

waiting for their litigation and all possible appeals to be exhausted, and then only seeing half of their award, the rest taken by the lawyers. This is especially true for claimants who are suing companies that have been forced into bankruptcy. There, the legal process can take half a decade and consume millions of dollars, leaving claimants able to recover only pennies on the dollar from the resulting bankruptcy trust. In short, victims bear much of the risk under the status quo, and they will continue to bear that risk until Congress acts. My proposal protects victims from those risks, and offers asbestos victims far more protection and certainty than they have today.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Nevada.

Mr. REID. Mr. President, I want to make sure, having heard the distinguished majority leader speak about asbestos, that we understand, as he has indicated, it is a very complicated, difficult issue. But there are concerns that I have, and I think I speak for lots of people in this country. I am very concerned about how it affects business, but I am also concerned how it affects individual people.

I called Mrs. Bruce Vento this week, a woman from Minnesota whose husband served in the House of Representatives, a wonderful man. He worked in an asbestos facility for a few months as a young man. He is 58 years old, he gets sick, he is dead within a year as a result of the disease that comes from being around asbestos, mesothelioma. The average life expectancy of a person who is diagnosed with this disease is a little over a year. They die quickly.

Then we have asbestosis, where people live longer but it has a detrimental effect on their health.

What we have to do is get rid of the spurious lawsuits, those that don't deal with those two conditions about which I just spoke.

So I hope, as we proceed through asbestos legislation, we worry about and are concerned about these very sick people. People in this Senate have worked extremely hard to come up with a solution. The distinguished Senator from Utah is in the Chamber, the chairman of the Judiciary Committee. He and the ranking member, Senator LEAHY, have worked days and weeks to try to come up with something. We always get close but never quite close enough.

So I hope as we proceed, as the distinguished majority leader indicated, toward legislation dealing with this, that we keep in mind the main reason we are doing it. The main reason we need to legislate, in my opinion, is to take care of the people who get afflicted with the diseases that are related to asbestos. In the process, I hope we can ban the importation of asbestos into our country. We continue to import thousands of tons of this stuff on a yearly basis, even as we speak.

So I appreciate the concern of the majority leader. I have concerns also. But if I were giving a speech in a prolonged fashion, I would speak about the people who get sick, as Bruce Vento did, and are now dead.

Mr. LEAHY. Mr. President, I thank the distinguished Senate Majority Leader for his remarks today on the need for the Senate to consider asbestos legislation next year. I wholeheartedly agree with him on the need for reform to establish a better system for providing fair and efficient compensation to victims of asbestos-related diseases. I remain committed to working with Senator FRIST, Senator DASCHLE, Senator HATCH, Senator DODD, Senator SPECTER, and others, to forge a bipartisan solution to this complex challenge.

Last fall, as Chairman of the Judiciary Committee, I held the Committee's first hearing to begin a bipartisan dialogue about the best means to compensate current asbestos victims and those yet to come. Chairman HATCH wisely held two additional hearings this year. Our knowledge of the harms wreaked by asbestos exposure has certainly grown since last fall, as have the harms themselves. Not only do the victims of asbestos exposure continue to suffer, and their numbers to grow, but the businesses involved, along with their employees and retirees, are suffering from the economic uncertainty surrounding this litigation. More than 60 companies have filed for bankruptcy because of their asbestos-related liabilities.

These bankruptcies create a lose-lose situation. Asbestos victims who deserve fair compensation do not receive it, and bankrupt companies can neither create new jobs nor invest in our economy.

A solution has never before been closer than it is today. Since the beginning of 2003, we have come to complete accord on the idea that the fairest, most efficient way to provide compensation for asbestos victims is through the creation of a national fund that will apply agreed-upon medical criteria in evaluating patients' injuries. We have been working tirelessly with representatives from organized labor, defendant companies, insurers, and other interested parties, to craft an effective trust fund system that will bring the certainty of fair payments to victims and financial certainty to industry. A myriad of issues have been resolved, from the definitions of the panoply of illnesses resulting from asbestos exposure to a ban on the use of asbestos in the United States. We are working, even today, on the details of other aspects of this scheme, down to the fine points of the administrative mechanism for processing claims.

We have made real progress in finding common ground. But we have yet to reach consensus, and without consensus we cannot end this crisis. Too much is at stake for us to walk away when we have come so far. An effective and efficient means to end the asbestos litigation crisis is within reach, and we must grasp it. Although the year is drawing to a close, our bipartisan commitment to this effort remains strong. I look forward to continuing to work

with my colleagues and all stakeholders to craft a consensus bill that we can move through the legislative process and into law next year.

#### MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 1, which the clerk will report.

The assistant legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1), to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the medicare program and to strengthen and improve the medicare program, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of November 20, 2003, Book II.)

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, we are now on this historic piece of legislation. I want to begin a discussion of that shortly.

But since the majority leader discussed the subject of asbestos legislation, and the chairman of the Judiciary Committee, who has been largely responsible for moving that legislation as far as it has come to date, is here and wishes to make a couple of comments, I would like to yield a couple of minutes to the distinguished Senator from Utah and then regain the floor to discuss the Medicare bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah.

Mr. REID. I am sorry, what was the concern?

The PRESIDING OFFICER. The Senator from Arizona has yielded to the Senator from Utah for 2 minutes and then will reclaim his time. Without objection, it is so ordered.

The Senator from Utah.

#### ASBESTOS REFORM

Mr. HATCH. Mr. President, I thank my colleague. I appreciated the remarks of the distinguished majority leader on the asbestos reform legislation. I certainly appreciate the kind remarks of the minority whip with regard to this. I think both of them spoke eloquently.

I rise today in support of the comments of the distinguished majority leader with respect to the asbestos legislation. This is an absolutely vital issue, and we have the opportunity

with S. 1125, the Fairness in Asbestos Injury Resolution Act, to correct what has been a gross injustice—both to asbestos victims and to our economy.

For more than 20 years now, compensation to legitimate victims of asbestos exposure has been delayed and diminished, while scores of companies with almost no connection to the problem have had to file for bankruptcy and hundreds of others live under the constant threat of insolvency from litigation. As a result tens of thousands of victims are not compensated and tens of thousands of workers have lost their jobs.

We've heard the statistics, but they bear repeating. The RAND Institute for Civil Justice tells us that, to date, approximately 70 companies have been forced into bankruptcy—at least three with operations in my home state of Utah.

The number of claims continues to rise as does the number of companies pulled into the web of this abusive litigation, often with little, if any, culpability. More than 600,000 people have filed claims, and more than 8,400 companies have been named as defendants in asbestos litigation.

This has become such a gravy train for some abusive trial lawyers that over 2,400 additional companies were named in the last year alone. RAND also notes that "about two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill." Former Attorney General Griffin Bell, amongst many others, has denounced this type of "jackpot justice."

To address this problem, I introduced a bipartisan bill with my friends Senators BEN NELSON, MIKE DEWINE, ZELL MILLER, GEORGE VOINOVICH, GEORGE ALLEN, SAXBY CHAMBLISS and CHUCK HAGEL. This bill creates a fund to provide fair compensation to victims, while reducing wasteful transaction costs dramatically. Let me first just dispel a few myths about this bill and set the record straight on a couple of issues. First, some Democrats and unions are saying there isn't enough money in the bill but the fact is that this bill gets more money to claimants on average than the current system does.

Let me explain how. There have been several studies of future asbestos-related costs under the current system, and the one which shows the highest reasonable estimate of prospective costs—the Milliman study—would result in approximately \$92 billion for victims, after attorney fees and expenses.

Under the FAIR Act, it is estimated that claimants will receive 90 percent or more of the total funds under the no-fault, non-adversarial system. This means the FAIR Act fund—which will have \$114 billion under the agreement proposed by Senator FRIST—will allow claimants to take home more than \$100 billion. This is more total money than they are projected to receive under the current tort system.

But it is not just more money in the pockets of victims, it is faster and more certain compensation as well. We anticipate that claimants will not have to endure years of discovery battles and endless litigation before they get paid. Currently, some victims are dependent on the solvency of businesses to decide if they get paid or not. Under the FAIR Act, these victims will no longer have to go without payment. It is time to end the current system of Jackpot Justice where only some win and many lose.

Some have also argued that there aren't adequate safeguards to ensure solvency of the fund. Baloney. This fund—which is funded at the highest reasonable claim-rate scenario—is equipped with many mechanisms to ensure that the pay-in and pay-out requirements are met. This includes borrowing authority against future contributions.

It also includes guarantee surcharge and orphan share reserve accounts which set aside money to grow and pay for unexpected shortfalls. Another safeguard is the provision to empower the Attorney General to enforce contribution obligations and ensure collection. And beyond these, there is \$10 billion in contingent funding as one more additional safety net. On top of all these safeguards, if the fund still becomes insolvent, claims would revert back to the tort system—a provision, by the way, which Democrats insisted be part of the bill.

Given that this bill is a clear net monetary gain for legitimate victims, and provides payments faster and with more certainty, I am at a loss as to why anyone could object to this bill. The unions that continue to oppose the bill risk throwing away the last, best chance to compensate fairly those who are truly sick and provide some protection to those whose jobs and pensions are at risk because of the asbestos litigation crisis.

Quite frankly, the only entity that stands to lose under this bill is the plaintiffs' bar which has siphoned off more than \$20 billion of the costs incurred on this issue as of the end of last year. If the FAIR Act is passed, they will not be able to use unimpaired claims to continue to squeeze a projected \$41 billion more for themselves from remotely-connected companies by abusing a broken system.

Fair is fair—I am all in support of compensating plaintiffs' attorneys for the value of their work. But when it diverts valuable resources away from sick victims, something is wrong with the system.

No one can accuse us of being unwilling to compromise in order to finally be able to address this overwhelming crisis being caused by asbestos litigation. When you look at where our bill started—and it was a good start—and where it is now, our efforts at compromise are blatantly clear.

In May we circulated a bipartisan draft measure and my staff met with

Democrat staff to listen to their concerns and we incorporated several requests—even before introduction. We then embarked on several weeks of markup which saw 23 Democratic-initiated amendments adopted into this legislation. Now I didn't agree with all of them, but it can hardly be said that there hasn't been strong participation by Democrats on this bill. This chart behind me lists just some of the changes we made at the behest of Democrats; let me highlight a few of them for you.

We increased overall funding. Our bill started with a mandated \$94 billion in contributions, which by most reasonable estimates should have provided sufficient resources for compensating legitimate claimants. In committee we increased base funding to \$108 billion dollars. That additional \$14 billion is not pocket change. We also took steps to ensure the enforcement of contributions as an added protection to the solvency of the fund.

We increased the number of claimants that would receive compensation by modifying the qualifying medical criteria and by including a provision to accommodate the unique circumstances of the victims in Libby, MT.

Moreover, we increased the amount of money that will go to claimants. Even though our original claim values would have on average provided more money to legitimate claimants, we increased the values even more. And we removed most collateral source offsets to ensure that more of the award goes directly to the claimant.

These changes listed on the chart behind me do not even include other changes that we have offered since the bill was reported out of committee to even further accommodate their requests, such as an additional \$6 billion increase in overall funding and significant increases in claims values in many categories. And we also offered a more flexible borrowing authority as another safeguard for solvency.

Now I understand that some want to make further changes, including streamlining the claims process even more, and I have said I'm willing to look at such proposals. But this and other complaints have been raised without the follow up of a concrete, alternative proposal. I hope that before this issue comes up in March as the Majority Leader indicated that we will resolve the outstanding issues.

We cannot delay any longer—we need to ensure that the truly sick get paid, while providing stability to our economy by stemming the rampant litigation that has resulted in a tidal wave of bankruptcies, endangering jobs and pensions. This crisis reaches far and wide—and it hurts everyone.

On Monday, this body will pass an historic bipartisan Medicare bill that will provide our seniors with drug benefits.

We can and should use this spirit of bipartisanship to come together on the asbestos issue.

I thank Senator FRIST for his leadership on Medicare and the constructive role he is playing on asbestos. Working together I am confident that Senators DASCHLE, SPECTER, LEAHY and DODD will all join together when we bring the asbestos bill to the floor in March.

Mr. KYL. Mr. President, I say again, this asbestos legislation, discussed by the leader, is very important for us to conclude early next year, and I make the point again, were it not for the work of the chairman of the Judiciary Committee, we would not be at the position where we hope to be close to finishing that legislation at some point.

Mr. CRAIG. Will the Senator yield to determine where we might be this morning?

There are several in the Chamber who wish to begin to speak on the Medicare prescription drug issue. Have we established any order for that purpose?

The PRESIDING OFFICER. There is no order other than to alternate speakers.

Mr. REID. Mr. President, if the distinguished Senator will yield for a response?

Mr. CRAIG. I will be happy to yield.

Mr. KYL. I will be happy to yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. What is in place is an agreement, gentlemen's in nature, that we would go back and forth. We are trying to work out an agreement where we would divide the time between proponents and opponents until 11 o'clock tonight. That has not been done yet, but there is something that has been typed up.

The reason going back and forth may not be fair is someone may speak for an hour and a half and someone else may speak for 10 or 15 minutes. So we have to come up with something better than that. That is what we are trying to do now.

Mr. KYL. Mr. President, might I suggest that during the time I am speaking, those who would like to speak in conjunction with the Senator from Nevada begin to work up a schedule. I would be happy to propound a unanimous consent request when that is concluded to reflect the agreement, at least for the next several hours, if that could be done.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, this is a historic day. Obviously, when one goes back to 1965 and thinks about the creation of Medicare, a lot has changed since then. We are here today to begin debating in the Senate a bill which passed early this morning in the House of Representatives, has long been advocated by President Bush, and which many people have worked on for a very long time, to try to modernize our Medicare system which, after 35 years, we recognize in this new 21st century needs to be changed to some extent.

For example, during that period of time, prescription drugs have become a

major component—indeed, in many cases the first component—of treatment for ailments, disease, and afflictions of people.

Mr. President, 35 years ago prescription drugs were used to alleviate symptoms of pain and occasionally to treat conditions, but more intrusive methods were the order of the day at that time. The Medicare program for seniors reflects the conditions then by covering hospital stays and physician benefits, but not outpatient prescription drugs. The prescription drugs which have over the last 35 years become a key, if not the key, component of medical treatment have not been a part of Medicare because they were not as key in 1965. So we know we need to add prescription drug coverage for our seniors and for those who are disabled and who qualify for Medicare.

There are other changes we know, also, that would help to strengthen Medicare, to ensure that as we proceed to provide Medicare to the baby boom generation, we will be able to do so with the highest quality of care possible, at prices that both they and the American people can afford and, as I say, which really encompasses the new concepts of modern medicine in this treatment.

So the question was how we would develop a system to provide prescription drugs as a component of Medicare. There were several different options, but the option that has been finally settled upon is one which I can support, and as someone who actually advocated a somewhat different approach, I would like to speak to those primarily who, like me, were not particularly pleased with the initial direction in which this legislation proceeded, to talk about why, at the end of the day, it is the best we can do under these circumstances and I think under any foreseeable circumstances of the near future, and therefore why it is important to move forward with this legislation.

It is momentous, it is huge in terms of the amount of money we are talking about, a commitment over the next 10 years of \$400 billion. That was the amount that Congress agreed to with the adoption of our budget and the crafting of this legislation. We resolved that this money would be set aside to provide this prescription drug benefit and make changes in Medicare to ensure the benefits of Medicare would be available to everyone in a quality way during the 21st century.

Let me discuss first of all some disappointments I have with the bill because these have been discussed by others and I want them to know I am very cognizant of the concerns that have been expressed.

I served on the conference committee that crafted this legislation and I spent literally hundreds of hours working with colleagues through these issues. Some of the battles we fought, I helped to prevail on, others we did not prevail on. But it is the nature of compromise

between the two bodies and between the two parties, especially when the Senate is almost equally divided that no one is going to get everything they think is best.

Let me first of all talk about the approach that was taken here and why in some respects I think we made some wrong turns, but how we have tried to recognize that and to ameliorate the effects of those wrong turns as much as we could.

There was a sense in this country, because there are many people who could not afford all of the prescription drugs they need in their treatment, that the Medicare plan had to be modified to ensure they could have access to those drugs at a reasonable cost. That was an approach that many Members thought would best utilize the funding available, to provide the maximum amount of benefit to those who most needed it.

Somewhere along the way, a major decision was made which fundamentally altered that concept. It was a decision that was strongly favored by the AARP, for example, a group which I am very pleased to say is in support of this legislation and has taken a strong role in educating America about the benefits of this legislation. That decision was to make the benefit of prescription drugs universal; that is to say, to make it available to all Medicare-eligible people, not simply to try to help those who needed the help the most.

The first result of that was it significantly reduced the amount of money we could make available to those who need it the most because, obviously, if you provide a universal benefit, you are providing it to everyone who qualifies for Medicare basically equally to those who do not need the benefit, because they have more money, as well as those who do need the benefit. Once that decision was made, it reduced the amount of money we could allocate to help those who needed the help the most. I regret that. We could have structured a plan that would have more targeted the benefits where they were needed the most.

In addition, we created some other problems. One of the problems is, employers who provide prescription drug retiree benefits will have less incentive to do that in the future because the Government will do so if they do not. Many will argue, why should we spend our money, our corporate funds, to support the prescription drug retiree benefits that we have done in the past when, if we stop that coverage, the Government will pick it up? The result of that was we had to allocate over \$70 billion of this money to be paid to these business plans, union plans, and even government plans, that provided retiree health care benefits with drug coverage. We had to provide that money to them to enable them to continue providing the coverage. Some call it a subsidy. It is a fair term, I suppose. But one might say we are paying them three fourths of what it would cost the Government, to provide this particular benefit.

So from the Government's point of view, we are saving money because if these company plans did not continue the coverage, the Government would have to pick up 100 percent of the cost. Nevertheless, it took a chunk of the money out of the program to pay for benefits that are already being paid for by somebody else, thus further reducing the amount of money we could allocate to those that need the care the most.

So those are just two examples of problems created by this initial decision.

The original idea of many Members was that we should provide more choices to seniors. Many Members came to that conclusion because Federal Government employees such as Members of Congress have a lot more choices in our drug coverage. We are entitled to enroll in something called the Federal Employees Health Benefits Program, or FEHBP, and we have a lot of health insurance options. These insurance options are integrated health-care plans. They provide all of our care, from hospitals to doctors as well as prescription drugs.

A lot of Federal employees, 10 million strong, like those kind of plans. Many are PPOs, preferred provider organizations, where you go to any one of the doctors on a list who has signed up with that organization, or you can even go out-of-network, you can go to a different doctor, and that is still OK. This was the concept the President originally announced and it is a concept I strongly supported because it would maximize choices.

At the same time, we recognize that a lot of people would still want to maintain what they currently have, what we call traditional fee-for-service Medicare, and simply add a drug benefit on top of that. We did not want to take that choice away. So the concept was to have basically two choices: Stay in traditional Medicare with the new drug benefit, or sign up with one of these new insurance programs, a PPO or what we call today Medicare+Choice, which is predominantly HMOs. That choice has been created in this legislation. The choice is a good choice.

I regret, however, that I don't think we have given the health insurance option a good enough chance to attract very many beneficiaries. There are efforts in the bill to do that, but I think we put too many restrictions on the PPOs, in particular, to expect they will be very successful. For one thing, we strongly regulate how much they can be paid. As a matter of fact, their payment rates are directly tied to what we pay in regular fee-for-service Medicare. That is price control. Congress and the administration set the prices that can be paid under the traditional Medicare Program. We were trying to get away from that heavy price control with this new insurance option. Unfortunately, in an effort to make sure we could keep the costs ratcheted down and compare

those costs to what we are paying for traditional Medicare, there is a direct relationship between what we pay in traditional Medicare and what will be paid on the private health insurance side. It is not really like regular private insurance. This is very highly regulated, controlled price, controlled private insurance as the alternative to fee-for-service Medicare.

I think it is less likely those PPOs are going to succeed as a result of that. Nevertheless, we at least, for the first time, have the concept of private health insurance as an option to traditional fee-for-service Medicare for all beneficiaries.

Senator NICKLES, in particular, and I worked strongly to increase the flexibility that the insurance option could provide so there could be literally dozens of products out there like the FEHBP for Federal employees, and people could decide what was best for them. Again, unfortunately, that flexibility has been greatly limited in this legislation, primarily because of concerns by the Congressional Budget Office that if very much flexibility were provided, the cost of the program could exceed the \$400 billion.

As a result, the options that are offered by these private plans will be very limited. For example, as you will hear others get into the details of the legislation, especially the drug benefit—and my colleague, the Senator from Iowa, the chairman of the Finance Committee, Mr. GRASSLEY, is in the Chamber. I know he will go into great detail about precisely how this works.

When that occurs, and you see how this benefit is going to be provided, one of the things you will see is that even though there is a very generous benefit—the Government will pay 75 percent of your drug costs up to \$2,250, after a \$250 deductible; so it will pay about \$1,500 worth of drug benefits—at that point, then, the individual is going to be responsible for a little under \$3,000 worth of drug benefits, before the catastrophic coverage of 95 percent Government-paid kicks in. Some people refer to this as a donut hole.

Obviously, with \$400 billion allocated to the problem, we are not going to be able to pay all of everybody's drug costs. There is not enough money in the Federal budget for us to do that. As a result, you can only cover what that amount of money will cover.

Well, it is hoped that the private sector insurance option will provide different ways of ensuring against that donut hole, ensuring against that out-of-pocket expense that individuals will have to pay. But, unfortunately, that cannot be done under this legislation. The threshold can be raised, but the out-of-pocket amount still has to remain the same. As a result, there is a limitation on the insurance product that can be offered.

Again, Senator NICKLES and I had hoped there would be a lot more flexi-

bility. I am hoping in the future we can loosen this up so these health insurance options can act like regular insurance options.

Another point: If you go to an insurance company today, a preferred provider organization, and you would like to get treatment from a different doctor who is not in their network, you can go to that different doctor. The plan will only pay an agreed-upon amount, and then you are billed for the difference between that and the physician's reasonable and customary fee. That is standard practice today.

That cannot be done under the way this legislation is written. That has to be fixed as well. Right now there is a price cap on that, and, therefore, it will discourage people from going out of the network, which will discourage people from signing up with PPOs in the first place.

These issues will have to be addressed later because we did not give sufficient flexibility to the insurance company alternative in this current bill. Again, I am speaking primarily to those who, like me, approach this with the idea that we could provide coverage similar to FEHBP coverage that the President originally articulated as the goal, and as someone who did not win all of the battles in this negotiation, but who still believes that at the end of the day, this is the best we are going to do, either now or any time in the future, that I can predict, given the politics, given the closeness of the Democrat-Republican split in the Senate and in the House of Representatives and the various other factors that influenced the decisions that we made.

Let me talk a little bit more about the drug benefit. Seniors today buy Medigap insurance, and that provides them a certain degree of drug coverage. It is regulated by the Government, but I think a lot of seniors believe they have pretty good drug coverage because of the Medigap insurance they have. The reality is, they are paying a lot of money for not that great of coverage. They pay almost as much money in premiums as the amount of coverage they receive. So it is not completely dollar for dollar, but it is not the kind of insurance that ordinarily we would think of.

As a result, the drug benefit that we provide here will be more substantial for the amount of money that is paid. But I do fear a lot of people will see the drug benefit we provide here as less than they are able to obtain today through their Medigap insurance, and it is going to be incumbent upon all of us to explain to people how this drug benefit will work. Again, it calls for us to try to loosen up the way the private insurance market can provide the drug coverage to meet seniors' objectives, not all of which are precisely the same.

Therefore, in order to convince them there are good alternatives to what they have today, since they are not going to be able to purchase the new drug benefit through the means of

Medigap insurance anymore—that will be done through a different mechanism—it is going to be important for us, I think, to provide them the maximum type of flexibility and choices, something, again, that we are going to have to address in the future because it is too restricted in the bill as we have it written today.

There are other items—and I do not want to dwell on the negative—but just to cite two or three others to show areas in which we could have done better.

Today, we reimburse physicians and hospitals in a very irrational way. It is very tightly controlled. It is price controls. We never get it right. We tend to want to save costs, so we do not reimburse them enough, and then hospitals begin to shut down, doctors begin to get out of Medicare, and we realize we have made a horrible mistake. So then we ratchet the payments back up, and it is a very herky, jerky way of reimbursing the very people we rely upon to provide the critical health care that we want. As a result, we have tried to figure out ways to make this more rational.

Well, the best example is in the case of oncologists, doctors who provide us drugs to treat cancer. The oncologists are not reimbursed at anywhere near what it costs them to provide this service for us. As a result, what they have to do is to buy the drugs for the chemo part of chemotherapy, and they mark up the value of those drugs, sell them to the patient, and that is how they get reimbursed for what they do. Of course, people have said: Well, it is a huge markup. They are making a lot of money off these drugs. And it is true that there is a huge markup. It is not a rational way of reimbursing them.

So what we tried to do was to go back and fix the basic formula, called the practice expense formula, to figure out how much it really costs those doctors to stay in business to provide this all-critical care for cancer patients, and we begin to re-adjust that formula so it will pay them more, and, at the same time reducing the markup they get on the drugs so they would not have to be paid out of that pot of money, in effect.

Well, we got about halfway there, but we still have more work to do on that particular formula. So it is just an example of how the Medicare system served seniors well, but there are clearly things in it that need to be fixed if we are going to continue to provide high-quality care and to ensure that we have physicians and hospitals that can stay in business to take care of us.

Cardiothoracic surgeons are another group. The very best of these surgeons go into the operating room with their own team. This is life and death. They have teams that work together for years. They have had a lot of experience in doing what they do. But they do not get reimbursed for their team members, their nurses, and so on. What they have to do is pay for that out of

their own pocket. You can obviously see, at a certain point, they are not going to be able to provide the high-quality care. What they have to do is basically go into the hospital and take whoever the hospital has at that time. They do not work together as a team, and they provide about half as many people as some of these surgeons need in order to provide the highest quality cardiac care.

Here is another area in which we could have provided at least a demonstration project or two to figure out how best to reimburse these cardiothoracic surgeons. We failed to do so in this legislation. We need to do that in the future. Cost containment was another matter. We wanted, given the fact this legislation could explode in cost, to have something in this bill that would ensure that the costs would be controlled.

There is a section in here that purports to do that, but it is largely illusory. It basically says, at a certain point in time we have to get together and make some recommendations. The President has to send some recommendations down to us. We do not have to act on them, of course. And it is really very hard to change the rules of the Senate to force us to act on something like this.

So I just want to let my conservative friends know that, no, there is not good cost containment in this legislation. But I would also ask them to think about one other thing; and that is, there is no free lunch. If you want high-quality health care, you are going to have to be willing to pay something for it.

I think sometimes conservatives look at one side of that ledger but not the other. We have to do everything we can to ensure that taxpayers can afford this expense. But we also do not want to be penny-wise and pound-foolish when it comes to providing quality health care for our seniors and for others who are on Medicare.

Indeed, for those who say we are going to control the costs in this legislation, I would say that the means of doing so that are in the bill are primarily price controls by the Government, which have been demonstrated not to work very well, and I think we can expect that the younger generation is going to bear the full brunt of this expense.

It is a \$400 billion expense over 10 years. It is not taken out of any kind of payroll tax or other kind of payment by the beneficiary for that segment of what we are providing. It is going to be paid for out of the pockets of people who are working to earn a living and pay for their kids' education. We have to stop and evaluate whether, with a lot of seniors who are well enough off to afford drug coverage, it is fair to ask their kids, who are struggling at this point to make a living, to bear more of the burden.

There is well over \$100 billion of this, probably about \$150 billion, in pre-

miums and copays and deductibles that will go toward the benefit we are providing here that is worth \$400 billion. But let us not forget that the \$400 billion money is being paid by taxpayers. So cost containment is important, and it will boil down to the discipline that we in the House and Senate and the President can exercise in keeping the right balance between cost containment and providing high-quality care.

I have stressed the negatives to try to establish a point. I didn't get my way negotiating this legislation despite hundreds of hours of work in the conference committee. Nobody got 100 percent of what they wanted. For those conservatives who are disappointed because of the kind of things I have been talking about here or the lack thereof that shows we really missed a historic opportunity to make the bill better, I would like now to address why I think, nevertheless, they should support the legislation.

It boils down to the fact that it is extraordinarily difficult with something this big and this complicated and important to so many people, with every Senator and every Representative having a very big stake in trying to get it right, to reach the kind of compromise that is going to make any particular group happy.

I note there was a scathing op-ed piece against one of the Democratic Members who was substantially involved in these negotiations, criticizing him for not representing his point of view well. I can't tell you how wrong the writer of that piece was. From my perspective, that distinguished Senator got far more than I did out of this. He won more of the battles than I did.

I think one should be a little bit careful about simply putting the ideology out there and saying, because one side didn't get everything it wanted, therefore it is a bad bill. The reality is that under the circumstances we face today, I think it would be impossible to put together a bill that would provide drug benefits for our seniors that would do it any better than what we have done here.

Why do I say that? Some people say, let's let this bill fail and we will come back and simply provide a drug benefit to those who need it the most. I think we have gone too far for that. Groups such as AARP are not going to support that. Their support is very important for a program such as this. I don't think a lot of Senators would support that. So even though that might have been how I would have liked to have started this process, I don't think that is going to pass.

Do we let 2 or 3 more years elapse without providing a drug benefit? I don't think that is an alternative. So I would challenge anybody who says this bill isn't perfect to demonstrate to me how they could cobble together a majority to provide an important drug benefit and still achieve all of the objectives they want to achieve and get it passed.

We do need to include prescription drugs in Medicare. They haven't been included, and we all know this is the preferred method for treatment by most physicians for many illnesses and diseases today. We also need to ensure that those who don't have coverage can get it. The options we provide in this bill at least get us part way down that road.

Importantly, we will be reducing the costs of prescription drugs both to third party payers, whether it be the Government or the employers, as well as the seniors for the part they have to pay. How is this done? There are a variety of mechanisms in the bill. One of them is the fact that the Government and the private plans will be buying in bulk. Everybody can understand that concept. You can buy for a lower cost if you buy in bulk. Another is that there are a lot of incentives to use fewer drugs, to use generic drugs, drugs that are based on a formulary that more specifically fits the particular patient's need, and not to have a lot of extra drugs sitting around in the drug cabinet. Almost all of us have extra drugs sitting around, which is probably not a very healthy thing. It is a costly thing as well.

There are a lot of incentives built in this legislation that should permit us to reduce the cost of drugs both for the third party payers as well as for the seniors themselves for the portion they are going to have to take care of.

Another important thing in this legislation is that we at least go a little way toward rationalizing the system of paying the doctors and the hospitals and other health care providers that have not been adequately reimbursed. There were large cuts in store for hospitals and doctors. Those cuts are no longer in place. In fact, there are very modest increases for physicians and hospitals: A 1.5 percent increase for the physicians, instead of the 4.5 percent cut that was going to take place starting January 1 if we did not act. At least there is modest support for those that we really count on when the chips are down to take care of us.

As I said, if we defeat this bill now, I don't see how we can come back and provide these things, how we can get consensus to do it anytime in the near future.

Another important item is the health savings accounts provision. Many of us have believed for a long time this could really provide a long-term way for people to build up the savings they can apply toward health care for insurance and out-of-pocket expenses so that they won't need to rely as much on Medicare when they get to be eligible for Medicare.

We know one of the reasons we have high-priced drugs is that Americans have to bear almost the full burden of the cost of production of drugs since other countries, such as our friends to the south and north, have price controls on how much they can reimburse the drug companies for their prescrip-

tion drugs. This is unfair trade. It puts all of the burden, a cost shift, on the American consumer. This bill provides instruction to our Trade Representative to come up with a way to deal with those other countries to get them to share more of the burden of the expense of producing these important drugs for us.

We also include the affluence testing of the Medicare Part B premium for those at the very wealthy end of the spectrum; a senior who makes over \$80,000 a year, for example. I think it is not too much to ask them to pay a little bit more in their Medicare premium for the coverage they receive.

We index the Part B deductible so we don't have to come back every 10 years and have Congress pass a law. This will basically keep up with the cost of inflation. We also include a change for so-called 340B hospitals. These 340B hospitals are public safety net hospitals, and we enable them to purchase their inpatient drugs cheaper than they can purchase them today. I introduced legislation earlier on this subject, and I am pleased we have that provision included here.

Then finally a provision that is important to those States such as the border States—Arizona, Texas, California, and others—that are required under Federal law to provide treatment to illegal immigrants because of the law called EMTALA, the Emergency Medical Treatment and Active Labor Act, that says no emergency room can turn away a patient whether that patient can pay or not.

Because emergency rooms now are faced with treating illegal immigrants under this requirement and because the Federal Government has not been able to enforce the law to prevent those people from coming into the country illegally in the first instance, we believed it was important for the Federal Government to at least help these hospitals defray some of the expenses they are incurring, which in some cases are so severe, it is forcing hospitals to consider closing down and certainly shutting down emergency room care.

That can't be. American citizens should not suffer because of a law that requires that we provide care to illegal immigrants. We can at least reimburse those hospitals for a portion of the cost they bear. This bill provides \$250 million a year for 4 years to provide that kind of reimbursement.

There are a lot of positives in the bill. There is a lot more I know the chairman of the Finance Committee will discuss in more detail.

What I want to do is discuss it from the standpoint of somebody who has been critical, who has constantly said: We can do better. We are missing opportunities. We ought to do this in a way that is more flexible, that looks more like the FEHBP. I didn't win a lot of those battles, but we have an opportunity to at least implement a plan that we have a possibility of making better over time as people see the ad-

vantages of the concepts we have put in the legislation.

We have the knowledge that at least in the foreseeable future, because we are adequately reimbursing those people upon whom we rely for care, that we are going to have that care provided to us in a quality way and that our seniors will not suffer because we didn't consider it important enough to provide for them the very best.

Without this legislation, they will continue to pay more than they should for prescription drugs. They won't receive as much in the way of prescription drug coverage or care. And that will be a shame at a time when this country has the capability of providing that kind of care.

Notwithstanding all of the concerns I have noted, the challenges we need to face in the future, we should support the legislation.

I chair the Health Care Subcommittee of the Finance Committee in the Senate. I intend to have hearings next year into areas that may need improvement. I look forward to working with my colleagues to improve this historic legislation as we move forward. We owe our senior citizens no less.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, we are alternating back and forth. It is obvious that it is not fair. The Senator from Arizona did not speak for an inordinate amount of time. If somebody comes and speaks for 5 minutes who is opposed to the legislation and someone speaks for 45 minutes in favor of it, that doesn't work out. I am somewhat at a loss as to why we have not worked out an arrangement that the time between now and 11 o'clock be equally divided between proponents and opponents, with no limit as to how much they could speak.

If someone who wanted to speak in favor of the legislation were here and there was nobody to speak in opposition, that person could go ahead and speak. For reasons I don't understand, the floor staff has not gotten that approved by the managers and leadership.

The Senator from West Virginia is here in the Chamber. He is going to speak against the legislation. With the agreement now in effect, it would be his time to speak. I know the manager is here. Is that OK with the Senator?

Mr. CRAIG. Will the Senator yield? I know the Senator is going to speak at 11 o'clock. I was told I could speak. The Senator from Illinois has been here for some time. I understand both of these Senators anticipate fairly lengthy statements. I do not. I anticipated no more than 10 minutes. Is it possible that I could slip in there somewhere?

Mr. REID. Mr. President, I think the Senator from West Virginia would be happy to yield for 10 minutes to the Senator; is that right? I don't know that to be the case. This shows how unfair this whole situation is.

Mr. CRAIG. Exactly right.

Mr. REID. I cannot imagine what is holding up the UC to allow the time to be divided equally.

I yield to the Senator from West Virginia. He has an obligation. That is why he is here at 11. The Senator from Illinois said he would be happy to yield, following the statement of Senator BYRD, to the Senator. He has that right anyway; he doesn't need consent to do that.

Mr. BYRD. Mr. President, in any event, the distinguished Senator from Illinois would be recognized at the same time—if I understand the request of the Senator from Nevada. If the Senator from Idaho goes first and then I go next, then the Senator from Illinois would go; or if I go first, and the Senator from Idaho goes next, then the Senator from Illinois would go. So the Senator from Illinois, through his gracious courtesy, which is so characteristic of him, either way, that would suit the Senator from Illinois.

That being the case, I have no problem with yielding to the Senator from Idaho next, if he can limit his statement to 10 minutes, which I understood he would.

Mr. CRAIG. I would do that under a unanimous consent, certainly.

Mr. REID. Just understand that following Senator BYRD is Senator DURBIN. There could be as much as an hour and a half. I want to make sure everybody understands that.

Mr. President, I ask unanimous consent that the Senator from Idaho be recognized for up to 10 minutes, and then the Senator from West Virginia, followed by the Senator from Illinois.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. I will not speak longer than 20 minutes.

Mr. CRAIG. Will the Chair signal me when I have spoken for 9 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. CRAIG. Mr. President, the Medicare conference report now before the Senate, brings to fruition President Bush's early and strong commitment to prescription drug relief, and it reflects nearly 6 years of difficult congressional debate.

The Senator from Iowa is here in the Chamber. He has played a key role in shaping the final package, in hours and hours of work with our majority leader and with leaders from the other side, to try to strike a critical balance.

This historic legislation, like the 38-year-old program it seeks to reform, is indeed expensive, complex, and unwieldy but it is a compromise I can and will support, although not without some very strong reservations.

This bill is a solid step toward accomplishing two core goals: Providing prescription drug relief to seniors in need, and strengthening Medicare's future through greater market competition.

This legislation also includes dramatic improvements in consumer

choice through health savings accounts, and perhaps the best package of rural health care improvements Congress has ever considered. I know its impact on the rural hospitals of Idaho will be significant.

Despite its deep and undeniable faults, this bill offers a rare opportunity unlikely to return for several more years, if ever—years in which millions of seniors will continue to suffer for lack of needed drugs and years in which the retirement of America's baby boomers will draw ever closer, and the modernization of Medicare will become ever more urgent. No, it is not perfect, but to hold out for perfection would risk a permanent sacrifice of much that is good and necessary in this legislation.

As chairman of the Senate Special Committee on Aging, I have chaired several hearings examining many of the hard questions in this debate—including the long-term demographic and financial pressures facing Medicare, and the importance of integrating competitive alternatives into Medicare's future. I am pleased to see some of these themes reflected in the legislation before us today.

Mr. President, my reasons for supporting this legislation are straightforward:

First, the legislation provides long overdue drug relief for our Nation's seniors. Nearly every health insurance plan in America today contains drug coverage. It is time Medicare did, too.

Beginning in 2006, seniors who decide to enroll in this completely voluntary new program and will pay a premium of about \$35 and will receive a 75 percent subsidy for the first \$2,250 in annual drug costs, after meeting an initial \$250 deductible. And after a senior's annual drug costs reach \$3,600, Medicare will cover 95 percent, providing essential relief for those seniors with catastrophic drug needs.

Overall, the average senior enrolled in this program will see annual drug costs reduced by 44 percent to 68 percent. In the nearer term, prescription drug discount cards will be available, offering seniors drug discounts of up to 10 to 25 percent.

Second, I am very pleased that the bill devotes the greatest share of its relief to seniors of modest and low income, those who need it the most.

For these seniors, the relief will be even greater than in the basic package. In Idaho, nearly 35 percent of our Medicare beneficiaries are likely to qualify. Seniors whose incomes fall below about \$13,500 for an individual or \$18,200 for a couple will receive deeply discounted premiums and deductibles, and those whose income is below about \$12,100 for an individual or \$16,200 for a couple will have no premium or deductible and will pay only a few-dollar copayment for each prescription.

The important thing to keep in mind is that the proportion of seniors today who have no private drug coverage at all is relatively small—about 25 per-

cent—and it is on these seniors, as well as those whose current coverage is inadequate, that this bill is focused. In short, those in the greatest need get the greatest benefit and that is as it should be.

Third, the bill before us today seeks to bring Medicare into the 21st century, not just by providing prescription drug coverage, but also by offering seniors the choice to enroll in federally supervised but privately operated health care plans—that same kind of choice and coverage currently enjoyed by other Americans under 65.

Medicare today remains weighted down by rigid bureaucracy and complex regulations—regulations that are already beginning to drive doctors and other health care providers out of the program. Even more distressing, the heavily bureaucratic Medicare Program has utterly failed to keep up with the kinds of medical innovations and coverage options most of the rest of us take for granted.

By contrast, this bill's new competing regional preferred provider plans will give seniors one-stop shopping for comprehensive and integrated coverage, including prescription drugs, preventive care, care coordination, and protection against very high catastrophic medical bills—benefits which are largely unheard of in today's Medicare Program. Even more encouraging, six large-scale demonstrations, beginning in 2010, will test direct price competition between private plans and traditional Medicare. Although not as extensive as I would have wanted, these competition-based reforms are nevertheless the most substantial steps Medicare has ever taken toward bringing marketplace innovation into the program.

Importantly, all of these new choices will be completely voluntary. Seniors who want to keep their current coverage and stay in the traditional Medicare will be free to do just that. No senior will see any reduction in any Medicare benefits under this bill. No benefits will be taken away—none.

Fourth, this legislation contains landmark improvements in the ability of Americans to take charge of their own health care through expanding the use of health savings accounts.

To a greater degree than ever before, this bill will permit individuals to build significant tax-free health care savings for use in meeting a family's health care needs, including long-term care. As we try to encourage those who are becoming seniors to acquire long-term health care insurance, here is a way to finance it and finance it with tax-free dollars. Together with high deductible insurance for very high medical expenses, this approach puts control of health care where it belongs—in the hands of the individual citizens of our country.

This is something I have been fighting for since I first came to Congress, and I believe this bill's health savings account provisions are among its most important accomplishments.

Fifth, I am tremendously pleased, as should be every Idahoan, that this bill includes an unprecedented package of nearly \$25 billion in improvements for rural health care. Senator GRASSLEY can be extremely proud of the work he has done to ensure the stabilizing of rural hospitals and rural health care. Most importantly, this legislation achieves a permanent evening out of rural and urban Medicare reimbursement rates. For far too long, doctors and hospitals in Idaho and other rural States have suffered under payment classifications and reimbursement levels that put them at a significant disadvantage—and that makes the already difficult task of providing rural health care even more daunting.

Sixth, the conferees have included, for the first time, a requirement that high income seniors (those making over \$80,000 individually or \$160,000 as a couple) pay slightly more in Medicare premiums than those who are less well off.

In the decades to come, I believe our children will thank us for recognizing that America's taxpayers simply cannot afford to continue subsidizing care for the wealthiest among us at the same level we provide for the less well off.

Finally, I believe it is important to recognize that the conferees have taken great care to include protections against something I know has concerned many seniors—namely, Will this bill cause me to lose the drug coverage I already have? The final bill includes very significant assistance to employer-sponsored plans to help assure their continued participation in retiree health care. Indeed, some are concerned that this assistance is, in fact, too substantial. But Congress's intent on this issue is clear: Seniors who are happy with the coverage they have today should be free to keep it.

The underlying framework of this bill is a sound one, and it follows the strong and guiding principles laid out by President Bush earlier this year—namely to strengthen traditional Medicare and keep it as an alternative for those seniors who want it—but also to provide a new foundation for the future, one built on choices, competition, and innovation.

This said, however, I remain gravely troubled by certain aspects of this bill.

First, it troubles me deeply that this legislation will add substantially to an entitlement program whose long-term future is already sobering in the extreme. Even without a new \$395 billion drug benefit, Medicare is expected to spend nearly \$3.9 trillion over the next 10 years—and by 2075, these costs will nearly triple.

Nothing can change the fact that desperately hard choices lie ahead, regardless of what we do this year. Nevertheless, what we sow today, future generations will reap.

Second, I am disappointed that the conferees chose not to adopt firm expenditure restraints if and when Medi-

care cost growth rises faster than currently projected. Nearly all honest observers predict that this bill will ultimately cost more than the \$395 billion over 10 years that is now budgeted. Such a cost restraint measure would have gone a long way toward assuring future generations that we are serious about fiscal restraint and preserving a viable Medicare program for our children and grandchildren.

Third, I believe this bill should have moved Medicare more assertively toward a 21st century competitive approach, with an even greater role for private plans and the innovation they generate—an approach patterned, for example, after the highly successful program now available to Members of Congress and other federal employees. As it is, this bill makes a credible start in that direction, but much more remains to be done.

And finally, I am concerned by this legislation's very high level of complexity and prescriptiveness. Of course, Medicare legislation is never simple. However, this bill runs to many hundreds of pages and is very heavy with exceptions, rules, and carveouts—including literally dozens of provisions and billions of dollars relating to specifics of provider payment.

This bill's new competitive alternatives, if they succeed, are intended to take us away from this kind of micromanagement. Unfortunately, if the complexity of this bill is any guide, we may yet have a ways to go.

My concerns about this bill are very serious ones. However, on balance, I believe this legislation is a positive step forward for America's seniors, for the Medicare program, for Idaho, and for the country as a whole.

President Bush deserves tremendous credit for making Medicare and prescription drugs a top priority this year, as do Majority Leader FRIST, Senator GRASSLEY, and the other conferees for bringing us to where we are today.

Medicare urgently cries out for a better future, and America's seniors desperately need meaningful prescription drug relief. This legislation moves solidly toward reaching both of these goals, and I urge my colleagues to stand with the President and support its passage into law.

I close by thanking the Senator from West Virginia for his courtesy. I will adhere to our agreement. I yield the floor, and I thank my colleague.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, our friend, the distinguished Senator from Idaho, who serves on the Appropriations Committee, is welcome. I thank him for his kind references to me.

I thank the Chair, Senator CORNYN of Texas, who has had the good fortune of presiding over the Senate on many occasions this year. I say, I have had the good fortune of speaking on almost every occasion that the Senator from Texas has presided over the Senate, and he presides so well. He presides

with a degree of dignity and skill and aplomb that is so rare as a day in June.

I also thank my majority whip, the best whip the Senate has ever had. And I have been the whip. I was the whip for 6 years. But I say—I will repeat the words of a great poet—"You're a better man than I am Gunga Din."

HARRY REID is a better whip than I was, and it wasn't because I didn't do my best. I don't grow lax in any job. Any duty that is placed on me, I do my very best. But he is a jewel, HARRY REID.

Let me thank the Senator from Illinois also, the distinguished Senator, Mr. DURBIN. He is always so gracious, but he can afford to be gracious. He is so able, an inimitable debater. He can speak at the drop of a hat, and the hat won't hit the ground. That man, DURBIN, is a very fluent and ready speaker. I am so pleased that he is my friend and that he is a Senator on my side of the aisle. I thank him for his courtesies on this beautiful morning in November.

It is a beautiful morning. May I say to the young pages who are here so early in the morning:

Ah, great it is to believe the dream  
As we stand in youth by the starry stream;  
But a greater thing is to fight life through  
And say at the end,  
The dream is true!

Mr. President, I had hoped to be out here on the floor talking about a plan to give senior citizens a prescription drug benefit for Medicare.

I had hoped to be extolling the virtues of a bill that would give needed relief to the millions of our Nation's elderly citizens who have been serving their country and their communities for so long and who are entitled to needed relief. Instead, the Congress will be voting on a measure that would undermine Medicare—undermine Medicare, I say. Listen to me. Hear me now. The elderly citizens who are watching through those electronic lenses, and also the sons and daughters of the elderly citizens as well, will be affected. So instead of voting on a measure that would give relief to the elderly citizens of this country, we are going to vote on something else.

In speaking of the elderly citizens, I speak of the young people as well. Why do I say that? I say it because I can remember the days when there was no Social Security or Medicare Program in this country. I used to go by the old county poor farm in Raleigh County, and as I traveled by there many years ago I would see sitting on the porch up there at the old county poor farm, sitting just within sight of the road, those old people in their rocking chairs. They had no dreams to look forward to. When they grew old, as some of them did—and those coal miners especially grew old early in life—they had no place to go, no place to go but to the homes of their sons and daughters. They would stand with their hats in their hands waiting to be taken in by their children. What a life.

Then there came to the White House of this country a crippled man, a man

who was paralyzed, a man who could not walk, as I can walk even at my young age of 86. There they stood waiting at the gates of their children hoping that they could be taken in. Then that man came to the White House and a Democratic Congress worked with him to give to the people of this country, the elderly citizens and their children, that promise. He fulfilled that promise of Social Security so that no longer would the old folks stand at the gates of their children with their hats in their hands. They could live out their lives with dignity and not be such a burden to their children.

Then I remember Medicare when it came. I was a Member of the Senate and voted for that program. That was when Lyndon Johnson, a great Democrat, was President of this land. Again, the Democratic Congress, working with that Democratic President, gave to the country this program of Medicare, the most successful program that the country has ever had, a program that today's Senators know and trust.

The Congress should be fashioning a real prescription drug benefit. That is what the American people have been told we are doing, but we are not doing that. Instead, the Congress debates a major restructuring and a step toward the privatization of Medicare.

I watched them tearing a building down,  
A gang of men in a busy town.  
With a ho-heave-ho and a lusty yell,  
They swung a beam and a sidewall fell.  
I asked the foreman, "Are these men skilled,

As the men you'd hire if you had to build?"  
He gave me a laugh and said, "No, indeed!  
Just common labor is all I need.  
I can easily wreck in a day or two  
What builders have taken a year to do."  
And I thought to myself as I went my way,  
Which of these two roles have I tried to play?

Am I builder who works with care,  
Measuring my life by the rule and square?  
Am I shaping my deeds by well-made plan,  
Patiently doing the best I can?  
Or am I a wrecker who walks the town,  
Content with the labor of tearing down?

That is what we are doing here. That is what we are about to do. That is what we are getting ready to do. That is what the seniors and their children of this country are about to see happen. This building which was built by careful hands, by caring hands, is about to be torn down.

This is a debate that has largely been hidden from the public, a debate for which our Nation's seniors did not ask. They did not ask for this.

The conference report before us was hatched behind closed doors. We see so much of that time and again under this Bush administration—programs, plots, hatched behind closed doors. Most Members of Congress have been largely excluded from the backroom deals—largely excluded from the backroom deals—that produced this conference report.

Some have asserted this legislation is merely a Trojan horse designed to get rid of Medicare. I hope that is not true, but there is something awfully sus-

picious about this particular horse that is galloping through the Congress.

We need to slow down and consider the unintended consequences of this massive bill. We may be signing off on the assisted suicide of Medicare as we know it. This legislation takes the first step to undermine a health care system that has benefited millions of retirees, and it is all happening within legislation designed to enhance Medicare to provide a drug benefit. Proponents are selling it one way but may be doing something quite different. You know the old magic tricks? I can remember vaudeville. I can remember when the vaudeville shows came to those coal camps in the hills of southern West Virginia and the actor would say: Watch my right hand, watch my hand, watch my hand. Don't look at this one. Watch this hand. Don't look at what's going on over here.

There is my friend from Maryland—he knows; he remembers—Senator SARBANES, one of the great pillars of the Senate, one of the truly great Senators, a thinker in the tradition of the venerable Socrates: PAUL SARBANES.

So proponents are selling it one way but may be doing something quite different—a classic bait and switch. But seniors are not falling for the bait. Many letters coming to me clearly reveal a genuine fear that this Medicare bill will leave seniors worse off. West Virginians have not been clamoring for enrollment in HMOs. They don't want restrictions on their choice of doctors. They have not been pushing for a new Medicare system that could leave them bouncing in and out of private health plans. My constituents are rightly fearful at the thought of having to pay significantly higher premiums just to stay in their current Medicare plan.

Some analysts of this bill estimate that as many as 29,000 beneficiaries in West Virginia will lose their retiree health benefits as a direct result of this bill and that as many as 45,000 Medicaid beneficiaries in my State will pay more for the prescription drugs they need. I thought our goal was to help seniors, not hurt them, as this bill may do.

Senior citizens across America are fed up with fast rising drug costs that they cannot afford. They are traveling by the busload to Canada—yes, traveling by the busload to Canada and Mexico—just to obtain the medications prescribed by their doctors. And this bill does nothing, zilch, to help reduce the price of prescription drugs. In fact, this legislation explicitly prohibits the Federal Government from directly negotiating with pharmaceutical companies to use the bargaining power of 40 million senior citizens to lower the cost of prescription medicines. This is something the Veterans' Administration, the Department of Defense, the Medicaid Program do every day to save money on drugs. Why in the world are we prohibiting Medicare from saving money?

Unfortunately, this bill offers more of a figleaf than sufficient prescription

drug coverage—a figleaf. Do Senators remember the first question that was ever asked in the history of the human race? It occurred during the evening, during the cool of the day when God came walking through the Garden of Eden looking for Adam and Eve. There they were in that paradise—how it might have been, how it might have been. God came through in the cool of the evening looking for Adam, and it was there and then that God asked that first question:

Adam, where art thou? Adam, where art thou?

Adam was hiding. Adam and Eve were hiding. They were trying to hide from that all-seeing eye that pierced through every veil. Yes, they were hiding back in the bushes with a figleaf—a figleaf.

That question: Where art thou? These seniors, senior citizens all over this country, are going to be asking their Senators: Where were you? Where were you when the critical moment came?

I hear the siren call: "You better take it. It's all you are going to get."

This Senator will never bow to that siren call. And there are others who will not.

Rather than building on the traditional and successful Medicare Program, the measure in front of us would force Medicare beneficiaries to rely on a private, untried, untested, drug-only insurance market for their prescription drug coverage. Is that what our seniors want? Is that what the people of West Virginia want? No. No.

It would cover less than a quarter of the Medicare beneficiaries' estimated drug costs over the next 10 years. The complicated coverage formula has a large, gaping hole smack in the middle, providing zero coverage just when seniors might need that coverage most—a large hole, large enough for Attila the Hun to drive his thousands of horsemen through.

This legislation includes copayments, premiums, and deductibles that may be unaffordable for many low- and middle-income seniors. A closer look at the fine print of this legislation reveals that private insurers could choose to charge seniors double or even triple these amounts. Seniors may find that their premiums could fluctuate dramatically based upon where they live and how healthy they are. At the same time, the Federal Government will be handing over billions of taxpayer dollars to for-profit insurance companies, just to get them to participate in Medicare.

Let's face it, the kind of prescription drug benefit that we have repeatedly promised to our Nation's seniors and they now rightly expect would cost at least \$800 billion during the next decade. Drug costs for senior citizens alone are expected to total almost \$2 trillion during this same period. Yet the Bush administration and congressional leadership have only set aside \$400 billion for a Medicare prescription

drug benefit. Although, isn't it remarkable that we can afford to spend \$1 billion a week—\$1 billion a week—in Iraq?

I will have plenty more to say about that. I made 62 speeches on that gargantuan mistake. I will make some more, the Lord willing.

Missiles? Yes. Medicines? No. Missiles? Yes. Medicines? No.

Where are the priorities of this administration? Where are the priorities of the Congress?

It seems that this Congress is trying to pull the wool over the eyes of our Nation's seniors hoping to claim victory and keep seniors in the dark until they become painfully aware of the fine print in this legislation upon a visit to their local pharmacy—in 2006. That will be my next election year, 2006, the Lord willing.

In the Book of James, we are told always never to say, I will go here, I will go to this city or to that city, I will buy this, or I will buy that tomorrow, but always to say, the Lord willing, I will go to this city or I will go to that city and I will buy this or that. So, the Lord willing, 2006 is my next election day. Eighty-six is not too old. I am 86 years old. Abraham lived to be 175, Isaac lived to be 180, Jacob lived to be 147, Moses, 160; and so on.

Mr. GRASSLEY. He lived to be 120.

Mr. BYRD. Was I wrong on that?

Mr. GRASSLEY. Moses lived to be 120, not 160.

Mr. BYRD. All right, 120. The distinguished Senator from Iowa corrected me. But he won't correct me on this bill. He won't correct me on the tragedies of this bill. But I accept his correction. I will go look it up to make sure.

As lobbyists for the pharmaceutical and health industry swarm all corners of the Capitol, the Congress is on a mad dash to pass this bill before Thanksgiving, regardless of its contents or its flaws, so long as it can be called prescription drug coverage. Unfortunately, when it comes to their health care security, it appears our Nation's senior citizens will find that they have little for which to be thankful.

I have heard some Senators argue that something is better than nothing. Is that what we are being given? Something rather than nothing? Nothing?

They try to rationalize a bad bill by claiming that this may be our last chance and you had better take it; something is better than nothing. They argue that we should vote for this now and fix the bill's problems down the road. I have been down that road. I have seen that and heard that many times in my 51 years in Congress. This conference report is a pill that is too bitter to swallow.

I am one of perhaps only a handful of Senators in this body who voted to create Medicare. I can say to you, Mr. President, that it was not created overnight. It was not created in the hidden dungeons, in the hidden subterranean caverns under this Capitol. It was created in response to a private sector

that would not offer affordable and reliable health insurance to the elderly and the disabled.

Few can argue that seniors are not better off today as a result of Medicare. We should not turn our backs on one of the most successful Government initiatives ever created. We should seek ways to strengthen Medicare, not dismantle it.

Senior citizens who need life-sustaining medicines want us to get it right. They trust us to get it right. We should reject this bill and work to pass a bill that does get it right. Thanksgiving is an arbitrary deadline. It means nothing when measured against the potential damage that could be done in haste—haste that could jeopardize the health care security of generations to come. We should do better for our senior citizens. We owe them that much.

In closing, I thank Senators who have worked hard on this bill, Senators who have toiled late into the nights and weekends. I thank Senator GRASSLEY. I thank Senator BAUCUS. I thank all Senators. I thank all Senators for listening.

By the way, as to Joseph, how long did he live? He lived to be 110 years old.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Nevada.

UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I am sure the Chair can protect the majority if there is a problem. We need to get this unanimous consent agreement, which has been approved by both sides.

I ask unanimous consent that the time until 11 o'clock tonight be equally divided between the opponents and proponents; provided that when time expires on either, it be in order for either side to consume additional debate time; further, that the debate time used beginning with Senator KYL's statement this morning be counted against the time allotment. I further ask unanimous consent that notwithstanding the order for an alternating fashion following the remarks of Senator DURBIN, it be in order for two Republicans to speak consecutively, one Senator for 20 minutes and the other Senator for 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, further, so Senators will have some understanding as to when they can speak, I ask unanimous consent that the Democrat order be Senators STABENOW and REED of Rhode Island following Senator DURBIN, and that the Republicans be Senators SNOWE, CORNYN, COLLINS, BENNETT, HATCH, BOND, NICKLES, and GREGG.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, before saying a few words about this Medicare bill, I would like to say a few words about the senior Senator from West Virginia. This man is such an amazing

person. At 86 years of age, what he brings to public service and what he brings to the Senate is incredible.

I was in the Chamber earlier this morning when Senator BYRD arrived. He said he would like to say a few words. I said, quite honestly, I am ready to follow you into battle any day. I deferred to him, which I was happy to do. He is a grand person and such an amazing Senator.

I have been fortunate to represent a congressional district in Illinois and the State of Illinois for over 20 years on Capitol Hill, and I have many favorite moments. But in the top tier of those favorite moments was the time in a conference committee downstairs from this Chamber involving Senator BYRD, and I would like to tell those who are following this debate about that experience because I still marvel at what he did that day.

He came to a conference committee on the Transportation appropriations bill facing a critic in the House who said that Senator ROBERT C. BYRD of West Virginia had put too much in this bill for the State of West Virginia. And your critic from the House was going to have his day with you at that conference committee.

As some people know who follow the Senate, the appropriations conference committees gather at a large, long table and the House Members sit across the table directly from the Senate Members. So your critic in the House came and took his seat with a sheaf of papers prepared to do battle with you over the Transportation appropriations bill. You arrived and just fortuitously happened to sit directly across from him at that table. He began his peroration about how terrible it was that West Virginia would have so much in this Senate bill and he was going to do something about it. He went on for all of 15 minutes. He got red in the face, his arms were waving, and finally he was spent. He had nothing more to say.

Then, as I recall, you turned to the chairman—which could have been Senator Hatfield of Oregon—and asked if you could be recognized.

The Senator began his remarks, and that is what I thought was the most remarkable moment, saying, in the history of the United States there is an exchange of speeches between two individuals which defined Federalism as we know it and the role of small States like West Virginia in the Senate and larger States. That exchange was between Daniel Webster and Robert Hayne.

Senator BYRD went on to say, Webster's reply to Mr. Hayne was delivered on January 20, 1830. And then Senator BYRD added, "and if my memory serves me, it was a Thursday." He proceeded to give an important history lesson to all who had gathered, Members of the House and the Senate, about why West Virginia had a fighting chance in the Senate but might not have that same chance in the House, as each State has

two Senators, of course, in this Chamber, and represented proportionately in the House.

I was absolutely spellbound by his performance that day in that small room. When it was all over, of course, West Virginia fared well in that appropriations bill, as it always has since Senator BYRD has been here to make sure his State was not shortchanged. I was in the House at the time, and a few years later I came to the Senate and said to Senator BYRD: Of all the things you said in the speeches, when you said, "If my memory serves me, it was a Thursday," I still remember those words.

Senator BYRD said: Well, Mr. DURBIN, if I am not mistaken, it was a Thursday.

I said: I am not questioning you; I am sure it was a Thursday.

Later in the day, he called me over to his desk and pulled out a perpetual calendar, and said, yes, January 20, 1830, was a Thursday.

It says a lot about this Senator, not only his reverence for history and this institution, but the fact that he brings to many of these political battles an insight that many Members admire so much and respect. Whether you are on his side or not, you best sit back and listen closely when Senator BYRD takes the floor because he brings to each one of these debates the very best in public debate and the very best in public service.

This Senator was happy to step back and listen very carefully as the Senator from West Virginia made another compelling argument on a very important and historic piece of legislation.

Mr. SARBANES. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. SARBANES. I listened to the able Senator from Illinois with great pleasure because I strongly share his feeling and views about Senator BYRD. I took the floor for a brief moment to underscore the extraordinary contribution that Senator BYRD has been making to the national debate in the recent period on issues of critical national importance. He has taken to the floor time and time again and spoken with a clear strong voice. He has sounded a clarion call to the country. I know from people I talk to that voice is reaching into many corners across the land and prompting Americans to think deeply about the issues that confront the Nation, and even more deeply and fundamentally about how we go about conducting our business and making these decisions.

The vote last night in the House of Representatives was held over for 3 hours in order for the Republican leadership to twist arms in order to change the outcome, which was already up on the board, where they had lost by two votes. That rollcall vote was held open indefinitely. My able colleague from Maryland, Congressman HOYER, remarked afterwards, it would be as though you had election day, the time

came for the polls to close, and you held the polls open for another 15 hours while you went out and somehow found the votes to assure you the result. It is an abuse of the democratic process.

The Senator from West Virginia has always spoken. He sounded a loud trumpet about our Nation. We are deeply in debt to him and appreciate that.

Mr. DURBIN. I thank the Senator from Maryland. I might just add something I have said in the Senate and I told Senator BYRD during the debate on Iraq. I went to my church in Chicago with my wife—this is highly unusual in my church—as we came back from communion, and we are kneeling, an elderly man came up to me and leaned over on his way back from communion and he said: Stick with BOB BYRD.

I came back to tell Senator BYRD that his message reached beyond this Chamber and beyond the State of West Virginia. It has been not only heard, but it has been applauded by the Nation of grateful people who are glad you are here in service to our country and continue to be. If you reach the age of Methuselah, Abraham, Isaac, or Moses, I hope I am still here to defer to you and listen carefully as you make these presentations.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. BYRD. Mr. President, I am deeply grateful to these two fine Senators for the kind words they have just spoken, Senator DURBIN and Senator SARBANES. I will go to my everlasting resting place with love and gratitude and affection and admiration and respect for these two Senators and how they have served the Nation and this institution and been loyal and true to the Constitution of the United States forever. I shall think of them and be in their debt. I thank the Senator.

Mr. DURBIN. I thank the Senator from West Virginia.

The Senator from West Virginia, when he came to the floor, gave us an important message. He asked us to look at this very carefully. This, my friends and fellow colleagues, is a proposed law. It is huge. But that is not uncommon. And that should not be a reason to vote against it. The reason to vote against it is what is contained in this law, this proposal, this bill.

When we started this debate about prescription drugs for seniors, overwhelmingly the President, the Republicans, Democrats, all agreed on one thing: We needed to find a way to provide affordable prescription drugs for senior citizens. Medicare, as good as it is, provides good care through hospitals and doctors but not enough help when it comes to paying for prescription drugs. We understood that needed to be done.

The solution was obvious from the start. The solution to this challenge was to put under the Medicare Program a voluntary, comprehensive, and

universal plan to pay for prescription drugs, to use the same successful model that has guided us for 40 years in keeping seniors healthy through good doctors and good hospitals, and also provide prescription drugs. We knew if we did that, it would work as Medicare has worked. The proof of Medicare's success is the fact that seniors are living longer, they are healthier, they are independent, and they are strong.

But there was a criticism of using this so-called Government approach. The criticism came from political extremes that argue that the Government shouldn't be involved, and also from the pharmaceutical industry which understood full well, if Medicare could bargain for seniors across America, Medicare could bring down the prices of prescription drugs just as the Canadian Government has brought down the price of those same drugs for its citizens.

The pharmaceutical companies lived in dread that Medicare would be able to have cost control and competition and bring down the price of drugs.

So we started on this convoluted path to find an alternative. The first suggestion was, why not let private insurance companies provide this prescription care benefit? Let them compete. There is nothing wrong with that from this Senator's point of view. If private companies want to offer prescription drug benefits and compete with Medicare, so be it. Let's see what happens. Let's see if that competition will also help seniors.

But they said, wait a minute, we are not wanting these private companies to compete with Medicare. We want Medicare out of the business of competition completely. That was the starting point for the Republican approach to prescription drugs. Of course, the pharmaceutical companies applauded this because if they do not have to answer to Medicare with 40 million Americans under its protection but, rather, to smaller companies, they have more bargaining power. So we went through this long exercise in the Senate about this proposition that private insurance companies would somehow provide prescription drug benefits to seniors.

I offered an amendment on the floor, supported by most of my colleagues who are here today, that said: Give Medicare a chance to compete. We did not prevail. In fact, we did not get any votes from the other side of the aisle. The Republican approach to this from the start was to say they believed in Medicare, but then to turn their backs on Medicare when it came to prescription drug benefits.

Well, eventually we were faced with the prospect, in the Senate bill, of either accepting their approach, and moving toward prescription drugs for seniors, and passing it out of the Senate, or doing nothing. Most of us voted to move the bill forward and into the conference committee. But, sadly, that was not the end of the story.

When it came to the conference committee, there was a new political force

at work, not just the people who wanted to keep Medicare out of the prescription drug business but a new group from the House of Representatives with a much more radical agenda. What they wanted to achieve was not just private insurance companies offering prescription drug benefits, they, in fact, wanted to privatize Medicare itself.

We started by wanting to add a benefit to Medicare, and now the House Republicans, and their cohorts in the Senate, have said: We want to change Medicare. We want to make certain that Medicare as you know it will not be there in the future.

One of the proponents of this point of view was former Speaker of the House Newt Gingrich, who this week came to the Republican House caucus and said: Vote for this bill; this is a good bill. That should be proof positive to anyone listening that this is a bad bill. Because it was that same Speaker Newt Gingrich, whom I served under in the House, who said, at one point, that we should allow Medicare to wither on the vine. There was no personal or political commitment by Speaker Gingrich to Medicare. And for him to endorse this huge bill is proof positive to me that within the four corners of this bill are threats to Medicare we need to take seriously.

This morning, as I came to the office, on Saturday, I had an e-mail from one of my staffers who fields the phone calls that come into my office. She wrote and said: Senator, something unusual is happening out there. When you first started debating prescription drugs under Medicare a few months ago, the phone calls were generally positive. Seniors were saying: Let's do it; we have waited too long. But she said: Something's happened. There is a sea change out there. The phone calls are overwhelmingly negative now.

Seniors have come to understand this bill not only does not give them good prescription drug coverage but it is a full-scale assault on Medicare itself, and they are calling every office, congressional and senatorial office alike, saying: Defeat this legislation.

Now, doesn't that tell us something? Doesn't it tell us something, that what we started off in believing—that seniors wanted prescription drugs—has now been rejected by them when they learned what is at stake? And there is a lot at stake.

This bill will raise Medicare premiums, something which lower income seniors will find very difficult to deal with. It will force seniors into HMOs. And you know what that means. That means insurance companies will pick their doctors and their hospitals for them and say that they will lose the right to choose their own doctors and hospitals.

Of course, that is the grand old Republican plan: that Medicare as we know it would change; that, instead, we would be dealing with HMO insurance companies. And I can tell you, I

have yet to run into a senior citizen anywhere who endorses HMOs, nor many doctors who believe they are very good when it comes to quality health care. Yet that is the solution that is being offered here.

It is not bad enough that my friends on the Republican side of the aisle have said they want to move toward private insurance companies and privatizing Medicare. They do not even believe in the value of the free market in this experiment. Because they are not saying to HMOs: We want to open the door and give you your chance to compete. No. They are coming through with more than \$10 billion in Federal taxpayers' subsidies to be given to these HMO insurance companies so that they capture more and more seniors out of Medicare.

Think of that. The Republican free market, entrepreneurial spirit that is being sustained by a \$10 billion Federal slush fund for HMOs so they can take more and more seniors out of Medicare.

What is even worse, as they draw seniors out of Medicare, they will look for, as most insurance companies do, the healthiest of the seniors, leaving behind the poorest and the sickest seniors in Medicare, meaning that the costs of Medicare per person are going to go up, and Medicare will become more expensive, and perhaps less popular from a budget point of view.

That is the grand plan here: Starve Medicare; have it wither on the vine. Newt Gingrich's vision for Medicare is finally realized in this 1,200-page bill. Speaker Gingrich rides again. He has prevailed. His was the voice that prevailed when it came to the contents of this bill.

Sadly, too, this bill will eliminate drug coverage for millions of Americans. We have had a Congressional Budget Office review of what happens when this bill goes into effect.

Mr. President, 2.7 million retirees will lose the private insurance coverage they currently have. Understand who these people are. These are people who have worked for a lifetime for a company, with the understanding they would receive a retirement benefit which included prescription drug coverage. And when this goes into effect, this proposal that has been brought before us, the Congressional Budget Office and other sources tell us 2.7 million Americans will lose their prescription drug coverage. They may lose all of their health coverage during retirement.

Over 100,000 of these unlucky retirees are in my State of Illinois. For them, if for no other reason, I will be voting no on this. I will be voting no because, frankly, we are basically saying: We want to reward HMOs. We want to reward pharmaceutical companies at the expense of people who have worked a lifetime for security in their retirement and will lose it because of this bill.

How can we, in good conscience, stand here and say we are going to cre-

ate a mechanism where companies will have the rationale and the opportunity to drop their retiree health care coverage? That is sad. Medicare was created because seniors across America did not have a helping hand when it came to doctors and hospitals. And now, in this effort to privatize Medicare and reward the big drug companies, we are going to provide less coverage for seniors across America.

Let me speak for a moment about the pharmaceutical aspect of this bill. We know if we have competition, we can bring prices down. We also know if the Government shows leadership, as they have in Canada, prices of drugs will come down. But the pharmaceutical companies have prevailed. The pharmaceutical companies have won the argument.

The most important question asked about any piece of legislation before the Congress is this: Who wants it? Who wants this bill?

First and foremost, the pharmaceutical companies want this bill because there is no effort to bring down the cost of drugs that American families and seniors have to pay—no effort whatsoever.

We had a provision included that called for generic drugs, one way to try to get good drugs that are lower priced in the hands of seniors, and it was weakened dramatically in the conference. We had an opportunity, through a provision proposed by the House of Representatives, for reimportation of drugs from Canada and Europe so seniors had a chance to get a break there if they could not afford the drugs here in the United States. That was dramatically weakened, too. And the Bush administration has vowed they will never let it happen, they will not allow reimportation to happen.

So if you do not have generics encouraged, and you do not have reimportation, and Medicare is not competing for cost, what it means is the pharmaceutical companies have their prayers answered, their dreams come true. They will continue to hike the cost of pharmaceuticals and drugs, and this Government and this bill will do nothing to stop it, and seniors across America will find this so-called prescription drug benefit of little or no value as time passes. Because if the cost of drugs goes up 10 or 15 percent a year, no matter what the Federal Government offers, in the end, there is little to show for it—less and less each and every year.

Mr. SARBANES. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question from the Senator from Maryland.

Mr. SARBANES. Am I correct in my understanding that under this bill, the Government, through Medicare, could not, in fact, bring its weight to bear in order to lower the cost of prescription drugs through a buying program, where they are a heavyweight in the scale—

that the bill actually precludes that from happening?

Mr. DURBIN. The Senator is correct because Medicare is not given the option of offering prescription drug coverage here, an option which most seniors would gladly endorse. And the reason is obvious: If Medicare can bargain on behalf of 40 million Medicare recipients, it has the bargaining power to bring down the cost of drugs for seniors. The pharmaceutical companies hate that concept, "like the devil hates holy water," to quote our old friend Senator Bumpers, who used to say that on the floor from time to time.

They don't want competition. They don't want cost control. They have won the day.

The Senator from Maryland has turned on his television at home in the last few days and weeks and maybe heard his name mentioned on television commercials that are being paid for by the pharmaceutical companies saying: Senator MIKULSKI, Senator SARBANES, vote for this bill. They are spending millions of dollars saying vote for this bill because this bill will mean millions and millions more in profit for those same pharmaceutical companies.

Mr. SARBANES. Will the Senator yield for a further question?

Mr. DURBIN. I am happy to yield.

Mr. SARBANES. In addition to precluding the Government from bringing its weight to bear in purchasing in order to lower the cost of drugs because they would be a very big purchaser and obviously they would have an impact, some have said: Well, let's at least allow for the reimportation of drugs from other countries, particularly Canada. Some of our people have been going to Canada in order to get their prescription drugs. They cross the border, and they can buy them at 40, 50, 60 percent less than they pay in this country. So there were provisions that passed to allow reimportation. Am I correct that, in effect, this bill eliminates that?

Mr. DURBIN. The Senator is correct. This bill gives the last word to the Bush administration and the head of the FDA who have said categorically they are opposed to reimportation. The reason they are opposed is that it would be more competition for pharmaceutical companies that want to charge higher prices in the United States. I have believed all along that we are not importing drugs from Canada, we are importing leadership from Canada. The Canadian Government has stood up for its citizens and said: We are not going to allow the drug companies to raise their prices every single year. This Government, this Congress, refuses to show the same leadership, and now is effectively blocking the reimportation of drugs that seniors need to survive.

Mr. SARBANES. Will the Senator yield for a further question?

Mr. DURBIN. I am happy to yield.

Mr. SARBANES. I also understand there was an effort to clear the path

for generic drugs to become available. Of course, generic drugs sell at a lesser cost than brand name drugs. A lot of the pharmaceutical people are opposed to that.

It is also my understanding that this bill fails to carry through on the efforts to make it easy to bring generic drugs to market. Am I correct in that respect?

Mr. DURBIN. The Senator from Maryland is correct. It is another success story for the pharmaceutical industry because they bring the drugs to market, brand name drugs, under patent, and during a period of time they have a right to sell them exclusively in America. But when that patent runs out, then other companies can make that same drug and sell it, usually at a much lower cost. So the pharmaceutical companies that make the brand-name drugs found ways to delay the process so that the generic drugs could not replace the brand-name drugs, so they could continue to make millions and millions of dollars off the brand-name drugs even when their patents expired. We changed that in the Senate.

We put in language that said we are going to move toward generic drugs so consumers can have affordable drugs. And, frankly, in conference committee, the pharmaceutical companies won again, another reason they are running ads about this Senator and the Senator from Maryland saying vote for this bill right now, because they know it means more money to an industry that is already the most profitable industry in America.

Mr. SARBANES. Will the Senator yield for one final question?

Mr. DURBIN. I am happy to.

Mr. SARBANES. I hate to intrude on his time, but this is a very important point. With this legislation, the pharmaceutical companies have, in effect, slowed the ability of generic drugs to come to market, which would be one source of competition that would lower their prices. The reimportation provisions have been written in such a way that it is completely in the hands of the administration whether reimportation of drugs, say, from Canada is allowed. The administration has been very clear that they are opposed to doing that. The legislation also, in effect, knocks out the Government from being a direct purchaser and controlling the prices.

Every source that potentially could exercise some pressure or influence on the pharmaceutical companies to lower or restrain their prices is being blocked out by this legislation. So the end result is that it is an absolute bonanza for the drug companies. Would you say that is a reasonable perception of what this legislation does?

Mr. DURBIN. I would say the Senator from Maryland is correct. I would refer him to a Bloomberg News article yesterday with the headline "139 Million Dollar Lobby Blitz Thrown at Medicare Bill." And it leads by saying:

Health care companies, led by drug makers Merck & Co. and Eli Lilly, spent a record \$139.1 million in six months to lobby Congress on a Medicare bill that will help the elderly buy prescription medicines. The pharmaceutical companies were the biggest spenders in the health care industry putting money into this lobbying effort.

The Senator knows, as I do, that if you find pharmaceutical companies working feverishly night and day to pass this legislation, it isn't because they want to make less money. They want to make more money. So we have the GOP, which could now be the acronym for the Greedy Old Pharmaceutical companies; that is what is pushing this legislation. That is proof positive that the seniors will be the losers.

The seniors understand that, as do families across America. It isn't bad enough that it is just pharmaceutical companies that are going to make out so well. The same thing is true about HMO companies, the HMO insurance companies with the more than \$10 billion Federal slush fund so they can compete with traditional Medicare, \$10 billion, and a reimbursement level of 109 percent for these same companies for their expenses while they are competing.

Then to add the crowning touch is something called health savings accounts. I would say to the Senator from Maryland, you are going to recognize this song after I sing a few lyrics. A company called Golden Rule Insurance Company, originally out of Evansville, IL, now based out of Indianapolis, with a man named Mr. Rooney as its CEO, has been locked at the hip with the Republican leadership on Capitol Hill since Speaker Gingrich took over in the House. That is when they dreamed up this idea of medical savings accounts and said: Here is the wave of the future. We can replace health insurance as we know it with the Golden Rule model of medical savings accounts, resulting in our efforts in 1996 of a demonstration project to see if this flawed concept would work. So few people were interested in signing up for it, it was a failure on its face.

Guess what. In this bill there is a \$6 billion subsidy for health savings accounts. In other words, not only are we guaranteeing record profits for pharmaceutical companies, not only are we creating a \$10 billion slush fund for HMOs to take seniors out of Medicare, we are putting \$6 billion into this boondoggle health savings account. I was on the floor watching the Energy bill yesterday and thinking it was scandalous that we were putting \$2 billion into the MTBE and oil industry—\$2 billion. They did us better with this bill. The Republican conferees came back and said: Let's up the ante; let's make it \$6 billion to subsidize this crazy concept of health savings accounts engendered by the Golden Rule company, one of the greatest benefactors of the Republican Party on Capitol Hill. If that isn't proof positive that this bill has gone astray, I don't know what is.

I say to seniors who continue to call congressional offices, keep the calls coming in. Let me suggest to them as well that if many of them happen to be members of AARP, here is that telephone number. Call your friends at AARP, ask Mr. Novelli, who has endorsed this boondoggle, why in the world has he turned his back on seniors? Why is he not fighting for more competitive drug prices? Why isn't he trying to stop the HMOs from privatizing Medicare? And why are we putting a \$6 billion subsidy in here for friends of the Republican Party, the Golden Rule Insurance Company. I think seniors across America get the message.

There was just a poll taken this week of members of AARP, which I hope Mr. Novelli will have a chance to read.

The poll shows that once seniors have been told what is in this bill, 65 percent of the members of AARP said they should stop trying to pass this bill and work for a better plan, and only 18 percent of the members of AARP supported it. So by a margin of almost 4 to 1, the members of AARP are saying to their leadership: You have it wrong.

I think, frankly, it is a burden now on AARP to come back to its roots and decide whether it is going to stand up for seniors or for pharmaceutical companies and HMOs. I hope the seniors across America who are as upset about this as many of us are will call AARP and tell them to stop spending millions of dollars trying to pass this bill. Instead, they should try to save Medicare first, and they should say basically don't sell out the seniors of America.

AARP is now in lockstep with these pharmaceutical companies and HMOs. They have forgotten their mandate, which is to stand up as a voice for seniors across America. That is unforgivable. I think they are going to find a lot of their members tearing up their cards and walking away from this organization. It has become very political and insensitive to the seniors across America.

Mr. SARBANES. Will the Senator yield for a question?

Mr. DURBIN. Yes.

Mr. SARBANES. The Senator made reference to a better bill. The very able Senator from Illinois, in the course of debate in the Senate, offered a better bill, which I was very pleased to support. That bill would have been a very significant and substantial step forward. Among other things, it did not have this "donut" in coverage that is in this bill.

As I understand this bill, at a certain point—I think \$22.50 in drug cost—and beyond that, up to \$3,600, the burden falls back on individuals; is that correct?

Mr. DURBIN. The Senator is correct.

Mr. SARBANES. In the Senator's bill that didn't happen; is that correct?

Mr. DURBIN. That is correct. This is a moving target. The fact is that there is a gap in coverage for prescription drugs built into this proposal so that

the sickest seniors with the highest prescription drug costs will find some coverage on the front end of the year for their illness and then find themselves paying out of pocket \$2,850, if I am not mistaken, before they get more coverage from the prescription drug benefit. So this so-called donut hole is one that I think seniors who are really sick and those who need expensive drugs should be aware of.

The bill we offered said Medicare will come in and compete for lower drug costs and the savings we can gather for lower drug costs will close this donut hole.

Mr. SARBANES. Will the Senator further yield for a question?

Mr. DURBIN. Yes.

Mr. SARBANES. Would we not also have been able to not have a donut hole if these moneys the Senator made reference to that are going to the HMOs—the \$10 billion, I think you said—

Mr. DURBIN. Yes, a \$10 billion slush fund for HMOs.

Mr. SARBANES. Also \$6 billion—

Mr. DURBIN. Yes, for health savings accounts, for their buddies at Golden Rule.

Mr. SARBANES. So that \$16 billion could have been taken and put directly to improve the benefit for our seniors, could it not?

Mr. DURBIN. The Senator is correct. The Senator starts with the same premise I do—that seniors are most comfortable with Medicare. If this started off as an added benefit to Medicare, this bill would have been much smaller and more understandable and supported by seniors. But when they rejected that and said, we are going to go to private companies, they really opened up all sorts of problems. They guaranteed profitability, put in slush funds, and they complicated it to the point where most seniors will struggle to understand it. This didn't have to be the case.

When you are out to privatize Medicare and reward pharmaceutical companies and help HMOs, that is where you end up.

Mr. SARBANES. As I perceive it, all of these things that are being done—the HMOs, the medical accounts, the limitation on Medicare being able to act directly, and so forth—if this stack of papers on the desk represents the Medicare Program itself, they are circling around it to undermine and undercut it. This bill has taken on an added fundamental dimension.

So as we look at this bill, we have to look at not only its shortcomings in adding prescription drugs to the Medicare Program, but we have to perceive that built into the bill are a number of efforts being put into place that will undercut the Medicare Program itself. Is that a reasonable view of the potential of this legislation?

Mr. DURBIN. The Senator is correct. There are those who began this debate saying: We are going to change Medicare. Well, they had their way. Many came here saying: We want to help sen-

iors pay for prescription drugs. If we had stuck to our original goal and focused on what seniors really want and what works, I think we would have achieved this result through Medicare a long time ago. It would have been at the expense of the profitability of pharmaceutical companies.

I say to my friend, who follows some of these corporate reports more than I do, this pharmaceutical industry is the most profitable in America. Look at this chart. Profits as a percentage of revenue in 2002: No. 1, pharmaceutical companies, with 17 percent return on revenues. Return on assets: No. 1, pharmaceutical companies, with 14.1 percent. Then they were nosed out when it came to return on shareholders' equity by household and personal products, but they are still No. 2, with 27.6 percent profit as a percent of equity.

This bill is giving them more profit at the expense of families and low-income seniors in America. That is why the pharmaceutical companies are spending millions of dollars for television, radio, and newspaper ads telling this Congress to "do our bidding." That is why they already spent \$139 million lobbying Congress to pass this bill.

If the pharmaceutical companies wanted to help seniors, they could have done this long ago. They could have charged more reasonable prices, particularly to low-income seniors. But that isn't their goal. Their goal is more profitability. Sadly, they found allies with the Republican majority who are attempting to pass this bill and make certain they are more profitable.

Mr. SARBANES. If the Senator will yield on that point, in confirmation of the Senator's analysis, the markets, in the last few days, have been boosting the price of the stocks of the pharmaceutical companies. The perception in the capital markets of the smart money people is that this legislation is going to significantly benefit the pharmaceutical companies, and they are building up the stock prices, which only goes to confirm and corroborate the analysis the Senator from Illinois has made on this issue.

Mr. DURBIN. The Senator from Maryland is correct. I will make this one last reference as I see colleagues in the Chamber who want the floor.

Represented on this chart are the compensation packages for the HMOs. This is another group that is benefiting. The \$12 billion slush fund will be going to HMO companies such as these on the chart. They will leave poor and sicker people behind. There will be a \$12 billion slush fund and some more benefits given to HMO companies. Look at the compensation for the executives. It runs from the obscene at Oxford, where Norman Payson gets \$76 million.

Mr. SARBANES. Is that per year?

Mr. DURBIN. Yes. Mr. Payson had a very good year. Alan Wise at Coventry gets \$21.6 million. This man must be really gifted if he is worth that to run a managed care company, which is now

going to be in the category of companies eligible for the \$10 billion Federal subsidy.

Down here is United Health Group, where R. Channing Wheeler is getting \$9.5 million. I bet he was embarrassed going to the country club with his friends and only making \$9.5 million.

Incidentally, United Health Group—do I remember that name from the AARP newsletter? Yes. It turns out they are in business together. It turns out that AARP, which is for this bill, is in business with United Health Group, a managed care company. Frankly, as I understand it, 60 percent of the revenues of AARP come through their insurance and advertising. Is it any wonder that AARP is pushing for this bill, when seniors are opposed to it?

I want to close because I see other colleagues in the Chamber. I say to seniors across America: If you have received your AARP solicitation and sent back your membership card, please call AARP at 1-800-424-3410. Tell them to stand up for seniors for a change, to reject this bad bill that won't result in lower prescription drug costs and will privatize Medicare.

Tell them you are opposed to a slush fund that is being created for HMOS. Tell them you think it is scandalous that we give \$6 billion to Golden Rule for health savings accounts. And tell them it is time for your organization, AARP, to stand up for seniors and stand up for Medicare instead of caving in to the special interest groups and supporting this legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

#### REMEMBERING PRESIDENT JOHN F. KENNEDY

Mr. FRIST. Mr. President, we discussed this morning that we will have a moment of silence at 12:30. I request we have a moment of silence.

The PRESIDING OFFICER. The Senate will observe a moment of silence.

(Moment of Silence.)

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, this moment of silence gives us an opportunity to reflect in a way that expresses our deep respect and also an opportunity to contemplate how we can capture what happened in the past and those lessons of the past and project them to the future but also in terms of carrying out our responsibilities in the Senate.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, for those of us who are old enough to remember President Kennedy, November 22 is always tinged with a sense of sadness and loss. Today, on this 40th anniversary of President Kennedy's death, we are especially aware of that loss.

One floor above us, in a corridor leading to the House side of the Capitol, there is a wonderful exhibit by a long-time Senate photographer named Ar-

thur Scott—"Scotty." He was an official Senate photographer from 1955 until his death in 1976.

One of my favorite of his photos up on the third floor shows a very young-looking Senator John Kennedy playing catcher in a baseball game with other Senators in 1958. Scoop Jackson is at bat and Mike Mansfield in umpiring. John Kennedy looks more like a staffer than a Senator.

About 12 feet down that same hall hangs another photograph. This one was taken on January 20, 1961. It shows a smiling, older-looking JFK walking into the Rotunda shortly before he was sworn in as President. Next to that is another photograph, also taken in the Rotunda. It shows a grim-faced Everett Dirksen with his arm around the shoulders of Hubert Humphrey as the two men walk past President Kennedy's casket in November 1963.

Only 5 years passed between that first photograph and the last. Only 1,000 days elapsed between John Kennedy's inauguration and his death. Not long at all. Yet, 40 years after that terrible day in Dallas, President Kennedy remains vivid in our memories and he continues to inspire even people who were not yet born when he died.

There are many reasons for this, I believe.

John Kennedy believed that politics can be a noble profession. Many of us in this Senate are here, in part, because we were inspired by his belief and his example. That is certainly true of me. That belief was also shared by his brother Robert, and it continues to be demonstrated today by his last surviving brother, our friend and colleague, the senior Senator from Massachusetts.

Another reason that President Kennedy remains such a force in our national life is that he inspired us to be our best possible selves.

He led by appealing to our better instincts, not our base fears. He showed us that we need not fear great challenges, as when he said America chose to go to the moon not because it was easy, but because it was difficult. He understood that there is almost nothing Americans cannot achieve when we are united and willing to sacrifice and work together toward a common goal.

John Kennedy was, indelibly, the grandson of immigrants. He was deeply grateful for the freedoms and opportunities that America affords. But he also understood that, with rights come responsibilities. As he said so often, "To those whom much is given, much is required."

President Kennedy understood that the most powerful weapon America possesses is the power to do good in this world. And he transformed that belief into the Peace Corps.

President Kennedy understood that we are all connected to each other, as he said to the Soviet Premier Nikita Khrushchev when the two leaders began negotiations on the first limited nuclear test ban treaty following the

near-cataclysm of the Cuban missile crisis. "In the final analysis, we all share the same planet, we all breathe the same air, we all cherish our children's future."

Today, thousands of people are expected to visit President Kennedy's grave in Arlington National Cemetery. They will file past that eternal flame. But we don't need to go to Arlington to pay our respects to John Fitzgerald Kennedy. That eternal flame also shines in the hearts of every American and every person on Earth who recalls what President Kennedy taught us in his too-brief life and who tries to live those lessons today.

Finally, Mr. President, I want to say a word about my friend, Senator KENNEDY. I know this is a sad day for him.

In the drawer of every desk on this floor are the names of the Senators who occupied these desks before us. I suspect we have all had the experience of seeing those names and thinking what an awesome responsibility it is to follow in such footsteps. In the drawer of Senator KENNEDY's desks are the names of two of his brothers, John and Robert. I am grateful to my friend that he chose to follow in his brothers' footsteps, despite the pain that public service has brought him and his family. It is an honor to work with him. America is better for the Kennedy family's service and sacrifices.

I yield the floor.

#### MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT—Continued

Mr. REID. Mr. President, I ask unanimous consent that the next Democratic speaker following Senator REED of Rhode Island be Senator HARKIN.

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

Under the previous order, the Senator from Maine is recognized. Does the manager of the bill seek recognition?

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for 4 minutes and that Senator SNOWE and Senator CORNYN not lose their right to speak.

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

Mr. GRASSLEY. Mr. President, I want to speak a lot longer to respond to what the Senator from Illinois has said because there is so much that can be so successfully rebutted. I will speak to two or three very obvious statements that are wrong.

The first one is that the Senator from Illinois has never run into a senior who endorsed HMOs. Forty percent of the seniors in Miami are voluntarily in Medicare+Choice. That is an HMO. And 6 percent of the seniors in his own large city of Chicago are members of HMOs. They are there because they want to be there. They can get in or, if they leave the area in which they live to go someplace elsewhere and they