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Senate

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Ultimate Sovereign of this Nation and of our lives, we commit this day to seek to know and do Your will. Our desire is to do what is best for our Nation. Help us to wait on You and listen patiently for Your voice whispering in our souls solutions for the complexities we face. Guide us to express our convictions with courage, but also with an openness to others. Give us humility to be more concerned to be on Your side than assuming You are on our side.

In the present conflict between the Congress and the President over the Federal budget, and with the looming crisis of governmental shutdown, we ask You to bless the negotiations of this day. Help the President and the leaders of the House and Senate to combine confrontation and compromise as they work together to find a solution to the present deadlock. We all have in common our trust in You and our dedication to serve our Nation. We relinquish our desire simply to win in a contest of wills. If we all seek You and Your righteousness, we know You will show us the answer. For Your name's sake and the good of America. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished Senator from New Hampshire.

SCHEDULE

Mr. GREGG. Mr. President, this morning it is the leader's intention to

turn to the consideration of the House message to accompany House Joint Resolution 115, the continuing appropriations bill, and hopefully pass the resolution on a voice vote. Following the passage of the continuing resolution, the Senate would immediately begin consideration of the House message to accompany H.R. 2491, the budget reconciliation bill.

Four motions to instruct the conferees are in order: Regarding Social Security, health care, Medicare tax cuts, and nursing standards. There is a 1-hour time limitation on each motion. Votes will be stacked to begin no earlier than 5:30 p.m., today. And at 2 o'clock, following debate on the motions to instruct, the Senate will consider the House message on H.R. 927, the Cuban sanctions bill, in order to appoint conferees.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative check proceeded to call the roll.

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

The PRESIDING OFFICER [Mr. GREGG]. Without objection, it is so ordered.

THE 7-YEAR BALANCED BUDGET RECONCILIATION ACT OF 1995

Mr. HATFIELD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 2491) entitled "An Act to provide reconcili-

ation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

For consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. Kasich, Mr. Walker, Mr. Armey, Mr. DeLay, Mr. Boehner, Mr. Sabo, Mr. Bonior, and Mr. Stenholm.

As additional conferees from the Committee on the Budget, for consideration of title XX of the House bill, and modifications committed to conference: Mr. Kolbe, Mr. Shays, Mr. Hobson, Ms. Slaughter, and Mr. Coyne.

As additional conferees from the Committee on Agriculture, for consideration of title I of the House bill, and subtitles A-C of title I of the Senate amendment, and modifications committed to conference: Mr. Roberts, Mr. Emerson, Mr. Gunderson, Mr. de la Garza, and [VACANCY].

As additional conferees from the Committee on Banking and Financial Services, for consideration of title II of the House bill, and title III of the Senate amendment, and modifications committed to conference: Mr. Leach, Mr. McCollum, Mrs. Roukema, Mr. Gonzalez, and Mr. LaFalce.

As additional conferees from the Committee on Commerce, for consideration of title III of the House bill, and subtitle A of title IV, subtitles A and G of title V, and section 6004 of the Senate amendment, and modifications committed to conference: Mr. Bliley, Mr. Schaefer, and Mr. Dingell.

As additional conferees from the Committee on Commerce, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference: Mr. Bliley, Mr. Bilirakis, Mr. Hastert, Mr. Greenwood, Mr. Dingell, Mr. Waxman, and Mr. Pallone.

As additional conferees from the Committee on Commerce, for consideration of title XVI of the House bill, and subtitle B of title VII of the Senate amendment, and modifications committed to conference: Mr. Bliley, Mr. Bilirakis, Mr. Tauzin, Mr. Barton of Texas, Mr. Paxon, Mr. Hall of Texas, Mr. Dingell, Mr. Waxman, Mr. Wyden, and Mr. Pallone.

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



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As additional conferees from the Committee on Economic and Educational Opportunities, for consideration of title IV of the House bill, and title X of the Senate amendment, and modifications committed to conference: Mr. Goodling, Mr. McKeon, and Mr. Clay.

As additional conferees from the Committee on Government Reform and Oversight, for consideration of title V of the House bill, and title VIII and sections 13001 and 13003 of the Senate amendment, and modifications committed to conference: Mr. Clinger, Mr. Schiff, and Mrs. Collins of Illinois.

As additional conferees from the Committee on International Relations, for consideration of title VI of the House bill, and section 13002 of the Senate amendment, and modifications committed to conference: Mr. Gilman, Mr. Burton of Indiana, and Mr. Hamilton.

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title IX and section 12944 of the Senate amendment, and modifications committed to conference: Mr. Hyde, Mr. Moorhead, and Mr. Conyers.

As additional conferees from the Committee on National Security, for consideration of title VIII of the House bill, and title II of the Senate amendment, and modifications committed to conference: Mr. Spence, Mr. Hunter, and Mr. Dellums.

As additional conferees from the Committee on Resources, for consideration of title IX of the House bill, and title V (except subtitles A and G) of the Senate amendment, and modifications committed to conference: Mr. Young of Alaska, Mr. Tauzin, and Mr. Miller of California.

As additional conferees from the Committee on Transportation and Infrastructure, for consideration of title X of the House bill, and subtitles B and C of title IV and title VI (except section 6004) of the Senate amendment, and modifications committed to conference: Mr. Shuster, Mr. Clinger, and Mr. Oberstar.

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XI of the House bill, and title XI of the Senate amendment, and modifications committed to conference: Mr. Stump, Mr. Hutchinson, and Mr. Montgomery.

As additional conferees from the Committee on Ways and Means, for consideration of titles XII, XIII, XIV, and XIX of the House bill, and subtitles H and I of title VII and title XII (except section 12944) of the Senate amendment, and modifications committed to conference: Mr. Archer, Mr. Crane, Mr. Thomas, Mr. Shaw, Mr. Bunning of Kentucky, Mr. Gibbons, Mr. Rangel, and Mr. Stark: *Provided*, That Mr. Matsui is appointed in lieu of Mr. Stark for consideration of title XII of the House bill.

As additional conferees from the Committee on Ways and Means, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference: Mr. Archer, Mr. Thomas, Mrs. Johnson of Connecticut, Mr. McCrery, Mr. Gibbons, Mr. Stark, and Mr. Cardin.

Mr. HATFIELD. I move that the Senate insist on its amendment and agree to the conference requested by the House.

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, the four motions to instruct the conferees are now in order. The motions to instruct are relative to Social Security, health care, Medicare and tax cuts, and nursing home standards.

MOTION TO INSTRUCT—NURSING HOME STANDARDS

Mr. PRYOR. Mr. President, I have the first motion to instruct the conferees, and this motion does, in fact, relate to the nursing home standards. Is it in order now?

The PRESIDING OFFICER. Yes, it is in order.

Mr. PRYOR. Mr. President, I send my motion to the desk to instruct conferees.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

MOTION TO INSTRUCT CONFEREES

Mr. Pryor moves that the managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 2491 be instructed to insist upon maintaining the Federal nursing home reform provisions of law that were enacted as part of the Omnibus Budget Reconciliation Act of 1987 and that provide for Federal quality standards and mechanisms for enforcement of such standards for nursing homes under the medicare and medicaid programs without an option for a State to receive a waiver of such standards.

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas is recognized for 40 minutes.

The Senator from Michigan will be recognized for 20 minutes.

Mr. PRYOR. Mr. President, later today, the U.S. Senate is going to be making a very, very interesting decision relating to the choice of the standards that we are going to employ for the 2 million nursing home residents who are today residing in America's nursing homes.

By the year 2030, Mr. President, we will no longer have 2 million nursing home residents. We are going to have 4.3 million nursing home residents residing in America's nursing homes. The question that we are going to decide this afternoon, Mr. President, is going to be that choice that we express as to which standards and how high the standards will be of protection—or I should say the protection for these nursing home residents who today reside in America's nursing homes.

In 1987, the U.S. Congress decided, after serious studies, after absolute horror stories, that it was time to have uniform standards on the Federal level. In 1987, for the first time, sweeping reform measures, sweeping standards were enacted in what we call now OBRA '87. Mr. President, necessitating this action was the fact that many of the States were not complying with the law, nor were they enforcing present State standards, nor was there a uniform code of standards nationwide that governed the policing, you might say, the regulating and the standard setting that protected nursing home patients.

OBRA '87 came about. Today we are proud to report that, last evening, approximately 142,000 nursing home residents in America went to bed, went to sleep unrestrained. We are proud to report, Mr. President, that 30,000 nursing

home patients today in America do not have bedsores because of the nursing home reforms and the strict guidelines of 1987.

In 1987, it was not a partisan effort. In fact, the late Senator John Heinz, former Senator DURENBERGER, former Senator Mitchell, majority leader George Mitchell of Maine, and many others in the Senate coalesced to bring about a bipartisan effort to have uniform, very carefully crafted procedures and standards on the national level, whereby these nursing home residents would be protected.

Mr. President, the irony of all of this argument today is, I do not know why this issue is before the U.S. Senate. These standards were working. In fact, these standards were working very well.

I ask unanimous consent that each of these letters I will refer to be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

BEVERLY ENTERPRISES, INC.,
Fort Smith, AR, October 25, 1995.

Hon. DAVID PRYOR,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PRYOR: Beverly Enterprises, the nation's largest provider of long term care services in the United States, supports strong, uniform and consistent Federal Standards for nursing homes and believes the focus of current efforts should be on improving, not eliminating the current standards.

Since Congress enacted the Nursing Home Reform Statute of 1987 (OBRA '87), Beverly has supported the Statute and continues to support the retention of Federal Standards.

It is critical that the health, well-being and dignity of our nation's elderly citizens be protected in every nursing home in the country. We believe that Federal quality standards are an effective way to ensure that this is achieved.

Beverly's commitment to the OBRA '87 Standards is evidenced by our institution's training programs throughout the company and the adoption and application of standards that in many instances exceed OBRA requirements. Prior to the implementation of OBRA '87, in October of 1990, our quality Management program required our facilities to meet standards similar to those required by OBRA '87. As a result we have exceeded the compliance rate of the industry as a whole for the last five years. The recent Consumer Report study recognized Beverly's compliance rates.

We recognize the need for industry-wide standards. We agree fully that there must be uniformity and consistency in quality standards across the States. OBRA '87 has been an impartial landmark in setting the ground work and we urge Congress not to eliminate the progress that has been made in improving the care provided to our nation's frail elderly.

Sincerely,

DAVID BANKS.

STATEMENT OF STEWART BAINUM, JR., SUBMITTED TO THE SENATE SPECIAL COMMITTEE ON AGING, OCTOBER 26, 1995

As the Chairman and Chief Executive Officer of Manor Care, Inc., I want to express our strong support for retention of the Nursing Home Reform Act of 1987 (OBRA '87). Manor Care owns and operates 170 skilled nursing

facilities in 28 states, and provides care to over 20,000 residents.

The OBRA '87 reforms represent the most comprehensive revision of nursing home regulations since the inception of the Medicare and Medicaid programs in the sixties. As I recall, the bill was over 1000 pages long, and addressed critical areas of care, such as resident assessment and care planning, nurse aid training and testing, resident rights, nurse staffing ratios, and enforcement. The final product reflected the agreement reached among 60 national organizations, representing consumers, seniors, providers, and state regulators. It was a painstaking process that worked. In fact, OBRA might depict one of the finest collaborative achievements ever in the history of health care legislation.

Manor Care proudly supported OBRA in 1987 because the legislation offered a valuable means of protecting and promoting the quality of life for one of the most vulnerable segments of our population. We must afford nursing home residents an environment which is safe and ensures their physical and mental well-being. OBRA '87 has been widely successful in accomplishing this goal.

Manor Care pledges to continue to meet these federal quality standards because they are reasonable, and have led to significant improvements in the care delivered to our residents. As a national company, we are supportive of the uniformity and consistency these standards provide across the states.

OBRA created a system of care delivery to help guarantee the dignity and respect of institutionalized seniors. Do not undo the valuable work that has been done. We ask that Congress support retention of the Nursing Home Reform Act and its standards. Stated most simply, it is the right thing to do.

Mr. PRYOR. Mr. President, one of the letters is from Beverly Enterprises, dated October 25, 1995. This is the largest provider of long-term care services in the United States, supporting keeping the stronger—not the weaker—standards embodied in this concept and instructing our conferees to maintain the strongest nursing home standards.

I will quote from the letter:

Beverly Enterprises, the nation's largest provider of long-term care services in the United States, supports strong uniform and consistent Federal standards for nursing homes and believes the focus of current efforts should be on improving, not eliminating the current standards.

This is signed by David Banks, the chief operating officer and chairman of the board of Beverly Enterprises.

Here is a statement of Stewart Bainum, Jr., to the Special Committee on Aging, October 26, 1995.

As Chairman and Chief Executive Officer of Manor Care, Inc., I want to express our strong support for retention of the Nursing Home Reform Act of 1987.

Manor Care proudly supported OBRA in 1987 because the legislation offered a valuable means of protecting and promoting the quality of life of one of the most vulnerable segments of our population.

Mr. President, what we have seen is, once again, that these standards are working so well—they are working as the Congress intended them to work—and we have seen a dramatic decrease in the dehydration of nursing home residents, a 50-percent decrease in dehydration since 1987. Second, we have seen a remarkable decrease of physical restraints, some 50 percent, as com-

pared to pre-1987 periods. We have seen a remarkable decrease in indwelling urinary catheters used on nursing home residents. We also point with great pride to that significant victory. Across the board, the nursing home regulations have not only worked, but they have worked well and they are working today.

So why are we trying to repeal the nursing home standards that everyone agreed to in 1987, that even the major providers agree to today, that all of the statistics show are working, that the nursing home residents are being protected, as they have been never before protected in our nursing homes? Why is it that we are suddenly trying to eliminate these standards?

Mr. President, to me, that is a mystery.

On October 27, by a vote of 51 to 48 in this Chamber, the Senate went on record as adopting the more stringent and retaining the Federal standards for nursing home protection.

A short while later, only about 6 hours later, Mr. President, we were discussing and had laid before the Senate the so-called Roth amendment which was sponsored by our colleague and friend, Senator ROTH, the chairman of the Finance Committee.

By a vote of 57 to 42, Senator ROTH's amendment prevailed. In my opinion and in the opinion of others, Mr. President, we dramatically, I should say, weakened the present nursing home standards.

This is just not my opinion that we are weakening these standards, Mr. President. It is also the opinion written on November 1 by the National Association of State Long-Term Care Ombudsman Program Directors, Mr. President.

Today we are writing to voice our opposition—from the ombudsmen who are out there in these nursing homes every day—to Senator ROTH's omnibus floor amendment [which] was passed and included nursing home provisions that can gravely weaken the quality of care standards you helped to reinstate.

... we believe this will be harmful to the quality of care provided to nursing home residents across the country.

Mr. President, not only do the ombudsmen out there in these homes every day feel that we are about to weaken these standards unless we instruct our conferees to keep the present hard standards—I should say stronger standards.

We have a letter from the Nursing Home Reform Coalition group.

The Coalition, however, does have serious concerns about the amendment providing for state waivers from the federal standards, passed by the Senate on Friday, October 27. The language in the amendment would allow States with standards "equivalent to or stricter than" the federal requirements to use its own standards.

We urge you, Senator PRYOR, and your colleagues, to consider the following recommendations:

Do not support maintaining this waiver provision

* * * * *

Provisions giving the Secretary the authority to take action against a facility providing substandard care, and where the state has not taken adequate enforcement action.

Mr. President, I ask unanimous consent that the letter from the Nursing Home Reform group, from the Ombudsmen who have written in about the nursing home standards be printed in the RECORD.

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

NATIONAL ASSOCIATION OF STATE
LONG-TERM CARE OMBUDSMAN
PROGRAMS,

Austin, TX, November 1, 1995.

Hon. DAVID PRYOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRYOR: Thank you for your successful effort in offering an amendment that reinstated the nursing home quality standards into the Senate Budget Reconciliation Bill. It was rewarding that it received some bipartisan support. This was particularly meaningful considering the House Bill eliminated these critical federal standards entirely.

Today we are writing to voice our opposition to Senator Roth's omnibus floor amendment was passed and included nursing home provisions that can gravely weaken the quality of care standards you helped reinstate.

As you know, the Roth amendment allows States to apply for and be granted waivers from the federal nursing home regulations. As stated in the amendment, a State can seek a waiver if it has equivalent to or stricter requirements as determined by the Secretary of Health and Human Services. For the following reasons, we believe this will be harmful to the quality of care provided to nursing home residents across the country.

It could lead to 52 different sets of standards. This would make federal oversight and enforcement impossible.

The provision lets the door open for States to seek private accreditation of nursing homes as their form of quality standards. The Ombudsman Program's experience has shown that accreditation alone is no indication of quality care.

This would create another level of federal bureaucracy charged with the task of approving and then monitoring the waiver.

There would be increased cost upon the states to write and apply for a waiver as well as the federal government's cost with the administration of the waivers.

NATIONAL CITIZENS' COALITION
FOR NURSING HOME REFORM,
Washington, DC, November 1, 1995.

Hon. DAVID PRYOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRYOR: The National Citizens' Coalition for Nursing Home Reform commends you for your leadership in having the federal nursing home standards maintained in federal law. As you are aware, federal standards are critical to achieving and maintaining uniform basic good standards of quality of care and life for our nation's nursing home residents, many of whom are frail and vulnerable.

The Coalition, however, does have serious concerns about the amendment providing for state waivers from the federal standards, passed by the Senate on Friday, October 27. The language in the amendment would allow

States with standards "equivalent to or stricter than" the federal requirements to use its own standards.

If states had standards that were stronger than the federal standards, there would be no need for a waiver, as the stronger standards could be implemented through state licensing requirements. States and facilities are always held to the higher of state or federal standards. Thus, nothing is gained by providing for such a waiver.

Further, it is unclear whether all of the state's standards would have to be equal to or stronger than the federal requirements, or whether a state waiver request would be approved if some of the state standards were equal or stronger. Only enforcement provisions are specified in the amendment language, thus casting doubt that all standards in state law will be evaluated.

When evaluating standards, it is not enough to approve a waiver request based on the fact that a state plan contains the same broad categories of requirements contained in the federal standards. The Secretary has the responsibility of also evaluating the substance of each category under the state plan, and only approve a waiver if the substance of each category is equal to or stronger than the federal standards.

To highlight the importance of the substantive requirements of the federal standards, the bill recently passed by the House of Representatives contains what have been described as "Quality Standards for Nursing Homes," provisions which will replace the standards contained in the Nursing Home Reform Act. In reality, the provisions in the House bill are a mere shell—lacking any substance—of the requirements under the Nursing Home Reform Act. Evaluating any State plan under the type of general provisions contained in the House bill, is no guarantee of the strength of those state provisions. We have prepared side-by-side comparisons of the requirements contained in the House MediGrant bill with the requirements in the Nursing Home Reform Act, and would be happy to share that with you. The same omission occurs in the lack of substantive language in the waiver provision.

Many states will argue that they currently have provisions that are as good or better than the federal law. Most states currently make that argument. California, for example, announced in October 1990, the effective date of the nursing home reform act, that since it's law was as good as the federal law, it would not implement the federal law. A class action lawsuit was filed against the state to compel implementation of the law. The federal district court ruled that California's law was not equivalent to federal law, and ordered the state to implement the entire law immediately.

Currently, no state has all the provisions of the Federal law, and there is no provision for a waiver from the federal standards. This amendment will result only in costly and unnecessary reviews of state plans and time spent defending denials of waiver requests. Considering the budgetary cuts facing the state and the federal governments, this is surely not the most effective use of limited funds and resources.

The language in this amendment leaves several other loopholes which would undermine the strength of the federal standards. First, there is a provision for a 120-day approval period, a time frame that includes public comment. This time frame is not adequate for public comment to be solicited, received, and the state plan evaluated. So the question arises, what happens if there has been no approval or denial by the 120th day? The amendment language is silent. It would be a travesty if the waiver were deemed approved. We could guarantee that states

would then be free to implement standards that were not at least equal to the federal requirements. Residents would, once again, be put at risk of being subjected to lower quality standards, poor care, and violations of their rights.

Additionally, the amendment language does not include any authority for the federal government to take enforcement action against facilities. The enforcement authorized by the amendment is against the State for failing to comply with Medicaid law, or with the state law they have been granted a waiver to use a place of federal law. Thus the Secretary could never take action against a facility, an important tool for achieving facility compliance in meeting contract obligations.

Further, subparagraph (b) Penalty for Non-compliance limits the federal government's ability to enforce the Medicaid requirements to a withholding of "up to but not more than" 2% of the State's "MediGrant." Studies have shown that poor care in nursing homes results in high costs to Medicare due to unnecessary hospitalizations. The state, however, incurs no cost after the resident leaves the nursing facility for the hospital. Thus, it may prove to be less costly for some states to incur a 2% penalty than to ensure that quality standards are being maintained.

Uniform standards for nursing homes, in addition to providing protections for residents and families, also serve another purpose. Standardized resident-level data is necessary in order to generate quality indicators. This enables Federal oversight of quality issues across states and facilitates quality improvement activities which result in cost effective techniques for the care of nursing home residents. This data also provides meaningful consumer information. Allowing states to obtain a waiver from the federal standards would seriously inhibit the ability to collect this important data.

We urge you, Senator Pryor, and your colleagues, to consider the following recommendations:

Do not support maintaining this waiver provision.

If it is inevitable that this provision will remain in the bill, we urge you support including the following provisions in the bill:

The requirement for a written determination that all provisions and substance of state law are equal to or stricter than the federal requirements in assuring that residents attain and/or maintain their highest practicable physical, mental, and psychosocial well-being before a waiver will be granted;

Stating that any waiver request not approved in writing within the specified time period would be deemed denied;

Provisions giving the Secretary the authority to take action against a facility providing substandard care, and where the state has not taken adequate enforcement action;

Requirement that the penalty for failure of a State to comply with a provision of Medicaid law, or State law requirements under a waiver, is the current 100% withholding of Medicaid payments to the state;

Including a private right of action for residents and their representatives to challenge the Secretary's granting of a waiver before it goes into effect.

Thank you for your dedication to the quality of care and services provided to nursing home residents. We look forward to working with you on these issues.

Sincerely,

ELMA HOLDER,
Executive Director.

Mr. PRYOR. I offer also some other concerns I have about the standards as set forth in the Roth language versus

the language that we are trying to get the conferees to adopt at this time.

First, in States that get waivers, the Secretary of HHS will have no enforcement authority against individual facilities and weaker enforcement authority against the States as a whole.

Now, why do we want weaker authority? Why do we want weaker standards? This is something that we are asking today as a question.

The second weakness is, Mr. President, that the language only says what the Secretary can do to the States, not to individual nursing homes.

For example, if a State has been given a waiver, if HHS determines that the State, for example, of New Hampshire has laws and regulations that are equal to or better than the Federal provisions, so the HHS Secretary stamps a document saying, "You are under no Federal regulations," then the State of New Hampshire at that time, notwithstanding that a nursing home or several nursing homes absolutely are giving unconscionable treatment to their nursing home residents, the Federal Government has no authority, no empowerment to do anything about those particular homes.

They can move against a State. They cannot move against the particular homes. Those residents, those nursing home residents, Mr. President, are sitting there, lying there, housed there absolutely helpless and without an advocate to come to their side to protect them.

The third concern, Mr. President, current law today allows the Secretary to withhold all Medicaid funds from the States that have problems in nursing homes.

Senator ROTH's amendment that was approved by the Senate which preempted the so-called Pryor-Cohen amendment, the Roth amendment only allows the Secretary to withhold 2 percent of Medicaid funds from waiver States.

What kind of a lever is that? What kind of a bargaining chip is that, just to be able to hold 2 percent of the Medicaid funds from those States with a waiver?

Also, Mr. President, look at the litigation. Just imagine the litigation that is going to result if we do not keep the present standards. If we wade off into this unknown field that our colleagues on the other side of the aisle have presented to us and say, "If you get a waiver, you can do this," but there are no guidelines. We are not sure what is going to be the law or the regulations that each State will adopt. We will just do our best.

Mr. President, how much litigation is going to result from this indecision, from this attempt at obfuscation of the nursing home standards that have served us so well since 1987? To me it is unconscionable for us to think about watering down the present standards that we see today that have served us so well in nursing home standards.

Mr. President, I am very hopeful that the Senate later on this afternoon

when we begin our voting process is going to support this motion to instruct the conferees to keep the present nursing home standards that we have and, once again, that have served us so very well.

Mr. President, we are also looking today at the typical nursing home resident. We look at those nursing home residents and realize that before 1987 and before we had these particular nursing home standards that we are trying to maintain today—look at the characteristics of a nursing home patient, of a nursing home resident. All of us in this Chamber, perhaps, have someone in a nursing home—an aunt, uncle, a mother, dad, grandmother, grandparent, grandfather, relative, good friend. We will look at the characteristic of the nursing home patient and residents that we have today.

Mr. President, 77 percent of all of the nursing home residents need help in dressing; 63 percent need help in toileting; 91 percent need help in bathing; 66 percent have a mental disorder. Mr. President, also, over 50 percent of the nursing home residents today in America have no relative, no friend, no one that becomes their friend and their advocate to make periodic visits, to make certain that basic rights are adhered to.

We have certain things that OBRA '87 brought about. The right for the nursing home patients and residents to choose their own physician. We are about to repeal that, perhaps. We have basically the protection that the nursing home residents can open their own mail and have the confidentiality of their medical records being protected. We are about to repeal that.

Mr. President, the average nursing home resident out there today, we feel, needs every protection, the highest standards that we can bring about. And for us to turn our back and say we are going to, basically, obliterate these standards and have them no longer, in my opinion would be a tragedy and a disgrace.

Mr. President, I see my colleague from Michigan, who has now come to the floor. I understand he is going to manage this issue for the other side. So, since he wants to speak, I assume, I will at this point yield the floor and reserve the remainder of my time.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time for the quorum not be charged against either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ABRAHAM. Mr. President, I yield myself such time as I may need to speak more generally on the reconciliation bill that is going to be dealt with later this week.

Earlier, when this issue regarding motions to instruct was being talked about, there were several I was considering bringing. Because of the unanimous-consent agreement that was entered into, these are precluded from being brought here today, but I would like to speak responsive to those because I think it is important, as our conferees begin to meet, that they focus on some of the issues of difference that existed between the Senate package and the package that passed the House.

In particular, as you will note, Mr. President, back during the final hours of debate on the reconciliation bill, the so-called Byrd rule was invoked to remove from the Senate reconciliation bill a number of provisions which related to the welfare reform proposals that are in the reconciliation bill. I had considered bringing back some of those in the form of instructions to our Senate conferees to accede to what the House has attempted to do in these areas, because I think it was a huge mistake for the Senate to remove some of these things from our package.

Specifically, during the final hours of that debate we removed part of the welfare reform bill that would have provided States with an incentive, in the form of additional dollars, to those States that were able to reduce the rate of illegitimate births, of out-of-wedlock births, through various programs they might enact so long as they did not simultaneously increase the abortion rate as a way they might accomplish the reduction in the out-of-wedlock births. This was a topic we debated at great length here in the Senate when the topic of welfare reform was before us. It is one that really had quite a bit of consensus support on both sides of the aisle. In fact, an amendment relating to it was defeated, an effort to take it out of our welfare bill, with more than 60 Senators voting to retain this so-called illegitimacy bonus language in the bill.

I think we have heard, from both sides of the aisle and across America, great concern expressed in an ongoing basis over the problem of rising numbers of illegitimate births in our country. Indeed, we have even heard percentages that are projected to be as high as 40 percent of all children born in this country by the year 2000 will be born out of wedlock. The social indicators are that children born under these circumstances typically have higher rates of dropout from school, higher drug abuse rates, higher likelihood of becoming, themselves, involved in some type of criminal activity. It is a problem that spans the entire country and it is one which we in the Congress, I think, have responsibility to address.

The one and only way in which we attempted to address this very specifically in the welfare reform bill was through this provision, which would have provided States with the incentive to reduce the number of illegitimate births. For that reason, I was

stunned when the Byrd rule was invoked, to try to remove—and in fact it did remove—this provision from the bill. In my judgment it was a terrible statement to make at the time when people from all political perspectives are arguing this is a problem of national concern and a problem we must address.

I can understand there were politics involved in the invocation of the Byrd rule with regard to the reconciliation bill on a number of fronts. But this statement was a mistake. I think making this statement sent the wrong signal. I think in many ways it was a repudiation of the concerns of average men and women, citizens across this country, who have been focusing on what we are doing here and asking, hoping the Congress will be responsive to a serious problem.

So, Mr. President, I say again, even though it is not in the form of an instruction, it is this Senator's hope the conferees will work to make sure the provisions in the reconciliation bill which addressed out-of-wedlock births in the form of providing States with financial incentives to address these problems locally will keep such language in whatever package returns to us.

Another provision which was likewise removed was the provision which would have capped the amount of time that people could be recipients of welfare benefits to 5 years. As I have traveled throughout my State, one of the concerns I hear expressed constantly by people is the notion that they do not want to see welfare become a way of life. The best and surest way to address that, I think, was the approach which we took here in the Senate in the welfare bill we did consider. It was overwhelmingly adopted. Approximately 87 Senators joined together to support the bill. In that bill we had a 5-year limit on the benefits that people would be allowed to receive from the welfare system. That, too, was a provision that was struck during the debate on the reconciliation package, again, I think sending absolutely the worst possible signal the Congress of the United States could send to people in this country who look to us to set rules that are fair and responsive to their concerns.

As I talk to the hard-working men and women of my State, who pay their bills and pay the taxes and are genuinely compassionate toward those in need, what I hear them say is, "Fine, we want to provide a safety net. We want to be helpful. But we think there are certain points at which enough is enough. Five years seems like a reasonable period of time for them."

For that reason, I sincerely hope, again, the conferees on the reconciliation package, whether or not it is in the form of an instruction from us, will be responsive to these concerns and retain the sort of language which we had

in the Senate bill prior to the invocation of the Byrd rule during the last hours of debate.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PRYOR. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time for the quorum not be charged against either side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I yield myself 5 minutes off the motion.

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

THE IMPENDING SHUTDOWN OF THE FEDERAL GOVERNMENT

Mr. GREGG. Mr. President, I am not going to speak specifically to the resolution, but I do want to speak to the underlying issues with which the resolution—and the other business which we will be taking up today—is involved. That, of course, is the question of the impending shutdown of the Federal Government, what has brought it about, and where we are going.

I think it is unfortunate that it has been characterized—but it is not unusual—as I understand it, by the national press as an event which is involving a confrontation over personalities, a confrontation that has borne the position of business as usual, or politics as usual; not necessarily name calling, maybe name implying, rather than a confrontation for what it is.

This is an issue involving some very substantive philosophical differences that we have arrived at, and we have not yet arrived completely at the point of final decision, if there is ever a final point of decision, in the business of governing because the point of final decision is more appropriately the reconciliation bill at which this motion to instruct is directed. The reconciliation bill, which is now being confereed, involves the fundamental changes which we as Republicans have proposed—or many of them anyway—especially in the entitlement accounts; fundamental changes which go to the fact that we believe the Nation's budget must be brought under control, that our Federal Government must work towards a balanced budget; and that needs to be done within a confined period of time; that we need to reach that balanced budget by the year 2002, or 7 years from now; that the way you reach that is not by cutting the Federal Government but slowing its rate of

growth, and specifically slowing the rate of growth in certain major entitlement programs such as Medicare, Medicaid, welfare, farm programs; and, that in slowing the rate of growth of the Federal Government we believe—and we have put forward proposals with which we think we can deliver better programs.

We can, for example—and have—put forward a program which is going to deliver to our senior citizens we believe a much stronger Medicare system, at least one which will be solvent, which is absolutely critical, something which will not occur if action is not taken. As we have heard from the Medicare trustees, the Medicare trustees say that it is going to be insolvent unless something is done. What we have proposed—and what is being discussed—essentially is to say to seniors we are not going to allow you to keep your present health care system. But, if you wish to participate in it, we will give you a chose of other forms of health care delivery. We are going to give you choices of other forms of health delivery, like I or other Members of Congress have, and using an HMO, or a PPO, or some of these other initials, which mean basically groups of doctors and different types of health-care suppliers getting together and offering you, the seniors, service.

We are going to bring the marketplace into the Medicare system, and by bringing the marketplace into the Medicare system hopefully create more efficiencies of delivery of service while still delivering first class-service, and in the process giving our seniors more choices; and, also in the process slowing the rate of growth of Medicare.

We have proposed in the welfare area that we take this system—which is so fundamentally flawed, which has created such dependency amongst so many of our citizenry and has not allowed people to get off the system but rather put people into the system for generations—and say to those folks, "Listen. You can only be on welfare for 5 years. You have got to be willing to go to work, if you are going to get welfare benefits." And, more importantly, we are going to turn it back to the States and allow the States to manage this welfare system, something that we should never have taken from in the first place because the States can do it so much better, to be quite honest, because they are closer to the people that are impacted by this.

So we are putting forward ideas which fundamentally reform the way this Government operates.

Today we are confronted with the fact that the President has vetoed the continuing resolution, which would allow the Government to operate for a couple of weeks, because he disagrees with the basic theme of the proposals that we are putting forward. It is the administration's essential position that the status quo works. I do not believe the status quo works. And many of us obviously on this side of the aisle

do not believe that the status quo works. We happen to believe that this Government needs to be adjusted, that we cannot pass a Government on to our children which is fundamentally bankrupt and expect our children to have an opportunity to prosper.

So we come to the point of decision. That point of decision is going to be the reconciliation bill. But, prior to getting to that point, we have reached this preliminary discussion over about how we fund the Government for the next 2 weeks. And the President has decided to make a stand at this point on his belief that the Government of the status quo is appropriate. So that is his right. It is his right to put forward that philosophical position—that this Government is not large enough, that it should get larger, that this Government should take more taxes from our citizens rather than less tax taxes, that this Government, which has a Medicare system which is going to be bankrupt, according to our own trustees, should pursue a system which does not correct that system, or improve that system. That is his right to put forward those philosophical differences.

What I think is unfortunate, however, is that, as we move forward over the next week, we will be in a period of confrontation which appears to be one surrounding politics as usual—name calling or posturing that is superficial—rather than one that in actuality we are really discussing here, really getting to the question of how this Government is delivered over the next 7 years, as to how this Government is going to be restructured and reformed, and, in my opinion, improved, and significantly strengthened.

So as we take up this issue for the balance of the day—and I suspect we are going to be in this matter of the Government shutdown for quite a few days because I do not see any immediate resolution of it—I hope that we will stick to the issue of discussing the substance that has gotten us here, the substantive issue which have brought us to this point.

Those substantive issues really come down to this. Do we wish to bring the Government into balance? Do we wish to have a Government which is fiscally responsible, one which is a Government which we can afford, and a Government which our children can afford? That is what this debate is really all about. It is not about who talked to who on the flight to Israel. It is not about what the phone conversations were, and the tone of the phone conversations. It is about whether or not we as a nation are going to finally make some decisions, and we in the Congress and this President as a Presidency are going to finally make some decisions about restructuring this Government and make it affordable for our children, and how we go about doing it.

My expectation is that we will not resolve this overnight; that decisions which will be made in the next 24 hours will not be those so momentous as to