

more forced abortions, more sterilizations of the mentally handicapped, more incarcerations of political dissidents, and the near extinction of the expression of any opinions contrary to those of the Communist regime.

I have on this chart, I think, a very clear illustration of the failure of the constructive engagement policy. On the left of this chart we see a dramatic increase of trade with China, a less dramatic increase of imports from the United States, and a very dramatic increase in exports. We see, in a very graphic manner, while trade has increased from 1987 to 1996, we have also seen that human rights abuses in China have increased almost in a parallel manner. Homeless children—in 1993 over 600,000, in 1997 almost three times as many homeless children, homeless children being the result of those who are incarcerated and those who are executed. Religious persecution in China—in 1993, 2.4 million believers, those people of faith persecuted. In 1997, 4 years later, under the policy of constructive engagement, 4.5 million, almost doubling.

So, while trade increased—the logic of constructive engagement would say trade increasing, more trade opportunities will mean greater human rights and fewer abuses in China. Just the opposite has occurred.

Reeducation camps—in 1993, 200,000 were in these forced reeducation labor camps; in 1997, over 5 million have been detained, according to Amnesty International and according to the Congressional Research Service. I believe this in fact demonstrates that constructive engagement has been very destructive.

Second, this delinkage has also resulted in a loss of leverage with the Chinese Government. I want to pause to read from an editorial that appeared in my hometown paper today, the Arkansas Democrat Gazette. It says:

But they may not realize that a carrot-and-stick approach isn't likely to be effective if the carrot is always offered and the stick is always withheld.

That has been the result of this delinkage policy. They would say, and they do say: Your words are empty because there is nothing to back them up. Delinkage has not worked because, in effect, there has been no stick. So, is it any wonder that, in effect, we hear the Chinese Government say we don't care what you say because in the end we get what we want and we can continue to do what we please? Mr. President, that delinkage has resulted in a loss of leverage is clearly evident in that State Department report of 1996, in which they said, "No dissidents were known to be active at the year's end."

When most-favored-nation status reaches the point that it is no longer conditioned, then it becomes absolutely meaningless. When we look at China and our own State Department says by every measure conditions are worse, yet we say we are still going to extend most-favored-nation trade status, then that annual exercise becomes

nothing more than an annual joke that we play in Congress, where we go through the process, we go through the debate, all the time knowing most-favored-nation trade status will be extended, MFN will be extended regardless of what conditions may have occurred within China.

In a flagrant act of intimidation, China effectively blockaded Taiwan during a missile testing exercise off its coast in March of 1996. Many examples could be given of where the Chinese Government acts with impunity toward our Nation because our policy has been one of coddling.

Third, constructive engagement supposes a true free enterprise system in China and that system just does not exist. The logic behind constructive engagement is flawed because it assumes that in fact they have a free enterprise system. They do not have that. They have protectionist trade policies, they have an enormous trade deficit with the United States, and the People's Liberation Army controls many of the industries in China. So the assumption is wrong and the policy is flawed.

Fourth, constructive engagement supposes a fair trade relationship that does not exist. How can you have a fair trade relationship when there are 5 million people in slave labor camps? Forced reeducation camps, the old gulag in the Soviet Union, the concentration camps, that's what they are, with prison industries. Though it is against the law, there is no way that we can totally detect what products are made in prison factories and what products are not. So there is no fair trade relationship with China.

Then, fifth, constructive engagement ignores the military buildup in China. If you reject everything else, the fact is we have a compelling national security interest as we see China's defense budget growing. United States Ambassador to China James Sasser recently stated that fact. The Chinese themselves have announced an increase in that budget, which will bring total defense outlays to \$10 billion and many believe it is closer to \$40 billion. So I say, as you look at China's military buildup, their willingness to export weapon components, chemical weapon components, selling those weapon components to Iran, nuclear weapon technology to Pakistan, advanced jet aircraft to Russia and on and on, it is clear that our national security interest would say we ought not extend again most-favored-nation status to China.

Sixth, constructive engagement is flawed because it assumes that gentle treatment will elicit good behavior while firmness will result in escalating tensions. Let me say that again. The assumption is that if we will give to China gentle treatment, it will elicit good behavior, but that if we dare to take a firm stand, it will escalate tensions. In an earlier day that philosophy was called appeasement, and it has never worked. It did not work in the days of Chamberlain, and it will not

work in our day. There is no greater example of it, perhaps, or image of it, at least, than when Vice President GORE toasted Premier Li Peng.

Arthur Waldron wrote in his essay "How Not to Deal with China," he said:

China is involved in disputes around the full circumference of its border, disputes which, like burners on a stove, Beijing may turn up or down, but never turns off.

So they toy as we grant MFN. The logic behind this policy is flawed. I believe it deserves a vote of no confidence. I hope the Senate will have the opportunity to cast that vote. China has created a dichotomy. They say, on the one hand, give us trade. They say give us sales. They say give us dollars. And on the other hand, they practice political repression, slave labor, forced abortion and religious persecution. Between those two statements there is the great wall of China: Yes, market economy, free trade, but political repression and slave labor. To the extent that free markets lead to free minds, China, in recognizing that, built a wall between. And, as we continue to grant most-favored-nation status, we allow that wall to exist.

Mr. President, 2 years ago, I was present, as many of my colleagues were, at the dedication of the Korean War Veterans Memorial, the latest war memorial on the Mall in Washington, DC. At the edge of the memorial is a low wall upon which is inscribed this reminder, I think a good reminder for all Senators, a good reminder for all our colleagues in the House of Representatives on this eve of the MFN vote. On that memorial is inscribed these words: "Freedom is not free."

To those who would say that profits are the ultimate arbiter of American policy, I say it is time that, once again, values and principles be the determinant of what our national policy is and what our trade policy should be. Freedom is not free.

Thank you, Mr. President. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa is to be recognized.

#### BALANCED BUDGET ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. HARKIN. Mr. President, who yields me time?

Mr. President, I ask unanimous consent that my time be taken off the minority's time on the bill.

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

Mr. HARKIN. Mr. President, for many years, I have been working hard to identify and combat fraud, waste, and abuse in the Medicare Program. Starting in 1990, when I took over as chairman of the appropriations subcommittee that funds and has jurisdiction over the administrative funding of Medicare, I began holding hearings, and I held several hearings through

those years, released report after report, documenting the unnecessary losses to the Medicare Program. These losses are truly staggering. I have taken the floor many times over the last several years to document this for other Senators. The General Accounting Office estimates that up to 10 percent of Medicare payments could be lost to fraud, waste, and abuse. That adds up to about \$18 billion a year.

The HHS inspector general just concluded a comprehensive audit of Medicare claims paid last year. It is the most comprehensive review of claims ever made. They found that up to \$23 billion of those payments, or about 14 percent, should not have been paid. This is last year, 1 year. The HHS inspector general said that up to \$23 billion should not have been paid. So the problem may even be worse than we originally thought.

There are many components to this problem. Mr. President, if you can dream up a scam or a ripoff, it has probably already been tried in Medicare. We have uncovered losses due to out-and-out fraud—billing for services that weren't administered, providers paying and receiving kickbacks, double billing. We now even have evidence that organized crime has entered the Medicare fraud business. Clearly, there is a lot of criminal activity that is going on out there which is costing us billions of dollars each year.

However, we found, with help from the GAO and inspector general, that even greater losses are due to waste and abuse. That's right, waste and abuse is even bigger than fraud in the Medicare Program, and those losses are often directly due to or encouraged by wasteful Medicare payment policies and practices.

At long last, it appears that the bill before us will address some of the most glaring problems. It would make changes that I have been advocating since the beginning of this decade, changes, I might add, that this body has previously defeated. I have offered amendments on the floor in the past to provide for competitive bidding for Medicare, just like the Veterans Administration has, and I was not successful.

So now with the competitive bidding, plus a streamlining of Medicare's authority to pare back excessive payment rates, these two steps can cut waste and save taxpayers billions of dollars. I commend Senator GRAHAM of Florida for offering the amendment in committee on competitive bidding. He had cosponsored my proposals in the past. Senator GRAHAM has done us all a great service for his action, and I commend the full committee for adopting it and having it in the bill before us.

The need for these reforms could not be clearer. Let me just give you an idea of what I am talking about. Last year, I released a report prepared by my staff on waste in Medicare payments for medical supplies. Remember the \$500 toilet seats from the Pentagon of a dec-

ade or two decades ago? The good news is, the Pentagon isn't buying them anymore. The bad news is, Medicare is.

Our analysis of Medicare payments for a sample of medical supplies and equipment from saline solution to hospital beds reveals that Medicare is paying up to six times more for these items than other Government or private-sector entities. For just 18 items reviewed, Medicare could save over 50 percent, or up to \$236 million this year. Let me repeat that. We reviewed 18 items—just 18—out of the tens of thousands that Medicare pays for. In just those, we could save \$236 million this year if we paid the same rates in Medicare as we paid in the Veterans' Administration. Same item.

If Medicare were just to pay wholesale rates offered to others around the country, it could save \$218 million this year. In fact, it was so bad, we found that if Medicare just went down to the local drugstore and paid retail rates, it could save \$371 million over the next 7 years; \$371 million over 7 years if they just paid retail rates for the 18 items that we looked at.

For example, we found that Medicare pays up to \$182.80 to rent an air mattress, more than six times the wholesale price of \$29.95, three times the price of \$53.88.

Medicare is paying \$99.35 for a simple commode chair that the VA is able to buy for \$24.12.

Medicare is paying \$7.90 for a bottle of sterile saline solution; the VA buys it for \$2.38.

I have a chart here which just shows some of these items and the potential savings. Here is an irrigation syringe which Medicare is paying \$2.93 for; the VA is paying \$1.89.

Here is a walker. This is one of those plain walkers that elderly people use. It has four legs on it. Medicare is paying \$75.52 for them; the Veterans' Administration is paying \$25.40 for the same one, the exact same walker made by the same company.

A commode chair. You know what a commode chair is; if you can't get to the bathroom, you have it by your bed. Medicare is paying \$99.35 for it; the same commode chair, identical, the Veterans' Administration is paying \$24.12 for it.

Here is the sterile saline solution I talked about. Medicare is paying \$7.90 for it; the same item, the Veterans Administration is paying \$2.38 for it.

Why? Why would the Veterans' Administration pay \$25.40 for a walker that Medicare is paying \$75 for? Same item, same town. Why? Because the Veterans' Administration is engaging in good old-fashioned competitive bidding. If you want to sell it, put out a bid for what you are selling it for, we will take the lowest bid. That is why Medicare pays bloated prices based on historical charges and the VA, which has much less purchasing power than Medicare, puts it out for both quality and cost control. So the Veterans' Administration is able to save money, be-

cause they use competitive bidding to assure it is getting the best rate possible.

Right now, under law, Medicare is prohibited—prohibited—from using this measure. Medicare is prohibited from engaging in competitive bidding. But the bill before us now gives them that much-needed authority. It doesn't mandate it. I think we ought to mandate it, but the bill at least gives HCFA the authority to engage in competitive bidding.

In the hearings that I have held in the past, Mr. Vladeck, the Administrator of HCFA, has testified that if given the authority, they would use it. So I think this will be sufficient and will get the Health Care Financing Administration to start engaging in competitive bidding.

Another important reform that is in this bill is the streamlining of Medicare's authority to reduce grossly excessive payment for items it purchases. It is called the inherent reasonableness authority. Under current law, the authority is tortuous to complete. As a result, it has only been used once.

Three years ago, we found that Medicare was paying up to \$211 for a home diabetes monitor. At that time, I sent a staff person of mine out to the local K-mart and bought the same item for \$49.99 that Medicare was paying \$211 for.

After several hearings, we got Medicare to begin the process of using their authority, the authority that they call inherent reasonableness authority. We got them to use that to reduce this gross overpayment for these blood glucose monitors. It took them 2 full years to go through all of the hurdles set up in the law. They finally reduced the payment to around \$50, and that alone is saving taxpayers \$25 million over 5 years. But it took 2 years just to get that done. That delay cost taxpayers \$10 million.

The bill before us includes a streamlining of this process that I have been suggesting for years. It would allow Medicare to respond quickly when it finds that it is paying prices that are out of line with what everyone else pays. So I am pleased that this finally is before this body, and I hope it is agreed to.

Mr. President, I have an amendment that I will be asking to send to the desk, after I give a brief explanation. They are changes that will help to reduce the massive losses due to waste, fraud, and abuse. All of these are based on reports and recommendations by the General Accounting Office and the inspector general of Health and Human Services. I don't believe it will be controversial to anyone, and I hope it will be accepted by the managers of the bill.

First of all, Mr. President, the first part of the amendment has to do with improving information to beneficiaries. Under current law, beneficiaries are sent a statement, an explanation of charges and payments. They are brief

summaries of the actual bills and payments. There are several shortcomings of these current statements that are sent to beneficiaries. The first thing that you will notice, if you look at a statement, it says in big bold letters: "This is not a bill."

So you are an elderly person, you get this, it says, "This is not a bill." Hey, I get a lot of things in the mail that is not a bill. I'm not going to worry about it. So many beneficiaries don't take the time to examine them for the mistakes. In addition, the statements do not provide the number of the toll-free hot line operated by the Medicare contractor to receive reports of errors or fraud or abuse. Finally, there is no requirement that beneficiaries can get copies of complete itemized bills submitted by providers.

So what my amendment does is it requires that each explanation of benefits sent to beneficiaries, including the statement, because billing errors do occur and there is significant waste, fraud, and abuse, that the beneficiary should carefully review the statement for errors or other questionable billings and report those to Medicare.

It also requires that the statement include the toll-free hotline number to report the suspected problems. These toll-free lines already exist. I am not setting anything up that does not exist. They already exist, but many seniors do not know about it. All I am saying is, the phone number ought to be put on the statement of benefits.

My amendment provides that a beneficiary may, if they request, be provided an itemized bill within 30 days of their request when the beneficiary suspects irregularities from having read the summary provided to them.

My amendment also requires that any specific allegations of errors or other problems made by beneficiaries based on a review of the itemized bill be reviewed and any appropriate recoveries made for the trust fund.

Second, Mr. President, Medicare payments are supposed to be limited to those that are reasonable, necessary, and related to patient care. That is the law, and those are the regulations. However, while most other Federal agencies specifically prohibit indirect cost allowances for gifts, entertainment expenses, education costs for spouses and dependents, Medicare does not prohibit this.

In addition, Medicare does not explicitly prohibit indirect cost reimbursement for fines and other penalties imposed by Federal, State, or local governments on health care providers. As such, providers can escape a fine by simply charging them back to Medicare. Well, as documented by the General Accounting Office and the Office of Inspector General, this lack of clarity in Medicare policy invites confusion and abuse.

For example, a report by the Office of Inspector General found that Medicare had been billed for a portion of the cost of a sailing regatta for hospital em-

ployees, reimbursement for ballet tickets, reimbursement for Tiffany crystal pitchers, reimbursement even for a trip to Italy to inspect a piece of art for an executive office.

This amendment explicitly prohibits Medicare reimbursement for indirect costs related to entertainment, gifts, donations, personal use of motor vehicles, costs for fines and penalties, and tuition for spouses or dependents of health care providers. In other words, it brings it into line with other Federal law.

The next part of my amendment goes to the losses due to frequently abused items. Currently under the law, the Secretary may—may; does not say "shall"—may make a list of medical supply and equipment items that she finds to be frequently subject to unnecessary utilization. In other words, you see something popping up all the time, it keeps being utilized, well, the Secretary may develop a list of suppliers found to have business practices that result in a pattern of utilization.

So the Secretary's power is she may. The Secretary has failed to use this authority, thereby missing potential for significant savings. I do not mean to point at this Secretary. The Secretary before this one did not use it either. And therein lies the problem.

My amendment simply changes the word "may" to "shall" and requires the Secretary to develop the list of overutilized medical supply items and questionable suppliers.

Lastly, in OBRA 1993, it provided for certain medical supplies, including surgical dressings, to be reimbursed based on a fee schedule. As a result, providers must submit to fiscal intermediaries claims that itemize the specific supplies and quantities billed. However, this provision does not apply to items billed by home health care agencies. So since 1993, for certain medical supplies, like surgical dressings, reimbursed on a fee schedule, it does not apply to home health agencies.

Now, in addition, current law prohibits the Secretary—prohibits the Secretary—from using her inherent reasonableness authority to reduce grossly excessive payment rates for surgical dressings. Why that was left out we do not know, but it was left out.

The General Accounting Office has documented that these two exceptions to Medicare law result in considerable unnecessary losses. They found, for example, that items as diverse as pacemakers were being billed as medical supplies, and those claims were paid because Medicare does not know what specific items they are being billed for.

In addition, the GAO found that payments for surgical dressings could be reduced by half if more reasonable prices were paid. For example, they found that Medicare pays \$2.32 for a gauze pad whose wholesale price is 19 cents and that another Government agency buys for 4 cents, in this case the Veterans' Administration. Again, Medicare is paying \$2.32 for a gauze

pad; the VA is paying 4 cents for the same one.

My amendment would say the home health agencies would be required to submit to fiscal intermediaries claims that itemize the specific supplies and the quantities billed for surgical dressings. All other providers are currently required to do the same, but not home health agencies. Mine would just bring the home health agencies in under this umbrella.

Finally, the loophole that for some reason is there that excludes surgical dressings from the Secretary's inherent reasonableness authority would be closed. She would have that authority to pay on a reasonable basis, to get that down to the same level that the Veterans' Administration is paying.

Mr. President, I am going to be asking unanimous consent to set aside the pending amendment and lay down my amendment. We are now discussing it with the Finance Committee. I am hopeful it can be cleared without the need for a vote in the next day or two.

#### AMENDMENT NO. 428

(Purpose: To reduce health care fraud, waste, and abuse)

Mr. HARKIN. So, Mr. President, I ask unanimous consent to have the pending amendment laid aside so that I may lay down my amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object.

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

Mr. DOMENICI. I say to the Senator, I need you to further agree, if you would please, that we can, with the assurance that your amendment will be placed in a stacked order to leave us the range of offering the two major committee amendments first. They are going to be offered this afternoon.

Mr. HARKIN. Sure.

Mr. DOMENICI. Then we will stack them, and perhaps yours will be the third or fourth. But you will get it in that manner.

Mr. HARKIN. Absolutely.

Mr. DOMENICI. Is that sufficient for you to understand the unanimous-consent request?

The PRESIDING OFFICER. The Chair understands the request.

Mr. HARKIN. I understand it.

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

Mr. HARKIN. We are working with the Finance Committee. What I suggested I hope will be accepted in the next day or two.

Mr. DOMENICI. You are going to work with them on that account, right?

Mr. HARKIN. Yes.

Mr. DOMENICI. Have you sent your amendment to the desk?

Mr. HARKIN. Yes; I sent it to the desk.

Mr. DOMENICI. There is time still reserved in opposition to it. We have not yielded back.

The PRESIDING OFFICER. The Chair understands.

Mr. DOMENICI. We will probably need a couple minutes, so let us leave it to the reservation time. And he has time, too.

Should the clerk report his amendment so it will be ready?

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 428.

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

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

The amendment is as follows:

At the end of the bill add the following:

**SEC. . IMPROVING INFORMATION TO MEDICARE BENEFICIARIES.**

(c) CLARIFICATION OF REQUIREMENT TO PROVIDE EXPLANATION OF MEDICARE BENEFITS.—Section 1804 of the Social Security Act (42 U.S.C. 1395b-2) is amended by adding at the end the following new subsection:

“(c)(1) The Secretary shall provide a statement which explains the benefits provided under this title with respect to each item or service for which payment may be made under this title which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to such item or service.

“(2) Each explanation of benefits provided under paragraph (1) shall include—

“(A) a statement which indicates that because errors do occur and because medicare fraud, waste and abuse is a significant problem beneficiaries should carefully check the statement for accuracy and report any errors or questionable charges by calling the toll-free phone number described in (C)

(B) a statement of the beneficiary's right to request an itemized bill (as provided in section 1128A(a)); and

“(C) a toll-free telephone number for reporting errors, questionable charges or other acts that would constitute medicare fraud, waste, or abuse, which may be the same number as described in subsection (b).”.

**(b) REQUEST FOR ITEMIZED BILL FOR MEDICARE ITEMS AND SERVICES.—**

(1) IN GENERAL.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended by adding at the end the following new subsection:

**“(m) WRITTEN REQUEST FOR ITEMIZED BILL.—**

“(1) IN GENERAL.—A beneficiary may submit a written request for an itemized bill for medical or other items or services provided to such beneficiary by any person (including an organization, agency, or other entity) that receives payment under title XVIII for providing such items or services to such beneficiary.

**“(2) 30-DAY PERIOD TO RECEIVE BILL.—**

“(A) IN GENERAL.—Not later than 30 days after the date on which a request under paragraph (1) has been received, a person described in such paragraph shall furnish an itemized bill describing each medical or other item or service provided to the beneficiary requesting the itemized bill.

“(B) PENALTY.—Whoever knowingly fails to furnish an itemized bill in accordance with subparagraph (A) shall be subject to a civil fine of not more than \$100 for each such failure.

**“(3) REVIEW OF ITEMIZED BILL.—**

“(A) IN GENERAL.—Not later than 90 days after the receipt of an itemized bill furnished under paragraph (1), a beneficiary may sub-

mit a written request for a review of the itemized bill to the appropriate fiscal intermediary or carrier with a contract under section 1816 or 1842.

“(B) SPECIFIC ALLEGATIONS.—A request for a review of the itemized bill shall identify—

“(i) specific medical or other items or services that the beneficiary believes were not provided as claimed, or

“(ii) any other billing irregularity (including duplicate billing).

“(4) FINDINGS OF FISCAL INTERMEDIARY OR CARRIER.—Each fiscal intermediary or carrier with a contract under section 1816 or 1842 shall, with respect to each written request submitted to the fiscal intermediary or carrier under paragraph (3), determine whether the itemized bill identifies specific medical or other items or services that were not provided as claimed or any other billing irregularity (including duplicate billing) that has resulted in unnecessary payments under title XVIII.

“(5) RECOVERY OF AMOUNTS.—The Secretary shall require fiscal intermediaries and carriers to take all appropriate measures to recover amounts unnecessarily paid under title XVIII with respect to a bill described in paragraph (4).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical or other items or services provided on or after January 1, 1998.

**SEC. . PROHIBITING UNNECESSARY AND WASTEFUL MEDICARE PAYMENTS FOR CERTAIN ITEMS.**

Notwithstanding any other provision of law, including any regulation or payment policy, the following categories of charges shall not be reimbursable under title XVIII of the Social Security Act:

(1) Entertainment costs, including the costs of tickets to sporting and other entertainment events.

(2) Gifts or donations.

(3) Personal use of motor vehicles.

(4) Costs for fines and penalties resulting from violations of Federal, State, or local laws.

(5) Tuition or other education fees for spouses or dependents of providers of services, their employees, or contractors.

**SEC. . REDUCING EXCESSIVE BILLINGS AND UTILIZATION FOR CERTAIN ITEMS.**

Section 1834(a)(15) of the Social Security Act (42 U.S.C. 1395m(a)(15)) is amended by striking “Secretary may” both places it appears and inserting “Secretary shall”.

**SEC. . IMPROVED CARRIER AUTHORITY TO REDUCE EXCESSIVE MEDICARE PAYMENTS.**

**PAYMENT FOR SURGICAL DRESSINGS.**—Section 1834(i) of the Social Security Act (42 U.S.C. 1395m(i)) is amended by adding at the end the following new paragraph:

“(3) GROSSLY EXCESSIVE PAYMENT AMOUNTS.—Notwithstanding paragraph (1), the Secretary may apply the provisions of section 1842(b)(8) to payments under this subsection.”.

**SEC. . ITEMIZATION OF SURGICAL DRESSING BILLS SUBMITTED BY HOME HEALTH AGENCIES.**

Section 1834(i)(2) (42 U.S.C. 1395m(i)(2)) is amended to read as follows:

“(2) EXCEPTION.—Paragraph (1) shall not apply to surgical dressings that are furnished as an incident to a physician's professional service.”.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I see the floor manager.

I was wondering if we could follow the same procedure with an amend-

ment that I would send to the desk in regard to the copayment on home health services. I ask unanimous consent for that.

Would that be agreeable?

Mr. DOMENICI. That would be satisfactory, so long as it is understood, I say to the Senator, that it may be the fourth, fifth, but it will be in order.

Mr. KENNEDY. Fine.

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

AMENDMENT NO. 429

(Purpose: To strike the provision relating to the imposition of a copayment for part B home health services)

Mr. KENNEDY. Mr. President, I send to the desk an amendment for myself and Senator WELLSTONE.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mr. WELLSTONE, proposes an amendment numbered 429.

The amendment is as follows:

Strike section 5362.

Mr. KENNEDY. Mr. President, I thank the floor manager.

As I understand the procedure that we are following now, amendments are being sent in and there will be an order that will be worked out by the managers, both the Republican manager and the Democratic manager, so that there will be time so that Members will know when the vote will be expected. As I understand from the previous discussions, there is the best expectation it will be sometime either in the morning or in the early afternoon.

Mr. DOMENICI. The Senator is correct.

Mr. KENNEDY. I would not, in cooperating with the managers, obviously, take much additional time. I would like to be able to at least preserve some time to allow for a brief comment. But I will follow our leaders on these issues, and try to ensure we are able to move in an expeditious way.

Mr. DOMENICI. Would Senator KENNEDY just yield?

Mr. KENNEDY. Yes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. My impression, with a brief observation, is that the amendment is subject to a point of order. There is no intention at this point in any discussion to in any way waive points of order against the amendment if they lie.

Is that correct, Mr. President?

The PRESIDING OFFICER. The points of order are not made by these arrangements.

Mr. DOMENICI. I say to Senator KENNEDY, each amendment has an hour on each side, and I am not attempting to change that.

Mr. KENNEDY. Fine. Good. I appreciate that.

Mr. DOMENICI. I think tomorrow we will narrow it down.

Mr. KENNEDY. We will cooperate with the floor managers.

Mr. DOMENICI. Thank you.

Mr. KENNEDY. We believe this is in order. But we will have an opportunity to address that issue at the appropriate time.

Mr. President, I rise this afternoon to offer an amendment to strike the new copayment for Medicare's home health patients. Without warning, the Finance Committee has imposed a tax on America's seniors of nearly \$5 billion in new copayments for part B home health services.

This cruel and unexpected provision, which was not debated or voted on in the committee and is not necessary to meet the committee's reconciliation targets, will fall primarily on the oldest, poorest, and sickest Medicare beneficiaries.

Let me repeat that. The nearly \$5 billion that is raised by this provision is not necessary to meet the requirements of the budget agreement. Nonetheless, it was put into the agreement. Why? The best estimate is that those will be used for tax reductions, perhaps for the wealthier individuals.

I am sure that some in the Senate will justify to the American people this change and the other dangerous proposals in this bill by claiming they are needed to preserve Medicare for future generations. This could not be further from the truth.

As I understand, the agreement worked out in the bipartisan budget negotiations was to stabilize the Medicare trust fund for at least 10 years and to establish a commission that will make recommendations to preserve Medicare for the future.

The proposal we are debating now does neither of these things. It establishes a \$5 copay that will affect the oldest, the sickest, and the poorest senior citizens. This provision preys primarily on the elderly women who are dependent upon Medicare and the home health care system.

The assault on Medicaid that began last Congress is continuing with full force. Congress should reject this just as we rejected it last year. There is no rationalization, none whatsoever, for Congress to rush forward with ill-considered changes in Medicare under the thinly veiled pretext of balancing the Federal budget. None of these basic changes in Medicare were part of the budget agreement.

It is the height of hypocrisy for those who voted against including the Hatch-Kennedy children's health plan in the agreement last month to make this assault on Medicare part of the agreement this month.

When we brought that measure up here, we were told that this is going to break the budget agreement, even though it is completely paid for. Now, we have before us a plan to collect \$5 billion in copays from elderly widows and the poorest in our society. Under this proposal, we would collect \$5 billion that is not even necessary to meet the terms of the budget agreement.

In 1996, Mr. President, Medicare beneficiaries spent an average of \$2,605 on

health care. However, the sicker seniors spent \$5,600 out of their own pockets for cost-sharing related only to Medicare coverage services. Now the Senate Finance Committee is asking them to spend up to \$760 more.

I understand that some of my colleagues are interested in increasing cost sharing because they feel it would lead to a reduction in utilization and, therefore, a reduction in Medicare spending. It is important to note, however, that cost-sharing is a blunt tool to express change. It may reduce utilization but the goal is to reduce unnecessary utilization. It is almost certain this policy will fail to meet this objective.

Let me remind my colleagues that home health services were exempted from part B coinsurance in 1972 to encourage use of less costly noninstitutionalized services. Reimposing a copayment will undermine that effort. We removed cost-sharing requirements on home health care in 1972 specifically to reduce utilization, to the extent that we could in an appropriate health context, of services in acute hospitals and in high-cost medical delivery systems. We wanted to encourage the provision of home health care, which provides very important services and does so less expensively than in acute care settings.

It was the belief at that time, and it is my belief now, that burdensome cost-sharing can seriously threaten the health of the frail elderly, particularly those who are hard pressed to make ends meet. Imposing a \$5 new copayment will reduce access for those who need the services the most. If we are interested in reducing home health care utilization we ought to first look at ways to alter the behavior of providers, as we have done in the bill's proposed payment reform, before forcing the sickest beneficiaries to pay more.

Mr. President, just a few moments ago we had some excellent commentary from Marian Brown, an 82-year-old widow who lives independently in Marlow Heights, MD. She has numerous health ailments and is confined to a wheelchair. She is treated three times a week by a home health aide who tends to her physical troubles, spending 2 to 3 hours in her home on each visit. Her annual income is \$6,786. She simply cannot afford to spend an additional \$15 a week, \$60 a month, or \$720 a year on copayments for these necessary visits. She spoke articulately and compellingly about what this particular proposal would mean to her. She has difficulty with her hip, but doctors do not want to operate because of a serious heart condition. Yet her hip prevents her from being able to move in and out of the bathtub. It prevents her from being able to wash her own feet.

She is a very proud individual who takes great delight in living where she does with her friends and associates, and has a great sense of joy about her

and in her optimism about the future. She is not asking for very much. She is just saying, "I can just about make ends meet now, but, if you pass this copayment, I will have to give up stretching exercises to keep me from further disability, or the ability to be able to get out of bed and get dressed and cleaned up in a manner that allows me to retain my sense of respect and dignity and self-value and joy, or cut back on prescription drugs or food or heating of my apartment during the winter." She makes that case, Mr. President.

We have to ask ourselves what was the sense of urgency in this legislation. Those funds were not even needed in terms of balancing the budget. We ought to look at all the provisions—not only of this bill, which is the cutting of the spending programs—but also in the tax bill, to see who will benefit, where the pain is coming, where the fairness is.

I daresay I think those in the majority will be hard pressed at the end of the day to think that this kind of financial burden and anxiety—even though these are only \$5 payments that the individual will have to pay—that ought to be used to balance the budget. The amendment that I offer, joined by Senator WELLSTONE, will give the opportunity for the Senate to go on record opposing this proposal.

Finally, Mr. President, this new copayment will be an unfunded mandate on the States. I ask for the attention of our colleagues who are so concerned about unfunded mandates on the States. Medicare beneficiaries who qualify for assistance from State Medicaid programs have higher use of home health care services. In fact, the very poorest, who are eligible for Medicare and Medicaid, are twice as likely as other Medicare beneficiaries to use the home health benefits. As a result, State Medicaid programs will have to absorb the new copayments for these beneficiaries.

CBO estimates, Mr. President, that the additional State and local costs of home health copayment would amount to \$700 million over the next 5 years. I hope we are going to have the time and opportunity to hear the rationale and justification for this misguided proposal. States are usually quite clear in their opposition to unfunded mandates.

Mr. President, Medicare is still one of the most successful social programs ever enacted. It has brought health care and health security to tens of millions of senior citizens. We can deal with the financial problems of Medicare but we must do it the right way, not the wrong way.

Our goal is to save Medicare, not destroy it. Our priority should be to keep the promise of medical and financial security for senior citizens that Medicare provides. We are the guardians of that promise and we should oppose any schemes that violate it.

There is no question that Medicare will face serious challenges in the next century as a result of the retirement of

the baby-boom generation. Today there are nearly four adults of working age for every senior citizen. By the year 2030, that ratio will be down to two workers for every senior citizen. There is a right way and a wrong way to respond to that challenge, and the wrong way is to destroy the program under the guise of saving it.

I urge my colleagues to vote to strike these unfair and unnecessary provisions from the reconciliation bill.

Mr. LAUTENBERG. Mr. President, I want to commend my colleague from Massachusetts for being on the alert here. I worked very hard with my distinguished chairman from the Budget Committee to try and assemble a consensus agreement that we could all support, and suddenly now we are offered a change and that change says, "Well, senior citizens who have home health care pay \$5." It sounds trivial almost, but Mr. President, when we have someone who needs sometimes two, sometimes three visits a day to keep them going, \$100 a week, when the average for many of these people, whose income is \$15,000 a year or less—you get up to \$3,000, \$4,000, or \$5,000 a year, that is torment. That takes away their very life sustenance because they cannot afford the rent, they cannot afford the heat, they cannot afford the nutrition.

On top of that, to impose this new burden, I say, Mr. President, the Senator from Massachusetts is always on the lookout for a balance in our society to try and provide equal service to those who need help—the promise for the future, an education for their children—Senator KENNEDY is always there. In this case I must tell you, I heartily agree with him.

The target group are people, usually women, 75 on balance in years, with incomes of under \$15,000. They are old, very often frail, sick people who do not take home health care if they can get out of their homes, if they have any mobility, if they have any opportunity to go visit the doctor. These are often critical, life-sustaining services that they need.

Some argue, Mr. President, that most people subject to this copayment will not really pay because they have Medigap policies that cover copayments and deductibles. That is misleading because a new copayment would lead to increased Medigap premiums. So seniors would either have to pay the new copayment or their insurance bills would go up. Either way, the bottom line would be higher out-of-pocket costs. Already, seniors typically pay more than 20 percent of their income on these costs.

As the Senator from Massachusetts said, unfunded mandates, States will have to come up with \$700 million, I think is the figure the Senator used. This is not a particularly good way to get this bill back on track, especially when we know immediately hereafter in the next part of the reconciliation we will be looking at tax relief for lots

of folks who do not need it, who can get by very comfortably without it, and here we are talking about \$5 out of the pockets of the poverty stricken, typically those who need help, and whose only contact often with the outside world is with these groups, and they want to charge them \$5 to have somebody come by.

I commend the Senator from Massachusetts and I support him. I yield the floor.

Mr. KENNEDY. If I could, and I see Senator WELLSTONE ready to speak on this, but just before the Senator sits down, does the Senator understand what the Finance Committee was doing since this is a benefit that comes from part B. They are using the deductible limit in A which is \$760, which is a lot more, obviously, than part B which is just \$100.

Here they are taking something which is basically a benefit, they are tying it to the higher deductible to make the seniors pay more. I find that somewhat troublesome, as well. It is just a way of maneuvering the system.

I am just wondering if the Senator also is struck by the fact that States are going to be involved in collecting this? Even in the poorest of the circumstances, they are going to have a requirement to do so. We will not be helping any of the States to do it. We hear a great deal about mandates around here, I would have thought this would be a matter of concern to some of those that were troubled by unfunded mandates.

Mr. LAUTENBERG. The Senator is correct. The one thing that I found most disturbing about the proposals that have come in the reconciliation is the fact that suddenly we are in to a whole new area having very little to do with the mission that we have set out for us, to get a balanced budget, to try at the same time to invest in education, to try at the same time to make sure impoverished senior citizens do not have to pay more as a result of the transfer of home health services to part B—all of those things.

Suddenly, now we are seeing that something might be called bait and switch, where senior citizens are being told now, well, you may have to pay a higher premium for your part B, your deductible may be going up, that the most modest-income person would have to pay \$5, perhaps to get an insulin shot or something like that. Five bucks, when you ain't got it, to put it crudely, is an awful lot of money. These people do not have it. They do not have contact with the outside world. They are frail, they are elderly. For God's sake, where is our conscience on these things?

Mr. KENNEDY. I think the statement that the Senator makes is enormously important, since he is the ranking member of the Budget Committee. As I understand what he is saying, this was not part of the budget agreement. We do not need that \$5 billion to meet the terms of the budget agreement.

Mr. LAUTENBERG. The Senator is correct.

Mr. KENNEDY. Also this was not voted on specifically in the Finance Committee, and it is not necessary to balance the budget. It was added on in the Finance Committee, as I understand, without even an up-or-down vote, and here we are faced with the fact that millions of our seniors will be faced with this issue unless we move to strike it on the floor.

Now, since I have the Senator's attention, am I correct in my understanding that \$1.5 billion in premium assistance for low-income beneficiaries was included in the agreement?

Mr. LAUTENBERG. Yes, that is true. That was designed originally to pay, through Medicaid, for those who were up to 150 percent of poverty, any increase in premium that might occur.

Mr. KENNEDY. So the agreement included \$1.5 billion to offset that increased premium, but it was not done under the Finance Committee's bill, am I correct?

Mr. LAUTENBERG. The Senator is correct.

Mr. KENNEDY. So this bill has short-changed low-income senior citizens \$1.5 billion, and then asked them to pay \$5 billion on top of that. And then created an MSA demonstration, which is going to cost about \$400 million. We already have an MSA demonstration project.

Mr. LAUTENBERG. Not for the Medicare Program.

Mr. KENNEDY. My point exactly. The Kassebaum-Kennedy bill created a demonstration for those in the private market. We ought to first evaluate that proposal, on which we are already spending nearly \$1.5 billion, before doling out scarce Medicare funds in a wild experiment sure to benefit only insurance companies and the healthy and wealthy.

And then we are going to return to the days of balanced billing. Certain private plan options will allow doctors to overcharge, or balance bill. We have, over a long period of time, prohibited Medicare providers from balanced billing and encouraged them to take Medicare payment as payment in full. Releasing these important consumer protections will undoubtedly force seniors to pay more. It doesn't take any stretch of the imagination—and I ask my friend and colleague if he would agree with me—to envision doctors moving out of Medicare to form one of these private plans and invite their Medicare patients to "come into our program." Seniors will follow their doctors and find themselves being overcharged in those circumstances. That is what happened in the past. Is the Senator concerned about that?

Mr. LAUTENBERG. Yes. They are going to have to pay additional funds for services that, otherwise, they might not. And it's true that, in the past, we have not permitted the so-called balanced billing, which simply says the service was advertised or

talked about at this level and now it is at a higher level, so you are going to get a bill for it.

Mr. KENNEDY. Was that in the budget agreement? Balanced billing was debated last year, in the last Congress here, and we were given assurances that it wasn't going to be part of the budget agreement when we were talking then. I don't remember much discussion about that prior to the time that we voted on this issue here. I think that what is important here—we have not even talked about the issue of the part B deductible and what that will mean to seniors and the additional out-of-pocket expenses they will have in that area—is that these provisions are going to have a dramatic adverse impact on seniors, and it was not mandated in the budget agreement. This is all in anticipation of a commission that the bill sets up to try and review the Medicare system for the future.

Mr. LAUTENBERG. If I may ask the Senator a question, this isn't, I take it, your idea of a particularly good way to make reforms in something as complicated as Medicare, and I could not agree with you more. This is fast-track legislation, which means—for those who are not familiar with the terminology—that this is supposed to zip through this place. This was not part of the consensus agreement we labored over for months in order to strike a budget agreement that could pass muster and would be a consensus bill. This now is recommended by the Finance Committee in terms of their reconciliation on expenditures.

I have been a loyal trooper in defending the consensus agreement. But this, in my view, is certainly outside the pale. I am not any happier than the Senator is.

Mr. KENNEDY. I appreciate that. We will have a chance to address these in accordance with the way the amendment process goes during the next couple of days. I am very grateful for the Senator's comments because I think it is important, as we address these issues, not to confuse what is necessary to preserve the financial integrity of the Medicare system—as this bill does for at least 10 years—with these other proposals that could destroy it. I dare say that those additional costs to seniors will reflect themselves by the end of the week, along with the additional tax relief for very wealthy individuals and corporations.

I daresay I was so interested when my friend, the majority leader, was talking about how the amendment that Senator HATCH and I offered to extend health insurance to children would be a budget buster because it is financed by an increase on the cigarette tax. And then the Finance Committee, with his support, turned right around and offered a 20-cent per pack cigarette tax increase. It's only a small part of it, but it is amazing the way all of this is being proposed.

I thank my colleague and friend from New Jersey for his response. He has

been a leader in terms of responsible economic policy and has a challenging position in representing our side through these negotiations. We have great respect for someone who understands this process so well. I am grateful for his response. I thank my friend and colleague, Senator WELLSTONE, also, for his strong support for this particular amendment.

How much time does the Senator need?

Mr. LAUTENBERG. Mr. President, I thank the Senator. I am prepared to yield as much time as the Senator from Minnesota needs.

Mr. KENNEDY. I think I have time on my own, is that correct, Mr. President, on the amendment?

The PRESIDING OFFICER. The Senator from Massachusetts controls 33 more minutes on his amendment.

Mr. KENNEDY. I see both the manager on his feet and also I have my friend and colleague who wanted to speak. The floor manager is perhaps the busiest person. I want to be accommodating to him. Otherwise, I will yield 7 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Thank you, Mr. President. I just want to put this in a little bit of context. There was a piece today in the New York Times headlined, "Study Shows Tax Proposal Would Benefit the Wealthy." This is when we get to the tax part of the reconciliation bill.

I quote:

The changes in Federal tax and benefit policies now working their way through Congress would eventually be worth thousands of dollars a year to the 5 million wealthiest families in America, while the 40 million families with the lowest incomes would actually lose money, a new study shows.

This is the Center on Budget and Policy Priorities. Their work, generally respected in academic circles, indicates that after-tax incomes of the richest 1 percent of Americans—those with incomes above \$300,000 a year for a family of three—would ultimately be increased by an average of \$27,000 a year.

"Families of three with incomes below about \$17,000 a year would end up with about \$60 a year less than they have now."

Mr. President, let me just say that, in this context, I know colleagues worked very hard in the Finance Committee, and I also know people were up very late, and we did not have a chance to study every particular proposal. The copay for home health services makes no sense at all. This proposal is profoundly mistaken.

I am very proud to support Senator KENNEDY's amendment. Sixty-six percent of the recipients of home health services are over the age of 75; 43 percent of them have incomes under \$10,000 a year; 66 percent are women and 33 percent live alone. As Senator LAUTENBERG pointed out, a \$5 copay may not sound like much to people

who have pretty high incomes, and it may not sound like much to those of us in the Senate, because we earn a fair amount of income; but to people living on maybe \$500 a month, and that's it, this \$5 copay for a home health visit is really worry about it. I am hoping that we will have very strong support here on the floor of the Senate.

Mr. President, I think that part of the direction of where we are heading in health care—and I wish there had been more discussion. Part of the problem is that these reconciliation bills that are fast-tracked don't give us much of an opportunity to really talk about policy and its impact on people's lives. Too much of the discussion is adding and subtracting numbers. Too much of the discussion is statistics. I don't think we are looking at some of these proposals—I am not saying all of them—very carefully. To that extent, some of the things in this bill are a rush to recklessness, which I think this is.

Mr. President, if anything, we want to make sure that as many elderly people as possible—or, for that matter, people with disabilities—can live at home with dignity. That is what we are trying to do. And what we are doing here is, we are saying to senior citizens—especially low-income, and the income profile of elderly people is not that high—we are saying, you know, we are going to start charging a \$5 copay. And for a lot of these people, this isn't going to work. What is going to happen is, they are not going to get the help they need; it is that simple.

I don't think this amendment is about party strategy or taking shots at somebody. I don't think it is about any of that. This amendment speaks to a policy discussion that I don't think we have had. I actually think that is part of the problem. I just think it is hard to do that on these bills. But this particular proposal—on this provision that was put in by the Finance Committee, I don't think there was an up-or-down vote. I think it was part of an overall chairman's mark. I think it is profoundly mistaken. I just think it was a mistake. I don't think this is the way we need to be generating revenue. This is not the place where we want to make the cuts.

I could carry on, and I will later on by marshaling a lot of evidence about the tax part, which I still think is way too tilted to those at the top. But for right now, let me simply say, since we are talking about Medicare, let me enter into a policy discussion and just say to all Senators—Democrats and Republicans alike—I hope there will be strong support for this amendment that Senator KENNEDY has introduced and that I am a cosponsor of. In this particular case, it is not a matter of numbers. You are really talking about a provision or proposal that could have a very, very negative impact on some of the most vulnerable citizens in this country. I don't think there is one Senator in here who wants to do that.

Now, if there are some alternatives and other proposals, fine. But this was a mistake. We ought not to be doing this \$5 copay on home health visits for very elderly people, most of them very vulnerable, most of them very low-income.

So I rise to speak on behalf of this amendment. I am proud to be an original cosponsor, and I hope we will get a tremendous amount of support for it tomorrow.

Mr. President, I yield the floor.

Mr. DOMENICI. Mr. President, I should note that the members of the Finance Committee who support the proposal that is here before us will be here tomorrow to debate the issue.

Senator ROTH is here now. I assume he will present his amendment and not argue against the Kennedy amendment, but I assume in due course there will be adequate opportunity to present the views.

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

Mr. DOMENICI. Of course.

Mr. ROTH. I would like to make a comment or two on the question—

Mr. DOMENICI. On the question of the Kennedy amendment?

Mr. ROTH. Yes.

Mr. DOMENICI. Of course I will yield whatever time the Senator desires.

Mr. ROTH. The problem that has been faced in Medicare is the explosion of costs in home health care. It has been going up something like 30 percent a year. Obviously, that kind of increase cannot be permitted if we are going to salvage and strengthen the Medicare Program.

Just let me point out that Medicare spending on home health services increased most dramatically in the last decade. In 1989–90, it went up 53 percent; 1990–91, it went up 44 percent; 1991–92, it went up 40 percent again; 1992–93, 30 percent; 1993–94, 30 percent; 1994–95, 19 percent. So, basically, it has been going up roughly 30 percent.

There has been an increase in beneficiaries using home health care. There has been an increase in the number of visits per beneficiary. There has been an increase in the number of agencies providing care. So the payment system has not controlled the utilization of home care. There is the reason that we have put this \$5 copayment.

Let me point out that it is particularly important to understand that those who are 100 percent of poverty or less will have this \$5 fee paid by Medicaid. So those who are under poverty are protected.

And that is the idea of the program. We want those who are over 100 percent of poverty to be careful in their utilization. The program is there. It is a good program. In many cases, it can save money because it is better to have home health care than to put a person into a hospital.

But the problem is that the costs have exploded. Somehow we have to make sure that the beneficiaries are more careful in their utilization of this

program. And that is the reason for this change.

Again, I want to stress the fact that those who are 100 percent of poverty or less will have this copayment of \$5 paid by Medicaid. And they will not be out of pocket. So they are protected.

Mr. DOMENICI. I thank the Senator.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I reserve 5 minutes of my time, and then I want to yield to Senator ROTH if he is ready to offer the amendment.

Let me just make a couple of points. Obviously, the seniors in the country, and even the AARP—not specifically with reference to this \$5 deductible, but with reference to home health care—there was a general understanding that when we moved a part of home health care from the trust fund to the part B, which is paid for by the general taxpayers, working men and women with kids who do not have any insurance and nobody gives them any, when we moved it to the general fund and the ratio of payment was 25 percent for seniors and 75 percent for the rest of the taxpayers, that in exchange for moving the home health care to that part B, there would be some additional fee.

I am not arguing that every fee that was imposed—it seems like there were two—that those were agreed upon, nor am I speaking for anyone whose name I just used. But, obviously, the agreement contemplated that if we moved part of some or all of that home health care that was under 100 days, it more likely belonged with a doctor instead of with the hospital, that there would be some additional premium paid into the part B, the 25 to 75 ratio that I have just described.

Second, the Senator from Massachusetts, Senator KENNEDY, raised \$1.5 billion on the agreement, and says that when the new fee is imposed we will use \$1.5 billion to accommodate the lower income seniors so they won't be burdened by the new fee. I understand the distinguished chairman of the Finance Committee, when he offers a broad amendment in some other areas, is going to take that \$1.5 billion into cognizance and do something about rectifying what is clearly a misunderstanding and a shortcoming in the Finance Committee bill vis-a-vis the agreement.

With reference to the agreement that we worked out, it is clear that there is no restriction on the Finance Committee or any other committee to do more than contemplated in the agreement. So we cannot look to the agreement every time a committee does something. What we do is we look at it to make sure they did at least as much as we asked. And, in the case of the issue before us, I understand it was almost unanimous in the committee.

You all can argue that as a committee later this evening or tomorrow. This was not all Republicans. It was

Republicans, and all the Democrats supported the fact that something had to be done about these spiraling costs of home health care. Am I somewhat correct?

Mr. ROTH. I would just point out that the Senator is absolutely correct. The proposal was adopted unanimously by the committee, both Democrat and Republican. As I said, it was done in such a way as to try to make the beneficiaries be more careful in its utilization.

I would point out that the question was raised, why did we use the \$760 limitation? The reason for that is that under part A, many people, after being in a hospital for 3 days, will utilize home health care. They do not pay the \$5 fee, but instead they pay \$760. So that was the ceiling that was set under part A, and we carried that over to part B. There the beneficiary pays \$5 per visit but not in excess of \$760.

Mr. DOMENICI. I wonder if I might inquire for my own management reasons. I understand that the Senator is working on two amendments from the committee that he would like to get in today before we close. Is that correct?

Mr. ROTH. That is correct. We are waiting for certain figures from the Congressional Budget Office. As soon as we have those, we expect to be in a position to offer those amendments.

Mr. DOMENICI. Might that be relatively soon?

Mr. ROTH. That is my understanding, I say to the distinguished chairman.

Mr. DOMENICI. Senator KENNEDY, I see, is still on the floor. I wonder if I might ask a question regarding some management aspects.

What we have been doing is, we haven't been finishing the debates on any of these amendments, and we are holding them until tomorrow and will be stacking the amendments in managementwise sequence. I myself am very desirous of leaving the Senate shortly and leaving it to Senator ROTH to offer two additional amendments, and perhaps the Senator from Minnesota wanted to offer one more. And that would be all we would do this evening.

How much more time would the Senator like to use this evening?

Mr. KENNEDY. I would just make a brief comment, maybe 5 or 7 minutes, perhaps.

Mr. DOMENICI. I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts

Mr. KENNEDY. Mr. President, the Senators respond that there has been an increase in the utilization of home health care. Well, it isn't the patient who says, "Look, I want to go home instead of going to the hospital." The person that does that is the doctor.

If you have problems with overutilization, do something about the provider but not the patient. The patient follows what the doctor recommends. If the provider says either you have to go

to the hospital or we can take care of this back home, it isn't the patient that is overutilizing. They are responding to options prescribed by the medical profession. So we shouldn't penalize our senior citizens and our frail senior citizens for behavior they can't necessarily modify.

There are those who say, "Look, Medicaid will take care of the costs of the poorest seniors." That may be true, first of all, if the beneficiaries know about the financial assistance. But we see many people fall through the cracks because they are not aware of this assistance. Some estimates indicate that only 10 percent of eligible senior citizens take advantage of this offer. And, basically, you are talking about individuals whose income rests near \$7,700. So, even if those in poverty may be taken care of by Medicaid, what do we do about the near poor?

What about the senior citizen whose income is \$8,000? What about the senior citizen whose income is \$9,000, \$10,000, \$11,000, \$12,000? We are asking them to pay up to \$760 more this year, and the cap will rise each year according to the rise in the inpatient hospital deductible. For what reason? It was never explained to us. It was never voted on.

With all respect to the deliberations of the Finance Committee, this wasn't even debated.

Here we are on the floor of the U.S. Senate at 5 o'clock, with an hour's debate on something that is going to affect millions of elderly, frail senior citizens, many of whom are widows between 75 and 80 years old. Look at the profile of who is going to be affected by this.

It wasn't even discussed. We weren't voting and saying, "Look, vote for this because we are going to collect \$5 on the frail elderly." To help pay for what? For a tax break.

We wouldn't be having this debate if it were not for the tax break for wealthy individuals. The reason we are having this is because of the next bill that we are going to consider provides tax breaks for wealthy individuals. The Finance Committee has said "We need to squeeze the elderly." Otherwise, we wouldn't have this debate.

No one was saying at the beginning of the session, we really have to go out and stop our elderly from overutilizing health care services. No one said, by God, one of the real problems we are facing in this country is to get those frail seniors to pay more so they won't use it. No, no, no. That wasn't even talked about by the proponents of the balanced budget.

Who are the people now that use the home health services? Sixty-six percent are over 75 years of age. Almost half of them have incomes below \$10,000. Sixty-six percent are women, and 33 percent live alone.

So there you have it. You are talking about women 75 to 80 years old. You are talking about those with incomes of \$7,000, \$8,000, \$9,000, or \$10,000, that need these home health services to

stay out of the hospital. That saves our health care system a great deal.

This comes at the same time that the Finance Committee ignored instructions to honor a clear commitment to provide \$1.5 billion in premium assistance for low-income elderly.

Time is not going to erase this injustice. You can say that the clock will be tolled at noontime on Wednesday, but it is not going to erase the fact that in that bill tonight frail seniors are required to pay \$5 billion more, that the \$1.5 billion to defray premiums for low-income seniors is nowhere to be found, and that the bill costs Medicare \$400 million in trial MSA's.

This is where we are. This is where we come in order to have a balanced budget? In order to have tax breaks of billions of dollars—billions of dollars—just 3 days from now.

That is the dichotomy here. This is the light Republican effort. Last year, we had the major Medicare cuts for major tax breaks and now we have smaller cuts to see how much they can get away with. You only have 20 hours on the floor of the Senate for this bill. The majority has decided to see what it can get away with in this first bill, and then move to provide the goodies later in the week.

This is a bad deal. This is a bad deal for senior citizens. It is a bad deal for parents. It is a bad deal for aunts and uncles. It is a bad deal for children. And at the end of the week, we are going to see the distribution of these tax breaks going, again, to the upper incomes.

It is absolutely, fundamentally wrong, and we are not going to let this go along without getting rollcall votes and having Members make a judgment and decision on those items so that they will hear it when they go back to their constituents and the elderly people and answer to them why they wanted to move ahead in that direction. It is wrong.

We will continue this debate tomorrow. Mr. President, I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. I yield myself such time as I may take. I say to the distinguished Senator from West Virginia I will be brief so that he can be recognized.

Again, I want to emphasize what the factual situation is. The fact is that home health care has been exploding at roughly 30 percent a year or more, and this kind of increase in cost cannot be permitted if we are going to strengthen and preserve Medicare for the long term. So the proposal has been made to put a \$5 copayment fee on each health care up to a limitation of \$760, which is what is paid as a deductible under part A.

This matter was discussed and unanimously agreed to in the Finance Com-

mittee by Republicans and Democrats alike. The reason it was agreed to is because it is important that these visits be available but they be used prudently and not without consideration to the cost. That is the reason we added it.

Again, I want to emphasize that those 100 percent under poverty will not pay this \$5 fee. It will be paid by Medicaid for them, so they are protected. But again, in reforming and restructuring Medicare, we are trying to do it in such a way that it strengthens and preserves the program for the long term. That in turn means it is essential that the utilization be done carefully, and that is what we seek to do and that is what the Finance Committee unanimously adopted.

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

Mr. ROTH. Yes.

Mr. KENNEDY. Will the Senator yield? Are you using the \$5 billion for other Medicare benefits for our elderly? Are you saying we will use the \$5 billion raised through the new copayment to try to help the elderly, for example, on prescription drugs, foot care, dental care, or eye care? Are we taking the \$5 billion, which you say is a result of overutilization, and investing it in the elderly for their health care needs, or are we taking the \$5 billion and putting it aside to be used for tax breaks?

Mr. ROTH. I point out to the distinguished Senator from Massachusetts we have added a number of preventive services for the sick. For example, we now permit mammography testing to be made, colorectal testing or screening; we also permit diabetes home care matching. So we have added a number of things. But again, overall, we are trying to put this program in such shape that it will survive in the long term. Unfortunately, in the area of home health care, the costs have exploded. Let me mention again that home health care in 1989-90 went up 53 percent; 1990-91, it went up 44 percent; 1991-92, 40 percent; 1992-93, 30 percent; 30 percent again in 1993 and 1994; 19 percent in 1994 and 1995.

Let me point out further that other groups, such as the Commonwealth Fund, support the idea of a \$5 copay. In a report issued by the Commonwealth it says that "this is a sensible approach which would make beneficiaries sensitive to use but not form a barrier to care."

I yield back the floor.

Mr. KENNEDY. Mr. President, I know we are going to have a statement by the Senator from West Virginia, but the point is that the preventive services, which I commend, were included in the President's proposal and are paid for under the budget that had been submitted by the President.

So this investment, while I support it, does not quite jell, because the preventive programs that have been mentioned now were already included prior to the creation of this new copayment.

Second, I did not think we were looking at the overall long-term changes in

Medicare. We wanted to get the 10 years of solvency that had been supported by the President and other Members of the Congress and then deal with the long-term issues. I think if the Senator wanted to, we could spend some time looking at the increase of home health care and the decrease in hospitalization.

But the bottom line is patients go, by and large, in the health care system where the doctor tells them. If the doctor tells them, you need to get to that hospital tonight, by and large, patients go there. If the doctor says, you need to have those services, by and large, the patients get them. When we are talking about individuals who have incomes of roughly \$7,700 being told they can get an offset in the State. We know the number of children, for example, that fall under the Medicaid proposals that are not covered by Medicaid. And the seniors are facing the same thing.

So I just think that, let alone, as the chairman has pointed out, the very poor can get some of this offset or will get it offset in terms of the Medicaid that is requiring the States to collect it. We have heard a great deal about putting additional burdens on the States, but it seems we are willing to do so as long as we get the additional funds for the tax cuts.

I thank the chairman of the Finance Committee for his response, and I appreciate his courtesy in responding to these questions. I will be glad to yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak out of order for not to exceed 10 minutes without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

#### CLIMATE ISSUES AT THE DENVER SUMMIT

Mr. BYRD. Mr. President, press reports today from the annual economic summit of the world's major industrial powers in Denver indicate that there was pressure on the United States from some of our allies to make new commitments to deep cutbacks on greenhouse gas emissions, specifically, carbon dioxide emissions. It is unfortunate that some of our allies, including the French in particular, chose this forum to change the terms of international dialogue on this issue. I commend President Clinton for resisting these surprising, new pressure tactics to shortcut the progress towards a reasonable solution at Kyoto and to try to force the United States to endorse an immediate commitment to unworkable new goals, thereby, shredding the negotiating process. We and the French are both part of negotiations intended as a follow-up to the United Nations Frame-

work Convention on Climate Change, the so-called Rio Pact, signed in 1992, and approved by the Senate. The Rio Pact called upon the industrialized nations to aim to reduce their greenhouse gas emissions to their 1990 levels by the year 2000, a goal which will not be achieved by the U.S. or by most of the industrialized nations.

As a result of the failure of most of the industrialized world to meet this voluntary commitment to reduce Carbon dioxide emissions, the parties met in Berlin in 1995 to discuss the future direction of the treaty. In Berlin, the United States agreed that new commitments should be binding upon the signatories, but the developing world was excluded from any new commitments. Unfortunately, excluding the developing world, which will be the most important emitter of carbon dioxide emissions by the year 2015, exceeding the emissions of the OECD nations, was a mistake. The solution, if it is to be effective, must include all major emitting nations or it will fail to really get the problem under control. More than that, the perceived unfairness of forcing limits on the economies of only some nations, but not others, will cause political pressure to frustrate the approval and implementation of any treaty that is signed in Kyoto this December. The temptations of industries to flee from the U.S. for example, behind the safe non-binding walls of Mexico, for instance, or other developing nations, will both frustrate the goals of a treaty and unfairly penalize the developed economies.

Therefore, Mr. President, the distinguished Senator from Nebraska, Mr. HAGEL, and I authored a Sense of the Senate Resolution indicating that it is imperative for the developing world to be parties to any binding commitments made in Kyoto, that those so-called commitments should demonstrate unequivocally an action program to approach this problem in a realistic way, and that everyone should start with aggressive efforts to act on those commitments immediately and not settle for vague promises to return to future negotiations to get serious. While some countries have different levels of development, each must make unique and binding contributions of a kind consistent with their industrialization. The developing world must agree in Kyoto to some manner of binding commitments which would begin at the same time as the developed world with as aggressive and effective a schedule as possible given the gravity of the problem and the need for a fair sharing of the burden.

Mr. President, in Denver during the last two days, some nations put pressure on the United States to agree to a whole new set of commitments beyond those agreed to in Rio, beyond the target of stabilizing at 1990 levels by the year 2010. Those nations sought to get the U.S. to agree to a 15 percent reduction by 2010, a level of reduction which would have very serious impacts on

major sectors of the U.S. economy. There were no discussions of bringing the developing world into the play. I highly commend President Clinton for resisting these surprising new pressures to deviate from the Kyoto track, and set targets for very sharp new levels of reductions. Those nations should know that the United States Senate stands strongly behind the President in resisting these pressures. Reductions must be fair, well-managed, well-planned, and spread across the globe—spread across the globe. In addition, Mr. President, a wide-ranging new set of initiatives is needed to harness technology, to engage in new crash research and development technologies to mitigate the carbon dioxide emissions from fossil fuel combustion, as well as new energy efficiency programs, and cooperative programs between the developed and developing world. We have only begun to match the targets of carbon dioxide reductions and limitations with our technological genius and to engage in pioneering a new energy frontier type program aimed at using man's genius to tackle this global problem from every conceivable angle.

I reiterate, Mr. President, that President Clinton is to be commended for resisting the pressure for these sudden draconian commitments.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### BALANCED BUDGET ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. LAUTENBERG. Mr. President, I yield to my colleague from New Mexico so much time as he needs to make his remarks.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank the Senator from New Jersey for his courtesy, as always.

Let me speak for a few moments on a motion, or amendment, that is going to be offered by the Senator from Illinois, Senator DURBIN, the Senator from Rhode Island, Senator REED, and myself. This is a motion to strike one provision that is in this reconciliation bill which would change the age at which senior citizens become eligible for Medicare. It raises that age from 65 to 67. Our amendment would propose to strike that provision from the reconciliation bill. In my view this is an unacceptable provision, it is very misguided, and one that we should not continue to keep in this legislation if we send this legislation on through the legislative process.