

is practical. This is not about litigation, it is about making sure that people get answers, that people get results, and that people get the care. That is what I think we are all here to do.

Again, I will yield.

Mr. WYDEN. I appreciate the chance to continue this for a moment because the Senator from Rhode Island is essentially being logical. Heaven forbid that actually takes over some of the debate we have. There is nothing partisan about making sure that consumers have all the facts about their health care. That is the effort with respect to barring gag clauses. And there is nothing partisan about this ombudsman approach.

I am very hopeful, frankly, that as the Senate learns more about this kind of concept pioneered by the Senator from Rhode Island, Families USA, and others, that we will see some of the good health care plans in this country saying we are going to support this because it makes sense to solve problems early on.

Frankly, if we can win support for the REED proposal early on—I am honored to join in on it—I think this will go a long way to eventually resolving the controversy about litigation because I think we will see good advocacy programs early on, and we can confine then the need for litigation to really only the outrageous, outlandish cases where I think every Member of the Senate would say, goodness, this is an area where you really ought to have a legal remedy. But we would have skewed the whole system toward prevention and early intervention, or answering the questions that the Senator from Rhode Island has properly identified.

I will tell you that in my hometown, where we do have a lot of good managed care, folks want to see this kind of proposal. They want to see what is laid out in the legislation that our colleagues on this side of the aisle are offering, and they want to see us reach a bipartisan agreement.

The Presiding Officer of the Senate and I have had the most competitive elections in the history of the West. We have teamed up together on a whole host of issues in the Senate.

It would seem to me that around the ombudsman program and around barring gag clauses, this is another area where essentially partisan politics ought to stop outside the Chamber. We ought to work together to enact a good ombudsman program to say that this is the best anecdote to frivolous litigation, frankly, that we could possibly find.

I thank the Senator from Rhode Island, with whom I have enjoyed working for well over a decade on senior and consumer issues, and for the chance to work with him on it.

Perhaps by way of wrapping up my question to the Senator from Rhode Island, could he fill us in on progress with other colleagues? I know that

Senator COLLINS has been very interested in this issue. She has done good work in her home State of Maine. Perhaps the Senator from Rhode Island could just wrap up by telling us where his proposal stands. I want to assure him and Senator KENNEDY, who has been leading this fight—and I am anxious to work with him. In fact, when I first came to the Senate, just a few weeks after arriving I had a chance to work with the distinguished Senator from Massachusetts on the effort to bar gag clauses. I only wish we had gotten that in place back then several years ago. It is long overdue that we get that protection for consumers as well as the Reed proposal.

Perhaps the Senator from Rhode Island could tell us where the ombudsman proposal stands at this time.

Mr. REED. Very quickly, we have been working, as the Senator knows, closely on the Reed-Wyden-Wellstone proposal, which was formally introduced as separate legislation. It is incorporated in the Democrat Patients' Bill of Rights. I know Senator COLLINS of Maine is very interested in this issue. I think she is also convinced that this is important and significant.

Let me also say that the Senator from Oregon made reference to his experience as a senior advocate. There are, in fact, senior ombudsman programs throughout the United States which we support with the Older Americans Act. These programs have been very effective and are doing precisely what we want to do in the context of managed care.

Again, we just adopted an ombudsman program for military personnel in the TRICARE system. It was non-controversial. In fact, we have a great deal of expectation and hope that this will be helpful to our military families. We are working together across the aisle. I hope that we can also incorporate this provision in whatever Patients' Bill of Rights legislation that emerges. It is not designed to be a tool of litigation; it is designed to be a tool of conciliation.

On those grounds, I am optimistic and hopeful.

But, once again, let me finally conclude by thanking the Senator from Oregon not only for our colloquy this afternoon but also for his support, not only on this issue but so many others.

Mr. WYDEN. I will be very brief as well.

I think the distinguished Senator from Rhode Island, particularly with Families USA, is on to something that really constitutes a revolution in consumer protection. What we have seen on one issue after another—just a few minutes ago the distinguished Senator from Arizona, Mr. MCCAIN, and Senator DODD of Connecticut, and I were able to get an agreement on the Y2K issue with respect to trying to hold down frivolous lawsuits surrounding Y2K. What the Senator from Rhode Island and Families USA have been able to do is essentially say in the health care

system: We are going to do everything we possibly can to limit frivolous lawsuits; we are going to help people when they need it most, when the problem first develops.

I want to assure the Senator from Rhode Island and the distinguished Senator from Massachusetts that I am anxious to work with them on this proposal, because I think this is one of the areas where the parties ought to be able to come together. It may sound quaint, but the ombudsman notion is simply good government. It is preventive kind of medicine.

I thank the Senator for the chance to work with him on it. I will not ask him to yield further. But I am very hopeful that in the days ahead both political parties can see the merit in this idea and have it included.

Mr. REED. Before yielding the floor, let me just say that I, along with my colleague from Oregon, must recognize Families USA and Ron Pollack for the inspiration and thoughtful analysis that helped propel this proposal. It is a good one.

Frankly, we could do very well in this Senate this year if we could protect children through better managed care legislation and give all of our citizens a real voice in our health care decisions through an ombudsman program. This will be a very satisfactory and very successful endeavor for all of us in the Senate.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from New Hampshire.

Mr. GREGG. Mr. President, are we in morning business?

The PRESIDING OFFICER. The time for morning business was concluded at 5 p.m.

Mr. GREGG. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as if in morning business.

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

#### MEDICARE

Mr. GREGG. Mr. President, I want to comment on the President's proposal relating to Medicare, and specifically relevant to the drug benefit which has been put forward by the President today and by his staff.

I think the American people have to look at this in the context of the history of this administration's efforts in the area of health care. We know that when this administration came into office, Mrs. Clinton was assigned the task of developing a health care proposal. She came up with what has become known as "Hillary Care," which was essentially a nationalization of the health care system. It was intricate bureaucracy that basically was so interwoven and so complex that it was totally impossible to recognize.

It needs to be noted in evaluating the drug component on this recent proposal on Medicare, the proposal of the

Clinton administration on general health care issues as it came forward under Mrs. Clinton's plan, known as "Hillary Care," was a dramatic invasion of the health care delivery system in this country by the Federal Government. It was essentially a nationalization of the system with huge complexities and huge intricacies. That was followed by a number of other initiatives which were lesser but equally aggressive in their attempts to move to the Federal level control over functions of health care in this country.

Then on the issue of Medicare, a commission was set up. The commission was to be balanced. In fact, the President had a large number of appointments to it, and the Senate and House had a large number of appointments to it. It was chaired by a Democratic Member of the Senate, Senator BREAUX.

That commission was to resolve this matter. It was to come forward with a proposal to address the long-term solvency of Medicare and, within that, the drug benefit for senior citizens. The commission did great work, yeoman's work. They came up with a proposal. More than a majority, a significant majority, of the commission supported the proposal which had in it a drug component, and the President walked away from the proposal, even though the proposal had been supported by a majority of the commission which he was instrumental in setting up and to which he appointed the chairman, who was Senator BREAUX from this body.

The question of his most recent proposal on Medicare, I believe, has to be looked at in that context, and therefore it becomes a question of whether or not the proposal put forward by the President, most recently today, is a serious proposal or is it a political proposal. If it is a serious proposal, why is it not in step with the Breaux commission, and if it is a political proposal, what is its purpose?

Let's look at it quickly. Nobody has had a great deal of time to analyze it, but if you look at it quickly, it appears to be a proposal that is turning on its head the basic purposes of a drug benefit.

The Breaux commission suggested that the purpose of a drug benefit should be to make sure the beneficiary, the person paying the drug costs, was not wiped out by the cost of the drugs. That is a reasonable position. Essentially, the Breaux commission concluded that we should have some way of saying to a senior citizen who ends up with a huge amount of drug costs that if you are hit with a catastrophic drug cost, there is going to be some protection for you and some coverage for you.

This proposal from the President does the opposite. Instead of covering a catastrophic drug event where a senior citizen has to buy a lot of drugs to maintain their health over a period of a year and, thus, runs up huge bills which basically deplete their assets,

this proposal has first-dollar coverage. The first-dollar coverage stops when it gets to \$2,000, I believe, of drug expenditures, which means that if a senior citizen has a large number of drug expenditures, essentially the senior citizen is still going to be wiped out by those costs.

It makes much more sense to approach it the way the Breaux commission approaches it and the way most people have looked at the issue, which is, you say to a senior citizen or anyone else: Listen, you have to be responsible for the cost up to a certain level, and when you get to that level which would threaten your economic solvency, at that point the Federal Government will come in and assist you in paying the drug costs, which would be catastrophic coverage and makes much more sense than the proposal which has first-dollar coverage, if you are putting forward a plan which has as its purpose the actual correction of the present problems occurring in the health care community relative to drug costs.

The proposal the President puts forward makes no sense substantively on the issue of paying for drug costs, because it does not benefit anybody if they have a catastrophic amount of drug costs. It may make sense, however, politically because it says to a senior citizen, we are going to cover you for first-dollar coverage of your drug costs, which means you can say to all seniors, you no longer have a drug cost for up to \$2,000, which means a lot of seniors will be covered, but of course those seniors who are most at risk, who have lots of drug expenditures, who exceed \$2,000 in drug expenditures, are thrown out like the baby with the bathwater, but at least politically you pick up the vast majority of seniors who have lower drug costs.

One has to look at that benefit and say that is a more politically driven benefit structure than a benefit structure directed at the problem, which is the huge amount of drug costs on senior citizens and the fact it can wipe out their assets.

One has to look at another issue, which is, we all know a drug benefit is very expensive for the Federal Government, and therefore for the taxpayers, and when we are talking about taxpayers, we are talking about younger taxpayers who are paying to support the senior citizens.

We have a transfer of income from younger working Americans into senior citizens' accounts, and one would expect, therefore, in looking at that, we would be saying: Seniors who are doing well—and a large number of seniors in our society are, fortunately, because we have been able to create an atmosphere where many seniors have a fair amount of income, and, as a matter of fact, as a matter disposable income, people over age 65 have more disposable income than in their working years when they were in their twenties and thirties. For the most part, you

could say those people are doing really well.

For example, say, Bill Gates' parents, who probably have a fair amount of stock in Microsoft, may be retired. I do not know if his parents are retired or not. I am using that as an example. Someone who is extremely wealthy who is retired, one would not expect their drug benefits to suddenly be subsidized by somebody who is working in a restaurant, a gas station, or on a computer assembly line in Nashua, NH.

Yet what the President has put forward is a plan that does just that. He put forward a plan where working Americans, Americans who are just trying to make ends meet, where both parents are having to work in order to take care of household expenditures, who are under tremendous financial pressure, are going to have to subsidize the drug benefit of all senior citizens, no matter what their income level.

A high-income senior citizen, somebody who happens to be a member of a famous family that has made millions of dollars, or somebody who is not even a member of a famous family but happens to have a tremendous amount of wealth—Charlton Heston, for example, I suspect he has been successful—that person's drug benefit under Medicare will suddenly become a subsidized event paid for by a working American.

Does that make sense? No; that is upside down. Obviously, if you are going to have a drug benefit for senior citizens, it should really apply to those seniors who need the benefit and who cannot afford it. That happened to be the proposal that came out of the Breaux commission. They suggested people up to 135 percent, I believe, of poverty be allowed to get the drug benefit and have it subsidized and people over 135 percent would not have that event occur. Therefore, people with higher incomes would not end up being subsidized by working Americans who maybe cannot afford to subsidize the drug benefit of senior citizens because they have to take care of their own household expenditures.

Yet this proposal from the administration has not taken the tack of the Breaux commission which says: Let's take care of those seniors who need the assistance, but let the seniors who can afford to pay for their own drugs pay for them. They turned it upside down: Let's take care of all seniors at the expense of working Americans, maybe even Americans who have trouble making ends meet.

That leads one to the question: Why are they doing this? Is this the substantively right thing to do? Is it the politically correct thing to do? Yes, it is, because we all know when it comes to senior citizen accounts, there is tremendous reticence within the senior citizen activist community in this country to have any sort of means testing, which is what this amounts to, or affluence testing, which is where it would lead to. Yet they allow Americans to subsidize extremely wealthy

Americans, not only for the drug benefit as proposed by the President but, unfortunately, as the President did in part B premiums, they are willing to allow that truly inappropriate action to occur for the political benefit of it. Once again, what we are seeing is a political initiative.

Then if you look at the proposal in its outline form, you can see it is going to create an intricate, complex, bureaucratic structure to determine what benefit is covered and is available to be picked up by the Federal Government under the drug benefit cost. There is going to have to be some sort of extremely complex structure. They turned it over to HCFA, which is an agency that has the capacity to develop a complex structure, but there will need to be some sort of national structure set up in order to account for what is and is not covered under the system the President has set up in his proposal.

One gets the feeling we are looking again at the use of the Federal bureaucracy as the agency to manage the day-to-day activities of health care. We know from experience that does not work too well.

This proposal the President has put forward is, on its face, upside down on core basic issues of better health care, whether it happens to be the premium, whether it happens to be the means testing, or whether it happens to be the bureaucracy.

I think the thing that I find most dangerous about this proposal, and the thing I am most concerned about, is the effect on lifestyle of American seniors because it puts us on an extraordinarily slippery slope, in its present structure, which will most likely lead to a diminution of the effort of the American entrepreneurial culture to produce better drugs for seniors.

A great number of American citizens today benefit dramatically from the fact that we have the most vibrant, innovative drug research and development industry in the world. We have an industry which is second to none in producing products that make people's lives better.

But it is an extremely expensive undertaking. It takes 12 years and hundreds of millions of dollars to bring a drug to the market. The only way that these entrepreneurs can undertake that initiative is if they are able to go out in the marketplace and get the capital necessary to take that type of risk to produce those drugs.

When you start having the Federal bureaucracy manage who can and who cannot buy a drug and what drug has to be bought and what drug cannot be bought, as will inevitably be, I suspect, the outcome of this initiative, as it moves into its second- and third-generation event—and was the intention, by the way, of the Hillary health care plan, so we know that we can suspect that is in the back of somebody's mind around here—then your ultimate outcome will be to have a chilling effect,

a dramatic dampening effect on the innovative minds of America, on the scientists of America who are producing the new drugs which make people's lives better because those scientists and those innovators are not going to be able to get funds through the capital markets to underwrite their undertakings.

Why? Because if you are a capital investor, as Mr. Greenspan has so often told us, the capital markets are the most efficient markets in the world. Money flows for capital where it gets the return that makes the most sense for those dollars. People are not going to invest in drug research and development if they are not going to get adequate return. They are not going to get adequate return on it if you have a Federal bureaucracy taking over the control of the pricing mechanisms or the appropriate drugs to be purchased—both of which are potential outcomes of any plan put forward by this administration because that, as we have already seen, is a goal that is in the back of the mind of this administration. So although it is not a stated risk, it is, in my opinion, a clear undercurrent of risk as we step into this area of drug benefit for senior citizens.

The ultimate conclusion of this, of course, is that I think the President's proposal is political, not substantive. If the President wanted to substantively pursue a drug proposal, a drug benefit for senior citizens that would work, that had been well vetted and well thought out intelligently, he would have adopted the proposal of his own commission, the Breaux Commission. That was rejected in order to take the path of the political initiative. I think we should be very suspicious before we step on to that path as a Congress.

Mr. President, I appreciate the courtesy of the Chair and yield the floor.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, let me say first Senator DASCHLE and I have labored long and hard to come to an agreement on a unanimous-consent procedure to deal with the Patients' Bill of Rights issue, appropriations bills, and nominations, and it still takes an awful lot of good faith. We have to work together. We have to have some trust. We have to give the benefit of the doubt to the leaders. Also, in the Senate we have to be prepared to deal with action. We are trying to find a way to deal fairly with the appropriations bills and with the Patients' Bill of Rights.

I ask unanimous consent that the majority leader or his designee, introduce the underlying health care bill and it be placed on the calendar by 12 noon on Thursday, July 8, and the bill become the pending business at 1 p.m. on Monday, July 12, 1999, with a vote occurring on final passage at the close of business on Thursday, July 15, and the bill be subject to the following agreement:

That the bill be limited to 3 hours of debate, to be equally divided in the usual form, that all amendments in order to the bill be relevant to the subject of amendment Nos. 702, 703, the introduced bill or health care tax cuts, and all first degree amendments be offered in an alternating fashion with Senator DASCHLE to offer the initial first degree amendment and all first- and second-degree amendments be limited to 100 minutes each, to be equally divided in the usual form. I further ask consent that second-degree amendments be limited to one second-degree amendment per side, per party, with no motions to commit or recommit in order, or any other act with regard to the amendments in order, and that just prior to third reading of the bill, it be in order for the majority leader, or his designee to offer a final amendment, with no second-degree amendments in order.

I further ask consent that following passage of the bill, should the bill, upon passage, contain any revenue blue slip matter, the bill remain at the desk and that when the Senate receives the house companion bill, the Senate proceed to its immediate consideration, all after the enacting clause be stricken, and the text of the Senate bill that was passed be inserted in lieu thereof, the bill as amended be passed, the Senate insist on its amendment and request a conference with the House, all without any intervening action or debate.

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

Mr. LOTT. I want to announce at this time that the minority leader, Senator DASCHLE, and I have discussed several times how we would proceed with this matter once we have had this period of time for debate and votes on and in relation to the Patients' Bill of Rights.

Senator DASCHLE has given me his assurance that although this agreement will not prohibit Members from offering this issue or an amendment related to this issue again in the session, he does not expect a need to offer this issue again, presuming the normal legislative process is followed.

In other words, if we should complete an action and it goes to conference, if it languishes there or does not come back, this arrangement would not prohibit some amendment from being offered at some subsequent point.

I can fairly say that the minority leader is willing to say this issue will have had due consideration after these 4 days of debate, and at the conclusion of this week we would not feel the need to readdress it.

Finally, I announce to the Senate, following this agreement, the two leaders have jointly agreed to pass three to five of the remaining appropriations bills available prior to the Fourth of July recess. This will take a good bit of cooperation, too.

The top priority of the appropriations bills are likely in the following