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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 10, 2001, at 2 p.m.

Senate

FRIDAY, JUNE 29, 2001

The Senate met at 9:00 a.m. and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER

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

Almighty God, reign supreme as sovereign Lord in this Chamber today. Enter the minds and hearts of all the Senators. May they be given supernatural insight and wisdom to discern Your guidance each step of the way through this crucial day. Break deadlocks, enable creative compromises, and inspire a spirit of unity. Overcome the weariness of the hard work of this past week. Give these men and women a second wind to finish the race of completing the legislative responsibilities before them.

Where there is nowhere else to turn, we turn to You. When we fail to work things out, we must ask You to work out things. When our burdens make us downcast, we cast our burdens on You. If You could create the universe and uphold it with Your providential care, You can solve our most complex problems. We trust You, Father, and place the challenges of this day in Your strong capable hands. In Your all powerful name, Amen.

PLEDGE OF ALLEGIANCE

The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 29, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DASCHLE. Mr. President, today the Senate will resume consideration of the Patients' Bill of Rights. As we agreed last night, we now will have a series of rollcall votes, all of which were on amendments which were offered last night.

Additional amendments with votes are expected throughout the day. It would be my expectation to finish the bill, either today or tomorrow, and then move to the organizing resolution.

So as I understand it, under the unanimous consent agreement, the first amendment is to be taken up right now. I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BIPARTISAN PATIENT PROTECTION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

Pending:

Thompson amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.

Warner modified amendment No. 833, to limit the amount of attorneys' fees in a cause of action brought under this Act.

DeWine amendment No. 842, to limit class actions to a single plan.

Grassley amendment No. 845, to strike provisions relating to customs user fees, and Medicare payment delay.

Santorum amendment No. 814, to protect infants who are born alive.

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

Nickles amendment No. 846, to apply the bill to plans maintained pursuant to collective bargaining agreements beginning on the general effective date.

Brownback amendment No. 847, to prohibit human germline gene modification.

Ensign amendment No. 849, to provide for genetic nondiscrimination.

Ensign amendment No. 848, to provide that health care professionals who provide pro bono medical services to medically underserved or indigent individuals are immune from liability.

AMENDMENT NO. 814

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 4 minutes of debate prior to a vote in relation to the Santorum amendment No. 814.

Who yields time? The Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Mr. President.

Mr. KENNEDY. Mr. President, could we have order. We have a series of votes now.

The ACTING PRESIDENT pro tempore. The Senate will come to order.

Mr. KENNEDY. We had good debates on them last evening. They are important votes. The Senator is entitled to be heard, and we want to give all those who worked on these amendments an opportunity for Senators to hear them.

The ACTING PRESIDENT pro tempore. The Senate will be in order. The Senator from Pennsylvania.

Mr. SANTORUM. My amendment is simple. My amendment says anybody born alive, any child born alive is entitled to protection under the laws of the United States of America.

Unfortunately, this amendment is necessary for two reasons. No. 1, because of the treatment of children who are delivered as a result of an abortion that was botched. We have ample testimony to, unfortunately, show that children born alive as a result of induced abortions are not cared for and are discarded, not cared for as appropriate to their gestational age. So we think it is important to make it clear there is Federal protection; that the laws of the land apply to even children who are born as a result of abortion—born alive.

The second reason is because of our courts in this country, particularly the Supreme Court, where two Supreme Court Justices in the most recent abortion decision, the Nebraska decision, stated that any procedure that the doctor would permit is OK in this country. This is just two of the nine. But they said the Federal Government and our Constitution does not allow regulation of any procedure that the doctor believes is in the best health interests of the mother. That, to me, leaves open the possibility, if the doctor decides in the health interest of a mother that the best thing is to deliver the baby alive and then kill the baby, two Justices on this Court would suggest that would be OK because we cannot regulate any procedure, and they use ''any procedure,'' that the doctor believes is the best interests of the mother.

So I think it is important for us to draw a line at least here. I am hopeful we will have unanimous support for this amendment. It is one that seems obvious on its face, but because of the courts and because of the practice in abortion clinics, it is necessary to make this statement again on the floor of the Senate.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. We yield 2 minutes to the Senator from California.

Mrs. BOXER. Mr. President, it is nice to see you in the Chair.

I say to my friend from Pennsylvania, our side has no disagreement with this whatsoever. Of course, we believe everyone born should deserve the protections of this bill. The Senator, in his amendment, mentions infants who are born and that they deserve the protections of this bill. Of course they deserve the protections of this bill. Who could be more vulnerable than a newborn baby? So, of course, we agree with that.

But we go further. We believe everyone deserves the protection of this bill: babies, infants, children, families, all the way up until you are fighting for your life because you may have a dreaded disease; you may be elderly. Everyone deserves the HMOs to act in the right way and to put your vital signs ahead of their dollar signs. That is key.

Maybe in the spirit of our Chaplain who called for unity this morning we start off this morning together, saying everyone who is born deserves the protections of this bill. We all know that, regardless of what age, we have heard stories of patients who are really disregarded in the name of the bottom line.

During times when we see CEOs in these HMOs drawing down hundreds of millions of dollars, we see little children and elderly people and those in between denied the needed care, denied the kinds of prescriptions they need.

We join with an ''aye'' vote on this. I hope it will, in fact, be unanimous. I also hope the underlying bill will get a very strong vote and we will say that all of our people deserve protection, from the very tiniest infant to the most elderly among us.

I urge an ''aye'' vote.

The ACTING PRESIDENT pro tempore. The time on the amendment has expired. The Senator from Nevada.

Mr. REID. Mr. President, during this vote, I will be conferring with the manager of the bill on the Republican side to determine what are the next two amendments after this series of votes.

I also plead with Members—the first vote is 15 minutes; the others 10 minutes—if everyone will stay where they are supposed to be, we can speed right through these votes. Senator DASCHLE has advised me and everyone here that we are going to try to maintain as close to the time for the votes as possible. So there might be some people missing votes. Everyone should know now that we are not going to keep these votes open for a long period of time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to Santorum amendment No. 814. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—98

Akaka	Durbin	Lugar
Allard	Edwards	McCain
Allen	Ensign	McConnell
Baucus	Enzi	Mikulski
Bayh	Feingold	Miller
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Helms	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Dorgan	Lott	

NOT VOTING—2

Domenici	Murkowski

The amendment (No. 814) was agreed to.

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, we have a series of votes coming up. We anticipate eight votes. We are trying to move the process along.

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

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

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 842

The ACTING PRESIDENT pro tempore. Under previous order, there will

now be 4 minutes of debate prior to a vote in relation to the DeWine amendment No. 842.

The Senator from Ohio is recognized.

AMENDMENT NO. 842, AS MODIFIED

Mr. DEWINE. Mr. President, I have a modification of my amendment at the desk. I ask unanimous consent that it be accepted.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 842), as modified, is as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 303. LIMITATION ON CERTAIN CLASS ACTION LITIGATION.

(a) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

''(o) LIMITATION ON CLASS ACTION LITIGATION.—

''(1) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms 'group health plan' and 'health insurance coverage' have the meanings given such terms in section 733.''.

''(2) EFFECTIVE DATE.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.''.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, this amendment is a very simple one. It limits class actions filed under this bill to suits filed within one company involving one plan. It is a commonsense approach. No individual's rights are in any way violated. Individuals have the right to file suits pursuant to this bill.

In addition to that, class actions can still be filed, but they must be filed within one company, one plan. What it basically would prohibit is the big national class action suits that would possibly be filed.

We are simply trying to balance the rights of the individual and the protection of the patient with the whole problem of increasing costs.

We believe that the elimination of these national class action suits will certainly help to keep the costs down.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, we appreciate very much the work by the Senator from Ohio. We appreciate him working with us. This is another example of what can be accomplished when we work together. We will be supporting this amendment.

I yield the remainder of my time to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise only to say that in previous debate, a story was referenced about a young patient named Christopher Roe, who tragically died on his 16th birthday. It was alleged that this had nothing to do with the Patients' Bill of Rights. That, of course, is not true. Nevada, where Christopher Roe died, does not have clinical trial provisions, and this boy would have clearly benefitted from such provisions. This would have given him another chance for survival with the help of experimental treatments.

When this Patients' Bill of Rights is enacted, either Nevada would have to enact a substantially compliant clinical trial provision or the provisions in this bill would apply. I don't want people misrepresenting the notion of what is happening to some of these patients who deserve and ought to be able to expect to receive the protections under this legislation.

Young Christopher Roe died at age 16 because he was required to fight both cancer and the managed care organization at the same time. That is not a fair fight, and it should not happen in the future. If we pass this legislation, it will not happen in the future.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DEWINE. Mr. President, I yield back my time.

Mr. KENNEDY. We yield back our time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

The question is on agreeing to the DeWine amendment No. 842.

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—98

Akaka	Cleland	Frist
Allard	Clinton	Graham
Allen	Cochran	Gramm
Baucus	Collins	Grassley
Bayh	Conrad	Gregg
Bennett	Corzine	Hagel
Biden	Craig	Harkin
Bingaman	Crapo	Hatch
Bond	Daschle	Helms
Boxer	Dayton	Hollings
Breaux	DeWine	Hutchinson
Brownback	Dodd	Hutchison
Bunning	Dorgan	Inhofe
Burns	Durbin	Inouye
Byrd	Edwards	Jeffords
Campbell	Ensign	Johnson
Cantwell	Enzi	Kennedy
Carnahan	Feingold	Kerry
Carper	Feinstein	Kohl
Chafee	Fitzgerald	Kyl
Landrieu	Nelson (NE)	Snowe
Leahy	Nickles	Specter
Levin	Reed	Stabenow
Lieberman	Reid	Stevens
Lincoln	Roberts	Thomas
Lott	Rockefeller	Thompson
Lugar	Santorum	Thurmond
McCain	Sarbanes	Torricelli
McConnell	Schumer	Voinovich
Mikulski	Sessions	Warner
Miller	Shelby	Wellstone
Murray	Smith (NH)	Wyden
Nelson (FL)	Smith (OR)	

NOT VOTING—2

Domenici	Murkowski

The amendment (No. 842) was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was agreed to.

Mr. BROWNBACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 845

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 4 minutes of debate prior to a vote in relation to the Grassley amendment numbered 845.

Mr. GRASSLEY. I yield myself 1 minute.

A point was made last night that extending the user fees in section 502 has no impact on the U.S. Customs Service budget. That is baloney. If it has no impact, why is it in the bill in the first place? Obviously, it is in the bill because it has an impact on budget scoring. Once CBO scores these funds against the Patients' Bill of Rights, these funds cannot be used by the U.S. Customs Service for customs modernization. These funds then are no longer available to offset the costs of customs modernization. We will have to find funds somewhere else; perhaps we can get them from the Health, Education, Labor, and Pensions Committee.

The U.S. Customs Service recognizes this problem: Any scoring which would limit in any way the ability to fund or offset customs activity would likely cause a critical funding shortfall in the Customs Service.

I think it is very clear.

Mr. KENNEDY. I yield 2 minutes to the Senator from North Dakota.

Mr. CONRAD. Has all time been yielded back on the other side?

The ACTING PRESIDENT pro tempore. It has not.

Mr. CONRAD. I rise for the purpose of bringing a point of order; that point of order will not be available until time has been used up on both sides.

Mr. GRASSLEY. I know the chairman is going to raise a point of order, and I want 1 minute to respond to the point of order.

Mr. KENNEDY. I ask consent that both sides yield back the time and the Senator be permitted to make a point of order and each side have 2 minutes to explain the point of order and 2 minutes to respond to that.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, sections 502 and 503 of the bill help to ensure that the Social Security surplus is not affected by the costs associated with providing expanded patient protection.

The bill extends customs user fees beyond 2003. That is all. The bill does not change the current nature, structure, or purpose of these fees. Customs operations will not lose funds as a result of the extension of these fees. However, the net effect of accepting the Grassley amendment would be that over $6 billion in spending contained in this bill would not be offset. That is spending that represents a transfer of funds to protect the Social Security trust fund. Deleting that offset would cause the Health, Education, Labor, and Pensions Committee to exceed its committee budget allocation.

As a result, at the appropriate time I will raise the point of order.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there will be a point of order made. If a point of order is made, I am obviously going to waive it. I make clear my motion to strike would essentially allow us to replace the revenues taken from the Finance Committee's jurisdiction with general funds that are still available in the off-budget surplus. All Finance Committee members, Republicans and Democrats alike, including my respected chairman of the Senate Budget Committee, a senior member of the Senate Finance Committee, should beware, a vote against my motion is a vote for weakening the Finance Committee's jurisdiction. If your membership on the Finance Committee means anything, you need to vote in favor of my motion to strike.

Mr. CONRAD. Mr. President, this goes beyond the question of jurisdiction. This is the first test of fiscal discipline in this Chamber. Do we adhere to the Budget Act or do we abandon fiscal discipline? That is the question on this vote. Are we going to spend money that is not offset and thereby violate the allocation that has been made to this committee and exceed the allocation that has been made to this committee? I hope this body will stick with fiscal discipline and require we offset spending that is over and above the allocation to this committee. Spending, after all, is actually a transfer of funds to protect the Social Security trust fund.

Mr. President, I bring, therefore, a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The ACTING PRESIDENT pro tempore. Senator from Iowa.

Mr. GRASSLEY. I move to waive the point of order under section 904 of the Budget Act. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER (Ms. LANDRIEU). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 46, nays 52, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—46

Allard	Fitzgerald	Nickles
Allen	Frist	Roberts
Bennett	Gramm	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Helms	Snowe
Chafee	Hutchinson	Stevens
Cochran	Hutchison	Thomas
Collins	Inhofe	Thompson
Craig	Jeffords	Thurmond
Crapo	Kyl	Voinovich
DeWine	Lott	Warner
Ensign	Lugar	
Enzi	McConnell	

NAYS—52

Akaka	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Nelson (NE)
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Inouye	Rockefeller
Carnahan	Johnson	Sarbanes
Carper	Kennedy	Schumer
Cleland	Kerry	Specter
Clinton	Kohl	Stabenow
Conrad	Landrieu	Torricelli
Corzine	Leahy	Wellstone
Daschle	Levin	Wyden
Dayton	Lieberman	
Dodd	Lincoln	

NOT VOTING—2

Domenici	Murkowski

The PRESIDING OFFICER. On this vote, the yeas are 46, the nays are 52. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 846

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate prior to the vote in relation to the Nickles amendment No. 846.

The Senator from Oklahoma.

Mr. NICKLES. Madam President, the amendment we have before us now says this should apply to all private-sector plans, including union plans. For the private-sector plans, the effective date is October 1, 2002. But for collective bargaining plans, there is a little section on page 174 that says it shall not apply until the collective bargaining agreement terminates. In many cases, collective bargaining agreements do not terminate for years and years, or they may be renegotiated.

My point is, we should make these protections apply, and hope they will apply—if they are so positive—to all Americans, including union members. Union members should have these protections.

My colleague from Massachusetts asked: Was the Senator trying to punish the unions? I am not trying to punish anybody. Shouldn't union members have the same appeals process? Shouldn't they have the same patient protections we have for all private-sector plans?

To say we are going to exempt them for the duration of their collective bargaining agreements I think is a mistake, especially when some of these agreements may not terminate for years—maybe 10 years or more. We should make this apply for all plans at the same time.

Madam President, I yield the remainder of my time to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, this morning the Senator from North Dakota got up and spoke about a young man by the name of Chris Roe from my State. He said this young man's parents would have been covered under this bill. But according to the Department of Labor, the protections in this bill do not apply to collective bargaining agreements. Because Chris Roe's parents were under a collective bargaining agreement—as a matter of fact, that collective bargaining agreement does not expire until years from now—the Roes would not be covered.

Chris Roe is no longer with us, but people in the future like him should be able to be covered under the same patient protections as everybody else under this bill.

I urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, this is language on page 173. It is basically boilerplate language, which means we have used identical language in the HIPAA program and also in OBRA, the pension reform. It is basically out of respect for contracts. If you read the language it says ''for plans beginning on or after October 1.'' ''For plans'' refers to insurance. Most of the insurance, 60 percent of insurance plans start in January; 40 percent go over until the next year. So this will apply at the first opportunity when those plans expire and also when collective bargaining expires.

That is our purpose, to do it in a timely way. I hope the Nickles amendment will be defeated. I will offer an amendment that will say irrespective of collective bargaining, it will have to be done within 2 years, and rollovers will not be permitted. That is the best way to do it. That respects the contracts. It was really done with the support of the insurance industry. It has been boilerplate language that has been used in a number of different bills

as a way of addressing respect for contracts.

I hope the Nickles amendment will be defeated. We give assurance to the membership that the follow-on amendment will say that every contract has to be done within 2 years and that there is no possibility, even within that period of time, for a rollover agreement.

Madam President, I move to table the Nickles amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 211 Leg.]

YEAS—54

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Cantwell	Hollings	Reed
Carnahan	Inouye	Reid
Carper	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden

NAYS—44

Allard	Fitzgerald	Nickles
Allen	Frist	Roberts
Bennett	Gramm	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Helms	Snowe
Cochran	Hutchinson	Stevens
Collins	Hutchison	Thomas
Craig	Inhofe	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McConnell	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Madam president, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to table was agreed to.

AMENDMENT NO. 847, WITHDRAWN

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Brownback amendment No. 847.

Who yields time?

The Senator from Kansas.

Mr. BROWNBACK. Madam President, I want to say that I will not be requiring a vote on this amendment. At the end of a short statement, I will ask unanimous consent that the vote be vitiated. I am doing this because a number of people who looked at this amendment have said they are very interested, intrigued, and supportive, but they are not sure about the language. I think it needs to be tightened up some and reviewed.

Indeed, the chairman stated to me his desire to look at this issue in further depth later in the year. That is why I will be pulling this from a vote. We are talking about prohibiting the taking of genetic material from outside the human species and injecting it into the human species, to where it can be passed on to future generations.

I point out to my colleagues that this is the modern face of eugenics, the desire to create perfect people, as if we can become a biologically perfectible artifact. This is a dangerous thing. It is an ugly thing that has reared its head in history previously, and its modern face involves taking genetic material wherever we can find it and putting it in. It should be banned. It is currently allowed. It is currently being researched in this country. It should be stopped.

I look forward to working with the chairman of the HELP Committee to see if we can tighten up the language to address it in the Congress in the near term before people start actually doing this. It is completely allowed now, with no prohibitions. We limit it more in other species than we do in humans.

I ask unanimous consent that the rollcall vote on the Brownback amendment be vitiated and that the amendment be withdrawn.

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

AMENDMENT NO. 849

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Ensign amendment No. 849.

Who yields time? The Senator from Nevada.

Mr. ENSIGN. Madam President, I am going to ask unanimous consent in a moment to temporarily lay this amendment aside so we can work out the language. There seems to be support on both sides of the aisle for this amendment. There is just slight disagreement on the language.

I ask unanimous consent that my amendment No. 849 be temporarily laid aside to recur at the concurrence of the bill managers.

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

AMENDMENT NO. 848

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 848 by the Senator from Nevada.

Mr. ENSIGN. Madam President, we can actually have a vote on this amendment. This amendment is about protecting health care providers who voluntarily give of themselves, give of their services, and this amendment will protect them from being sued.

Last night in the debate, the Senator from North Carolina mentioned the Volunteer Protection Act of 1997 already takes care of the health care providers. In fact, it does not. It defines a volunteer as ''an individual performing services for a nonprofit organization or governmental entity who does not receive compensation or any other thing of value in lieu of compensation.''

I was speaking to one of my neighbors. He is a general surgeon. He was just in an emergency room last week. He saw a patient who did not have health insurance, could not afford to pay, and he voluntarily saw this patient. I do not think it would be right for people to volunteer and then be sued.

My amendment says if, out of the goodness of your heart, you work at a clinic, such as Dr. Chanderraj, a friend of mine who is a cardiologist in Las Vegas—he takes care of the poor on the weekends, and yet he has to carry malpractice insurance.

Many doctors and health care providers who volunteer their services for the poor should be encouraged, not discouraged, to give their services.

I urge the adoption of this amendment. It is the right thing to do, just as the Good Samaritan Act and the Volunteer Protection Act of 1997 were the right things to do.

The PRESIDING OFFICER. Time has expired. Who yields time in opposition? The Senator from North Carolina.

Mr. EDWARDS. Madam President, Senator Coverdell offered legislation in 1997, as the Senator referred to, called the Volunteer Protection Act that does what this amendment is aimed at. It provides specific protection for people who provide volunteer services. Physicians are included in that legislation.

Further, there is a specific provision in that legislation which provides that State laws can remain in effect and States are given wide latitude to opt out and enact their own legislation on this issue. There is no such provision in this amendment.

Legislation, offered by Senator Coverdell and passed in 1997, covers this issue. If the Senator wants to attempt to amend that legislation, that would be the appropriate vehicle, not this vehicle. This legislation we are debating today is the Bipartisan Patient Protection Act. It is about HMO accountability and HMO reform. These issues that are not directly related to HMO reform and HMO accountability do not belong on this legislation. For that reason, we oppose this particular amendment.

I yield the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EDWARDS. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—52

Akaka	Durbin	McCain
Baucus	Edwards	Mikulski
Bayh	Feingold	Miller
Biden	Feinstein	Murray
Bingaman	Graham	Nelson (FL)
Boxer	Harkin	Nelson (NE)
Breaux	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Shelby
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	
Dorgan	Lincoln	

NAYS—46

Allard	Enzi	Nickles
Allen	Fitzgerald	Roberts
Bennett	Frist	Santorum
Bond	Gramm	Sessions
Brownback	Grassley	Smith (NH)
Bunning	Gregg	Smith (OR)
Burns	Hagel	Snowe
Byrd	Hatch	Specter
Campbell	Helms	Stevens
Chafee	Hutchinson	Thomas
Cochran	Hutchison	Thompson
Collins	Inhofe	Thurmond
Craig	Kyl	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	
Ensign	McConnell	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as a point of information, we have the Thompson amendment. It is agreed by the managers we would have a minute on either side and then go to a rollcall vote. We ask our Members to remain in the Chamber, if they would. We are prepared.

Mr. GREGG. Madam President, if the Senator will yield, I would like to also note after the Thompson amendment it is expected the order of amendments will be Senator SMITH of Oregon for 30 minutes, Senator NICKLES for 30 minutes, Senator SANTORUM for 40 minutes, and Senator ALLARD for 30 minutes. We will enter into a unanimous consent agreement after the vote, hopefully, to get that order worked out.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 819

Mr. KENNEDY. Mr. President, I ask unanimous consent that on the Thompson amendment we have 4 minutes equally divided. I ask unanimous consent it be in order to consider the yeas and nays for a vote.

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

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. The amendment is now pending. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time? The Senator from Tennessee.

AMENDMENT NO. 819, AS MODIFIED

Mr. THOMPSON. I call up amendment No. 819 and I send a modification to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 819), as modified, is as follows:

On page 150, strike line 17 and all that follows through page 153, line 8, and insert the following:

''(9) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—A cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102 and 103 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) or paragraph (10)(B), with respect to a participant or beneficiary, unless the requirements of subparagraph (A) are met.

''(C) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

The court in any action commenced under this subsection shall take into account any receipt of benefits during such administrative processes or such action in determining the amount of the damages awarded.

''(D) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 103 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal court proceeding and shall be presented to the trier of fact.

On page 165, strike line 15 and all that follows through page 168, line 3, and insert the following:

''(4) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), a cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102, 103, and 104 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) LATE MANIFESTATION OF INJURY.—

''(i) IN GENERAL.—A participant or beneficiary shall not be precluded from pursuing a review under section 104 of the Bipartisan Patient Protection Act regarding an injury that such participant or beneficiary has experienced if the external review entity first determines that the injury of such participant or beneficiary is a late manifestation of an earlier injury.

''(ii) DEFINITION.—In this subparagraph, the term 'late manifestation of an earlier injury' means an injury sustained by the participant or beneficiary which was not known, and should not have been known, by such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied.

''(C) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) unless the requirements of subparagraph (A) are met.

''(D) FAILURE TO REVIEW.—

''(i) IN GENERAL.—If the external review entity fails to make a determination within the time required under section 104(e)(1)(A)(i), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 104(e)(1)(A)(i).

''(ii) EXPEDITED DETERMINATION.—If the external review entity fails to make a determination within the time required under section 104(e)(1)(A)(ii), a participant or beneficiary may bring an action under this subsection and the filing of such an action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 104(e)(1)(A)(ii).

''(E) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

''(F) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 104 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal or State court proceeding and shall be presented to the trier of fact.''

Mr. KENNEDY. Can we have order, Mr. President? We have had great cooperation of the Members. We have made good progress during the morning. We thank Senator GREGG for outlining the series of amendments and

the time that will be necessary. We are moving along with consideration of the legislation. The Senator from Tennessee is entitled to be heard. Can we have order in the Senate?

The PRESIDING OFFICER. The Senate cannot proceed until there is order in the Senate. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, this amendment has to do with the exhaustion of administrative remedies. As stated the other day, we have in this underlying legislation quite an elaborate procedure for administrative review so independent entities, at at least two different levels, have an opportunity to make a determination on a claim. Then the underlying bill allows a claimant to go to court if they are not satisfied. The problem we saw in the underlying bill is in many cases there was not a requirement that that administrative process be gone through, that very easily you could jump right to the court.

I think no one really wants to do that. We have set up this administrative appeal process, which is a good one, and we want to use it.

What we seek to do in this amendment is to basically require the exhaustion of administrative review, administrative remedies, before a claimant goes to court.

We had a good discussion with the other side. The concern was expressed that the modification should recognize an injury for which a claim has been denied might later become more serious, after the timeframe for exhausting external review has expired.

That is a legitimate concern. If someone has a later-developed injury that did not manifest itself early on, there should be a provision so they are not deemed to not have exhausted administrative review so they could never go to court. So we have addressed that in this modification.

The other concern was what if the external entity simply sits on the matter and doesn't come within the 21 days allowed under the bill to make its determination. We say in this modification, if the external entity takes longer than that, we give them another 10 days and then we allow the claimant to go to court.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMPSON. I ask for an additional 20 seconds.

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

Mr. THOMPSON. Under those circumstances, the claimant would still have to exhaust their administrative appeal, but they could go ahead and file the lawsuit in the meantime under, what I think are very rare circumstances. So with that modification I think we have a good process set up so this elaborate administrative process we have established in the bill will actually be utilized.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

May we have order in the Chamber, please.

Mr. EDWARDS. I thank the Senator from Tennessee. This is another example of what can be done when we tackle these problems together and try to find solutions. As the issue of scope and employer liability, with a number of Senators on both sides of the aisle, now we are doing it on the issue of exhaustion of administrative remedies, exhaustion of appeals.

This amendment meets the very principle by which we began this legislative drafting, which is we want patients to get the care they need. The most effective way to do that is to have an effective appeals process.

What we have done in this process is, No. 1, require that the patient, the claimant, go through the appeal before going to court, exhausting those appeals. That is the easiest way and the most efficient way to get them the care they need.

The second thing we do is provide an outlet in case the appeals process drags on and it does not operate the way it should. If it is longer than 31 days, then the patient will be able to go to court. But, as the Senator from Tennessee points out, they will have to simultaneously exhaust the administrative appeal.

Third, we have now provided specifically that the result of the administrative appeal will be admissible in any court proceeding, which is another important element of this amendment.

I thank my friend from Tennessee. I thank him for working with us on this issue. I think we have an issue about which we now have consensus and we are pleased to be there.

I yield the remainder of my time.

I ask for the yeas and nays.

Mr. NICKLES. Were the yeas and nays ordered on the amendment or the modification?

The PRESIDING OFFICER. They were ordered on the amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent the yeas and nays be vitiated on the amendment and they be ordered on the modification.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the Thompson amendment No. 819, as modified.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—98

Akaka	Allen	Bayh
Allard	Baucus	Bennett
Biden	Feingold	McConnell
Bingaman	Feinstein	Mikulski
Bond	Fitzgerald	Miller
Boxer	Frist	Murray
Breaux	Graham	Nelson (FL)
Brownback	Gramm	Nelson (NE)
Bunning	Grassley	Nickles
Burns	Gregg	Reed
Byrd	Hagel	Reid
Campbell	Harkin	Roberts
Cantwell	Hatch	Rockefeller
Carnahan	Helms	Santorum
Carper	Hollings	Sarbanes
Chafee	Hutchinson	Schumer
Cleland	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith (NH)
Collins	Jeffords	Smith (OR)
Conrad	Johnson	Snowe
Corzine	Kennedy	Specter
Craig	Kerry	Stabenow
Crapo	Kohl	Stevens
Daschle	Kyl	Thomas
Dayton	Landrieu	Thompson
DeWine	Leahy	Thurmond
Dodd	Levin	Torricelli
Dorgan	Lieberman	Voinovich
Durbin	Lincoln	Warner
Edwards	Lott	Wellstone
Ensign	Lugar	Wyden
Enzi	McCain	

NOT VOTING—2

Domenici Murkowski

The amendment (No. 819), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. THOMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, how long did that vote take?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Tennessee and the Senator from North Carolina. The last amendment was an important amendment. It was a major step forward. That amendment, along with the Snowe amendment and several others that have passed, has immeasurably helped this legislation.

I thank the Senator from Tennessee and the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join with the comments of the Senator from Arizona. In the trades, that was ''a biggie.'' It was a very positive action to make sure that the exhaustion of the appeals process is a true exhaustion of the appeals process and we don't go straight to the court system. I congratulate the Senators from North Carolina and Tennessee for achieving that resolution.

AMENDMENT NO. 847

Mr. HATCH. Mr. President, I rise to oppose amendment No. 847 offered by my friend from Kansas, Senator BROWNBACK.

This amendment purports to establish safeguards with respect to medical treatments that encompass therapies directed at genetic defects. The amendment would impose criminal sanctions, including imprisonment of up to 10

years, on those who violate the restrictions on modifying the human genetic structure.

Not only is this the wrong time to consider this amendment, it is also the wrong piece of legislation on which to consider this amendment. In all candor, I must tell my colleagues that in my view, based on my preliminary reading of this amendment, I greatly doubt there will ever be a right time for this proposal.

I have no doubt that this amendment is well-intentioned.

I have worked with Senator BROWNBACK many times in the past on many issues, including many important right-to-life issues, such as outlawing partial birth abortion. Both he and I are proud to call ourselves pro-life Senators.

But, as my colleagues are aware, Senator BROWNBACK and I happen to disagree on the issue of federal funding for embryonic stem cell research. I understand and completely respect his views on this issue.

In a nutshell, the Brownback amendment attempts to regulate genetic research. But I am afraid that it might regulate this critical avenue of research right out of existence.

This is an exceedingly complex and dynamic field of science.

It is certainly not the type of legislation that we want to attach as a nongermane amendment to a bill that does not directly relate to biomedical research.

My goodness, we have our hands full enough with HMOs and the Patients' Bill of Rights. We do not need to further complicate an already complex bill with this language.

Why do we need to take floor time on this proposal? Have there been hearings on this language? Has there been a committee mark-up on this bill?

Isn't the reason why we have committee hearings and committee markups so that complex issues can be adequately aired by members of the critical committees before the full Senate debates an issue?

There is much virtue for letting legislation ripen and be scrutinized in committee before the entire body debates the merits of proposals such as this amendment.

I think we should defeat this amendment today so that the relevant committees can thoroughly review this legislation.

While I strongly believe that we should defeat this amendment on strictly procedural grounds, I do want to make a few comments on some initial problems that I have with respect to the substance of the bill.

First, because there are over 300 diseases thought to be caused by a defect in a single gene, we must be extremely careful that we do not cut off or unduly impede vital research on such diseases.

As a co-sponsor of the Orphan Drug Act of 1984, I know very well how millions of American families must struggle each day with small population but highly debilitating diseases such as multiple sclerosis, ALS, and Fragile X Syndrome.

The problem with the Brownback amendment is that it appears to thwart research on gene therapies that may lead one day to cures for many of these single-gene diseases. It would not be right for the Senate to hastily adopt language that derails research on such crippling diseases as Alzheimer's or Parkinson's.

I am concerned with what the definition of human germline gene modification in section 301 of the Brownback bill could do when it is read in context of section 302 of his legislation. The amendment's definition of human germline modification is ambiguous.

As one attorney representing the biotechnology industry has characterized the reach of this definition:

> Among other problems, which of the examples listed are ''sources'' of ''forms'' of DNA and why does it matter? Moreover, the sentence—and he is referring to the first definition in section 301 which describes human germline modification—ends by referring to ''including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.'' To what part of the first sentence defining ''human germline modification'' is the language referring? Does the last sentence of the definition, ''Nor does it include the change of DNA involved in the normal process of sexual reproduction'' prohibit in vitro fertilization? Does any part of the amendment prohibit or allow in vitro fertilization? What genetic technologies does ''normal'' cover, if any?

Without objection, I would like to place in the RECRD a copy of this legal memorandum prepared by Edward Korweck of the law firm of Hogan & Hartson. As I understand it, this memorandum was written on behalf of BIO, the biotechnology industry association.

I also ask unanimous consent to place in the RECORD a copy of a letter from BIO to Senator LOTT opposing the Brownback amendment. This letter voices its opposition to the amendment by stating:

> Let's not cripple essential medical research for a host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease, and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

This argument must be considered by all members of the Senate.

The question of how in vitro fertilization relates to the normal process of sexual reproduction is a question of great importance because it appears to directly implicate the science of embryonic stem cell research.

Specifically, we need to know this language would treat research with human pluripotent stem cells.

We all know where Senator BROWNBACK stands on that issue. While I generally agree with my friend from Kansas, I disagree with him on embryonic stem cell research.

This is an issue that deserves careful consideration by each Senate. I welcome this debate. But today is not the time. We simply need to know all the implications of the Brownback language before we even consider such legislation.

In my view, this Senate should go on record as supporting federal funding for embryonic stem cell research. And we certainly do not want to turn back the clock on the type of gene therapy research that has been conducted for over 20 years.

This is simply not the kind of measure that you try to slip into an unrelated bill.

All interested parties—patient groups, religious and advocacy organizations, scientists, health care providers, biotechnology firms—deserve to be fully consulted on how the language of this measure will affect their interests.

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

BIOTECHNOLOGY INDUSTRY ORGANIZATION,
Washington, DC, June 27, 2001.

Hon. TRENT LOTT,
U.S. Senate,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the Biotechnology Industry Organization (BIO), I am writing to express BIO's opposition to an amendment that may be offered by Senator Brownback regarding germ line gene modification. This amendment may come up for a vote on the Senate floor as early as today during consideration of S. 1052—the McCain, Kennedy, Edwards Bipartisan Patient Protection Act. I urge you to vote against the Brownback amendment if it comes up for a vote.

BIO opposes germ line gene modification and we support the moratorium on germ line gene modification that has been in place for over a decade. This moratorium has allowed critical genomic research to continue while prohibiting unsafe and unethical work. To our knowledge, all scientists have complied with this moratorium.

Unfortunately, the Brownback amendment reaches far beyond germ line gene modification. It attempts to regulate genetic research—a complex and dynamic field of science that holds great potential for patients with serious and often life-threatening illnesses. This proposal also could prohibit research on human pluripotent stem cells. Since these cells have been demonstrated to form any cell in the body they hold enormous therapeutic potential.

Let's not cripple essential medical research for host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

Furthermore, to our knowledge there has been no consultation with the scientific community, researchers, physicians, or patient groups prior to the filing of the Brownback amendment. This is particularly troubling because the amendment calls for severe sanctions, including imprisonment of biotech researchers.

I urge you to vote against this amendment. If you have questions, please call me at 202–857–0244. Thank you for your consideration on this important matter.

Sincerely,

W. LEE RAWLS,
Vice President, Government Relations.

MEMORANDUM

JUNE 28, 2001.

To: Michael Werner, Esquire, BIO Bioethics Counsel.

From: Edward L. Korwek, Ph.D., J.D.

Re: Some Initial Comments/Analysis of the Brownback Amendment.

The Brownback Amendment is poorly worded and confusing as to its precise coverage. It uses a variety of scientific terms and other complex language both to prohibit and allow certain gene modification activities. Many of the sentences are composed of language that is incorrect or ambiguous from a scientific standpoint. A determination needs to be made of what each sentence of the Amendment is intended to accomplish.

As to a few of the important definitions, the term ''somatic cell'' is defined in proposed section 301(3) of Chapter 16, as ''a diploid cell (having two sets of the chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development.'' What does ''of almost all body cells'' mean? Is this an oblique reference to the haploid nature of human sex cells, i.e., sperm and eggs? Also, why is it important to describe in such confusing detail from where the cells are derived (in contrast to simply saying, for example, a somatic cell is a human diploid cell)? From a scientific standpoint, the definition of a somatic cell is not dependent on whether the cell is from living or dead human beings. More importantly, as to this human source issue, when does a ''human body'' exist such that its status as ''living'' or ''dead'' or its ''stages of development'' become relevant criteria for determining what is a ''somatic cell.''

Similarly, the definition of ''human germline modification,'' especially the first sentence, is very convoluted. The first sentence states:

''The term 'human germline gene modification' means the intentional modification of DNA of any human cell (including human eggs, sperm, fertilized eggs (i.e., embryos, or any early cells that will differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.''

Among other problems which of the examples listed are ''sources'' or ''forms'' of DNA and why does it matter? Moreover, the sentence ends by referring to ''including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.'' To what part of the first sentence defining ''human germline modification'' is this language referring? Does the last sentence of the definition, ''Nor does it include the change of DNA involved in the normal process of sexual reproduction'' prohibit in vitro fertilization? Does any other part of the Amendment prohibit or allow in vitro fertilization? What genetic technologies does ''normal'' cover, if any?

Similarly, the second sentence in the definition, stating what is not covered by the definition of ''human germline modification,'' contains three ''not'' words, leaving the reader to decipher what exactly is ''not'' human germline modification'': ''The term does not include any modification of cells that are not a part of and will not be used to construct human embryos'' (emphasis added). Also, what is an ''embryo'' for purposes of this Amendment and what does ''part of'' mean? Are (fertilized) sex cells ''part of'' an embryo?

These and other problems leave the bill unsupportable in its current form. Due to this imprecision, the amendment's impact is unclear and seemingly far reaching.

AMENDMENT NO. 848

Mr. ENSIGN. Mr. President, this pro bono amendment will benefit doctors across the country. A prime example is my neighbor, Dr. Dan McBride. Dr. McBride has provided medical care to individuals and families free-of-charge for years. He understands that not all Nevadans can afford health care insurance each month, and that many cannot even afford to go to the doctor once each year; but that does not mean that they are not deserving of proper health care. This amendment will ensure that doctors such as Dan McBride can continue providing free health care to the less fortunate without fear of lawsuits.

AMENDMENT NO. 849

Mr. KENNEDY. Mr. President, today we are at the threshold of astonishing new progress in medicine. New discoveries in genetics and other areas of biomedical research will revolutionize the diagnosis and treatment of countless disorders. This astonishing potential to relieve suffering will be squandered if patients fear that their private genetic information will become the property of their insurance companies and their employers, where it can be used to deny people health care and deny workers their jobs.

To protect all Americans against genetic discrimination in health insurance and employment, I am proud to support the important legislation that Senator DASCHLE has introduced on this issue. I commend my colleague, Senator ENSIGN for bringing this basic issue to the floor of the Senate, and I look forward to working closely with him in the days to come.

However, Senator ENSIGN's amendment has several shortcomings that lead me to believe that it is not the right policy for us to adopt to end genetic discrimination. Yet in the interests of stimulating debate on this important issue and to speed the termination of debate on the Patients' Bill of Rights, I am prepared to accept it as an amendment to the bill. But next month, in our Committee, we will have a full and thoughtful discussion of this issue in our committee and a thorough debate on the Senate floor.

Senator ENSIGN's amendment fails to provide protections that are essential. The amendment does not address the important issue of discrimination in the workplace. Genetic discrimination in employment is real and it's happening all across America. Effective legislation on this issue must include protections for workers.

We must realize that genetic information will be commonplace in medicine and we must ensure that our definitions adequately protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the Ensign amendment do not properly protect genetic information. The definitions in this legislation allow employers and others to find dangerous loopholes in the protections offered by the legislation.

Finally, the remedies in the Ensign amendment do not provide adequate remedies for those whose rights have been violated. We should make sure that we allow those whose rights have been violated to seek proper recourse.

Despite these and other flaws in the Ensign amendment, I am prepared to accept the measure as a spur to future debate on this important issue. We will start from a clean slate in our committee deliberations and we will give this issue the thorough exploration it deserves. I look forward to a fresh debate and to taking action on Senator DASCHLE's important legislation.

Mr. DASCHLE. Mr. President, in an effort to move forward and complete debate on the Patient's Bill of Rights, the Ensign amendment on genetic discrimination, along with several other proposals, were included in a managers' package without a full vote of the Senate. It must be clarified that there are several problems with the Ensign proposal as offered, and we do not support this approach for dealing with genetic discrimination.

First, the Ensign amendment does not comprehensively address the problem of genetic discrimination. This amendment only covers genetic discrimination in health insurance and is silent on discrimination in the workplace. Simply prohibiting genetic discrimination in health insurance, while allowing it to continue in employment is no solution at all. Employers will simply weed out employees with a genetic marker. Additionally, the protections the amendment provides are so riddled with loopholes that health insurance providers would still have substantial access to individuals' private genetic information.

Recently, employees working at Burlington Northern Railroad were subjected to genetic testing without their knowledge or consent. The company was attempting to determine if any of the employees had a genetic predisposition for carpal tunnel syndrome—in an attempt to avoid covering any costs associated with the injury. Giving up your private genetic information shouldn't be the price you pay for being employed.

The Ensign amendment also fails to comprehensively cover all of the insured. We must create protections for all Americans regardless of where an individual gets his or her health insurance coverage. It is unconscionable to allow genetic information to be used to discriminate against anyone—access must be limited appropriately to ensure that no American is left vulnerable.

Finally, the Ensign amendment does not create a private right action—leaving individuals without an adequate remedy. Clearly, providing protections without proper enforcement provisions makes any protection meaningless.

We've seen a revolution in our understanding of genetics—scientists have finished mapping our genetic code, and

researchers are developing extraordinary new tests to determine if a person is at risk of developing a particular disease. But with increased understanding of the possibilities of the genome uncovers, comes increased responsibilities. We simply cannot take one step forward in science while taking two steps back in civil rights.

The HELP committee will move forward with consideration of this issue this summer. We welcome the opportunity to work with Senator ENSIGN and other Republicans on a comprehensive genetic non-discrimination bill that can command bipartisan support. It is our hope that we can bring up and pass a bill later this summer.

Mr. GREGG. I now propound a unanimous consent request relative to the order of the following amendments to which we will be proceeding. The first would be Senator SMITH for 30 minutes equally divided. The second would be Senator ALLARD, 30 minutes equally divided. The third amendment would be Senator NICKLES, 30 minutes equally divided. The fourth would be Senator SANTORUM, 40 minutes equally divided. And the fifth would be Senator CRAIG, 30 minutes equally divided.

The substance of the amendments or the purposes of the amendments have been presented to the other side. I can run through those if Members wish to hear them.

The PRESIDING OFFICER. Is there objection?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator has shared the substance. Members will hear the explanations, but the Smith amendment deals with tax credits; the Allard amendment, with exclusions for smaller businesses in terms of the numbers of employees; the Nickles amendment is an expansion to other Federal health programs; Santorum deals with punitive damages; and the Craig amendment deals with medical savings accounts. We are familiar with the subject matter. We have no objection to that as an order, and we believe the time recommended will help us move this process along and will be sufficient to evaluate the amendments.

Mr. REID. Mr. President, we want to just make sure that the vote is in relation to the amendments offered in the usual form with no second-degree amendments in order prior to the vote.

Mr. GREGG. That is acceptable——

Mr. REID. And also that the time limit be as outlined and the time for debate—there would be an opportunity to file a motion prior to the vote in relation to the amendment.

Mr. GREGG. Do you mean a motion to table?

Mr. REID. Yes.

The PRESIDING OFFICER. The Senator so amends his request?

Mr. GREGG. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Mr. President, I inquire of the Senator from Nevada whether or not it would be possible to stack these votes or whether the jury is still out on that?

Mr. REID. We should wait on that. We have a number of people on this side who want to vote after every amendment. We will work on that.

Mr. GREGG. I point out to the Senator, as I know and he knows, by not stacking the votes we add a considerable amount of time to this exercise. We are trying to move these amendments in a prompt and reasonable fashion. I think that has been shown in the process throughout the weeks here. We end up delaying if we don't stack votes.

Mr. REID. The managers have worked so hard and the leaders have conferred about this legislation. We will work on that. We hope that the Senator from New Hampshire will give us a finite list of amendments. Once that happens, I am sure we can quickly arrive at a time to dispose of this and the votes could be stacked.

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

The Senator from Oregon is recognized.

MOTION TO COMMIT

Mr. SMITH of Oregon. Mr. President, I send a motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH] moves to commit the bill, S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that further reading of the motion be dispensed with.

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

The motion is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment that—

(1) strikes all after the enacting clause and inserts the text of S. 1052, as amended,

(2) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41,

(3) provides that H.R. 3, as amended pursuant to paragraphs (1) and (2), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and

(4) provides that H.R. 3, as so amended, is not subject to a budget point of order.

Mr. SMITH of Oregon. Mr. President, for myself, Senator HATCH, Senator ALLEN, and others, I have sent to the desk a motion to commit S. 1052 to the Finance Committee with instructions to make permanent the research and development tax credit. We are joined in this also by Senators CRAPO, CRAIG, BENNETT, BROWNBACK, BURNS, HUTCHINSON, ALLEN, and ENZI.

As a Member of the Senate high-tech task force, I believe that the R&D tax credit is essential to the technology community, and also to the pharmaceutical community.

This credit encourages investment in basic research that, over the long term, can lead to the development of new, cheaper, and better technology products and services. The research and development is certainly essential for long-term economic growth.

Innovations in science and technology has fueled the massive economic expansion we have witnessed over the course of the 20th century. These achievements have improved the standard of living for nearly every American. Simply put, the research tax credit is an investment in economic growth, new jobs, and the important new products and processes that we need in our lives.

The R&D tax credit must be made permanent. This credit, which was originally enacted in 1981, has only been temporarily extended 10 times. Permanent extension is long overdue.

Because this vital credit isn't permanent, it offers businesses less value than it should. Businesses, unlike Congress, must plan and budget in a multiyear process. Scientific enterprise does not neatly fit into calendar or fiscal years.

R&D development projects typically take a number of years, and may even last longer than a decade. As our business leaders plan these projects, they need to know whether or not they can count on this tax credit.

The current uncertainty surrounding the credit has induced businesses to allocate significantly less to research than they otherwise would if they knew the tax credit would be available in future years. This uncertainty undermines the entire purpose of the credit.

Investment in R&D is important because it spurs innovation and economic growth. Information technology, for example, was responsible for more than one-third of the real economic growth in 1995 through 1998.

Information technology industries account for more than $500 billion of the annual U.S. economy. R&D is widely seen as a cornerstone of technological innovations which, in turn, serves as a primary engine of long-term economic growth.

The tax credit will drive wages higher. Findings from a study, for example, conducted by Coopers & Lybrand show that workers in every State will benefit from higher wages if the research credit is made permanent.

Payroll increases as a result of gains in productivity stemming from the credit have been estimated to exceed $60 billion over the next 12 years.

Furthermore, greater productivity from additional research and development will increase overall economic growth in every state in the Union. Research and development is essential for long-term economic growth.

The tax credit is cost-effective. The R&D tax credit appears to be a cost-effective policy instrument for increasing business R&D investment. Some recent studies suggest that one dollar of

the credit's revenue cost leads to a one dollar increase in business R&D spending.

There is broad support among Republicans for the credit, and President Bush included the credit in the $1.6 trillion tax relief plan.

I urge my colleagues to support this amendment, and I thank Senator HATCH and Senator ALLEN, the chief cosponsors, for providing us with the opportunity of increasing the size of the tax cut to include this important priority but which, unfortunately, was left out of the tax bill that we recently passed.

Before I yield to Senator ALLEN for his comments, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second?

The yeas and nays were ordered.

Mr. SMITH. I yield the remainder of my time to Senator ALLEN.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I rise in support of the amendment and very much thank Senator GORDON SMITH of Oregon for his leadership and for giving us the opportunity to vote on this very important amendment and principle and tax policy that is essential for the United States to compete and succeed in the future. I also commend the Senator from Utah, Mr. ORRIN HATCH, for all his work over the years, and especially this year, in advocating this measure.

As chairman of the high-tech task force on the Republican side of the Senate, we have endorsed this idea. We have been working on this idea. Unfortunately, as the Senator said, it was not included in the tax bill. But the reason that this is so important is that research and technology—generally speaking, research in biotechnology and pharmaceuticals—is at stake with this amendment and this research and development tax credit.

Up here in Washington, we are making decisions for a year or so, or even a 5-year budget, and even once in a while we do projections over 10 years. In private industry and business, their planning needs to be long-term. In particular, when you think of research and development into pharmaceuticals, the amount of research that goes into putting forward a drug before getting it to patent, to the market, and so forth, it is not just the research and the labs; there are clinical trials that go on year after year, and hopefully you will get a patent; and for a short period of time you will have a window of opportunity on that prescription drug, for example.

So this tax policy is very important so that businesses have certainty, that there is credibility, stability, predictability to devote the millions and, indeed, in some cases, billions of dollars to research and development and technology.

The issue is jobs and competition for the people of the United States. We, as Americans, need to lead in technological advances. The R&D tax credit is very important in microchips or semiconductor chips. It is important in communications research and development. It is important in life sciences and medical sciences and, obviously, that includes biotechnology and pharmaceuticals.

Making the R&D tax credit permanent, as Senator SMITH says, actually is cost effective. It makes a great deal of sense. Studies suggest every dollar of revenue cost leads to a $1 increase in business R&D spending. These are good jobs and it also allows us as a country to compete.

A permanent extension is long overdue. As Senator SMITH said, it has been extended every now and then for a few years. Once in a while it lapses. Businesses cannot plan that way. They have to make sure it stays constant. Publicly traded companies have their quarterly reports, their shareholder reports, and the amount of investment they get in their companies based on how they are operating and managing that company.

If you have changing tax laws or lack of credible, predictable tax policies that foul up that whole system, that makes them less likely to want to invest and take the risk of billions of dollars in research and development if they are not certain of the long term.

This amendment to make the research and development tax credit permanent will spur more American investment; it will create more American jobs—and they are good paying jobs—and that will lead us to better products, better devices, better systems, and better medicines.

I hope the Senate will work in a unified fashion on this amendment by Senator SMITH to make permanent the research and development tax credit so Americans get those good jobs, but, most importantly, allow America to compete and succeed and make sure America is in the lead on technological advances, whether they are in communications, in education, in manufacturing, or the medical or life sciences.

I again thank the Senator from Oregon, Mr. SMITH, for his great leadership, as well as that of ORRIN HATCH.

I yield back the time I have at this moment and reserve whatever time may remain on our side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a Patients' Bill of Rights bill. This is not a defense bill. This is not a foreign aid bill. This is not an agriculture bill. This is not a tax bill. This is the Patients' Bill of Rights bill.

The amendment offered by my good friend from Oregon is not a Patients' Bill of Rights amendment. It is a tax amendment. In fact, he would like to report out of the Finance Committee, by his amendment, a bill that is currently in the Senate Finance Committee, a tax bill. Tax legislation does not properly lie at this moment on this bill. Pure and simple. Full stop. That ends it.

I also say to my good friend from Oregon, I agree with permanent extension of the R&D tax credit. I daresay a majority of Senators agree. I cosponsored legislation in the past. The Finance Committee reported out a permanent extension, and the Senate-passed tax bill, that huge tax bill of $1.35 trillion, included permanent extension of the tax credit. Unfortunately, it did not survive in conference, but it is clear that the R&D tax credit has enormous support in this body.

Does anybody here think there is not going to be another tax bill? Of course, nobody here believes there will not be another tax bill. There will be tax legislation this year. That is clear. The appropriate time for this Senate to appropriately include considering permanent extension of the R&D tax credit is when the tax legislation comes up.

The current provision expires December 31, not 2001, not December 31, 2002, not December 31, 2003; it expires December 31, 2004, over 3 years away. In all the years we have been extending the R&D tax credit, that is probably the longest extension that has existed.

I agree with my good friend; it should be permanent. This yo-yo, up-and-down, back-and-forth, on-again off-again application of the R&D tax credit by this body does not make good sense. It is wrong.

This is not a tax bill; this is a Patients' Bill of Rights bill. There will be tax legislation. When there is tax legislation before this body, that is the time we can appropriately consider permanently extending the R&D tax credit.

I wish my good friend would withdraw his amendment because this is not the proper time and place for it. If he does not wish to withdraw it, I urge my colleagues to not support it because this is not the time and place. Were it to pass, the door would be open and we would be writing another tax bill. We have already passed a big tax bill. We passed a tax bill of 1.35 trillion bucks. That is a big tax bill. This is not the time and place.

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

Mr. BAUCUS. I yield to my good friend from Nevada.

Mr. REID. Mr. President, as chairman of the Finance Committee, the Senator from Montana made commitments to a number of people, including this Senator, that he is going to do everything in his power as chairman of the Finance Committee to make sure there are other tax vehicles this year; is that true?

Mr. BAUCUS. That is absolutely true. There are many Senators who wanted to offer tax provisions to this bill but deferred, recognizing this is not the time and place. It is Ecclesiastes, Mr. President: Essentially there is a time and place for everything. This is not the right time and place for tax legislation.

Mrs. BOXER. Will my colleague yield to me for a question?

Mr. BAUCUS. I ask how much time is remaining on both sides?

The PRESIDING OFFICER. Eleven minutes to the opponents; 4 1/2 minutes to the proponents.

Mr. BAUCUS. I yield to my good friend from California.

Mrs. BOXER. I want to ask the distinguished chairman of the Finance Committee this question. As someone who comes from the largest State in the Union, on the cutting edge of high tech, making the R&D—or R&E sometimes called—tax credit permanent has been a priority of mine for a long time.

Will my friend tell me, if this is such an important priority to those who, in fact, had the majority at the time the tax bill was written, namely, the Republicans, and the President certainly was working at that time with Senator GRASSLEY, could they not have put the extension of the R&D tax credit into the big tax bill that was brought to this Chamber?

Mr. BAUCUS. Mr. President, the Senator from California makes a very good point. Clearly, the President could have included a permanent extension of the R&D tax credit in his proposed tax legislation. The Senate was then controlled by the Republican Party, and it certainly could have put in the R&D tax credit, and it probably would have survived conference if they pushed it.

I say to my friend from California, this is only speculation, but that was not provided for because the current extension, the current provision is in place at least until December 31, 2004. So there is time for the R&D tax credit to take effect, and at a later date we can make it permanent.

Mrs. BOXER. I say to my friend, then that is the same comment we can make to our colleagues who are trying to put this on a Patients' Bill of Rights. The R&D tax credit is in effect until 2004. Let's get an appropriate vehicle where we can all walk together and support the R&D tax credit and not put it on the Patients' Bill of Rights.

I thank my friend for yielding.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I say to my friend from Montana, I want to put this on whatever moves. I know it does not expire until 2004. I also know President Bush did include this in his original tax bill, but that was moved down then. It was unfortunate it was moved down.

I want to see us do it as quickly as we can for the simple reason that businesses need to make planning and expenditures that last an awful long time. The year 2004 does not fit with some of those plans that need to be made.

This is not unrelated to medicine and patients' health. Part of the technological development we are hoping to continue to provide to our people is in the pharmaceutical and biotechnological areas which do have a direct bearing on patients' health. The best right a patient can have is good health. This will facilitate that a great deal, perhaps as much as anything else in the bill.

I ask unanimous consent to send a modification of my motion to the desk.

Mr. BAUCUS. Reserving the right to object, could the Senator share with the Senate the contents of the modification; otherwise, I will be constrained to object.

Mr. SMITH of Oregon. It is simply to comply with the Parliamentarian's request to be consistent with Senate requirements.

Mr. BAUCUS. I do not object.

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

The motion, as modified, is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41,

(2) provides that S. 1052, as amended pursuant to paragraph (1), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and

(3) provides that S. 1052, as so amended, is not subject to a budget point of order.

Mr. REID. Has everyone yielded back their time?

Mr. SMITH of Oregon. I yield 1 minute to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms and small businesses against the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bill.

More important than all the procedure is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being made permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and those decisions need to be made so they can create the jobs, get our economy going again, and improve our lives.

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.

Mr. SMITH of Oregon. We yield back the remainder of our time.

Mr. BAUCUS. I ask, is all time yielded back?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes 50 seconds.

Mr. BAUCUS. Mr. President, I yield back my time and I make a constitutional point of order against Senator SMITH's motion on the grounds that the motion would affect revenues on a bill that is not a House-originated revenue bill.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask permission to enter a request for unanimous consent with the Senator from New Hampshire. I ask that the vote on the motion made by the Senator from Montana be set aside and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, we debate the Allard and the Nickles amendment, and vote on those three amendments at the conclusion of debate.

Mr. GREGG. We have 2 minutes equally divided prior to the Allard amendment and Nickles amendment to explain.

The PRESIDING OFFICER. Does the Senator so amend his request?

Mr. REID. Yes.

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

The Senator from Colorado is recognized.

AMENDMENT NO. 821

Mr. ALLARD. Mr. President, I call up amendment No. 821.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD], for himself, and Mr. GREGG, Mr. CRAIG, Mr. NICKLES, Mr. ALLEN, Mr. INHOFE, Mr. SMITH of New Hampshire, Mr. GRAMM, Ms. COLLINS, Mr. SESSIONS, Mr. ENZI, and Mr. CAMPBELL, proposes an amendment numbered 821.

Mr. ALLARD. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To exempt small employers from causes of action under the Act)

On page 148, between lines 23 and 24, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

''(ii) DEFINITION.—In clause (i), the term 'small employer' means an employer—

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

''(II) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

''(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and

''(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

''(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

''(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

On page 165, between lines 14 and 15, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

''(ii) DEFINITION.—In clause (i), the term 'small employer' means an employer—

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

''(II) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

''(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and

''(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

''(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

''(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.''

Mr. ALLARD. Mr. President, my amendment provides another opportunity for the Senate to protect the country's employees of small businesses. Yesterday, the Senate voted on an amendment I offered that would have protected employees of small businesses from losing their health care insurance.

I am offering another amendment that gives Members another chance to protect those employees. My amendment, cosponsored by 12 Senators, protects employees of small businesses from losing their health insurance. My amendment exempts employers with 15 or fewer employees from unnecessary and unwarranted lawsuit.

We must protect small business employees from losing their health care insurance. Small business represents over 99 percent of all employers in America. If the Kennedy bill passes in its current form, small business employees will be subject to increased health care premiums and to the possibilities of losing their health care insurance altogether.

Based on studies from the Congressional Budget Office and the Lewin Group, the Kennedy bill will cause more than 1 million Americans to lose their health insurance. The White House estimates—and that is rather conservative, I believe, because the White House estimated even more Americans will lose their health care insurance—the Kennedy bill could cause 4 to 6 million Americans to lose their health care.

The least the Senate can do to protect small business employees from losing their health insurance and protect small employers from unnecessary liability is to pass this amendment. We are talking about employers that have 15 to 2 employees. Currently, numerous Federal laws provide exemption for small businesses and their employees.

In my previous amendment we talked about the 50 employee exemptions. The other side made the point it was unfair because we were creating a bright line and those with 49 employees would not have an opportunity to take advantage of benefits provided in the amendment as those with, say, 51 employees. This amendment draws a bright line. We are addressing the very small employers of the small business sector; that is, 15 employees or fewer. True, we have a bright line, but it is not unusual in Federal law to draw bright lines trying to differentiate where the respective law should deal with different sizes of employees, trying to draw a line between small employers and the larger employers.

Let me cite for Members some examples. The Occupational Safety and Health Act exempts businesses of 10 or fewer employees, workers, in certain low-hazard industries. The Americans with Disabilities Act defines the term ''employer'' as a person who has 15 or more employees engaged in an industry affecting commerce. This is the area where we have decided in this amendment to differentiate the very small employers from the other small businesses of this country. The Worker Adjustment and Retraining Modification Act, commonly referred to as the Plant Closing Act, defines the term ''employer'' as any business that employs 100 or more employees. The Family and Medical Leave Act, which requires employers to grant leave to parents to care for a newborn or seriously ill child, exempts businesses with fewer than 50 employees. The Fair Labor Standards Act, which established the minimum wage standards, exempts certain employers with minimum gross income—they did not use the number of employees—of less than $500,000 as an indication of what a small employer might be as it applies to that statute.

The Walsh-Healy Public Contracts Act, which contains minimum wage and overtime for federally contracted employers, exempts employers that have Federal contracts for materials exceeding $10,000, which also is indicative of a small employer. The Age Discrimination and Employment Act of 1967 exempts employers of 19 or fewer workers.

These numerous employee protections are currently in place as Federal law. The Senate should extend similar protections to employees of small business. If we do not protect employees from frivolous lawsuits, more than a million—some estimate up to 9 million employees—will lose their health care insurance.

Again, I am offering this amendment to provide the Senate with another chance to protect employees of small business from losing their health care insurance.

I inquire the time remaining on my side?

The PRESIDING OFFICER. The Senator has 9½ minutes.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, this is the third bite of the apple. The first bite was Senator GRAMM's amendment, where we were going to provide protection for all employers. Then we had the Allard amendment to protect an employer with 50 employees or less. Now with this amendment, we are down to 15.

The fact is, yesterday, if there was any question about what this legislation was really all about, it was well debated, discussed and addressed. That was in the amendment offered by Senator SNOWE of Maine and Senator DEWINE of Ohio. In their amendment, the Wall Street Journal says:

Employer protection makes gains. Senate passes rule to shield companies from workers' health plan lawsuits.

It is very clear now that the only employers, large or small, that are going to be vulnerable are those that take an active involvement in disadvantaging their employees in health care and putting them at greater risk of death or serious injury. That is it. The rest of this has been worked out. We have done it with 100 employees, we have done it with 50, and now we are down to 15. It makes no more sense today. Those employees should be adequately protected in these companies. I imagine, if the Senator is not successful

with 15, we will be down to 10, we will be down to 5, and then we will be down to 3.

We have addressed this issue. Every Member of this body ought to know it. I think this is a redundant amendment, one that we have addressed. The arguments are familiar. I yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, this is clear filibuster by amendment. I have been here a long time. I have seen this happen. As the Senator from Massachusetts pointed out, we have been here; we have done that. Next, as the Senator from Massachusetts indicated, it will be 10 employees, 5 employees, 4 employees, 3 employees.

When the time has expired on this amendment, I will offer a motion to table. This amendment should not be discussed. It should not take up the serious time of the Senate that has been so well used these past 9 days.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. I yield 2 minutes to the Senator from New Hampshire.

Mr. GREGG. I join the Senator from Colorado on this amendment. This bill is incredibly complex—to be kind. It has thousands of moving parts. The bureaucracy, which is going to be created and empowered as a result of it, is going to be massive. The lawsuits are going to be massive. The number of litigable events is going to be massive. It is going to be incomprehensible to large amounts of the American working public and their employers.

It is only elementary fairness that we say, to at least the smallest employers that are the ones creating the jobs in America today, you are not going to have to pay what will undoubtedly be your entire profit margin in order to try to comply with this new piece of legislation.

For employers that have 15 or fewer employees, it is simply fairness that we take them out from this cloud and give them the opportunity to give their people jobs and not be overwhelmed by the cost of this bill.

We have talked a lot about the costs of this bill, but let me cite a couple of figures. The cost to defend the average malpractice suit is $77,000. There are very few employers in this country that have less than 15 employees that are making more than $77,000. They are running a small business, a grocery store or restaurant, gas station, small retailer. These are the smallest businesses that create the most energy in our economy. That is where our jobs are created; they are created in these small businesses.

Let's not have those folks who are willing to be entrepreneurs for the first time in their lives, the first-time entrepreneurs who are willing to step into the risk pool of the capitalist system and, as a result, create jobs, let's not burden them with the bureaucracy and cost of this bill which we know is going to be extraordinary. Let's pass the Allard exemption for employers with 15 or fewer employees.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, let's just go back over what we are talking about this afternoon. First of all, the majority of small businessmen and women in this country are not involved in decisionmaking that affects the well-being of the employees. We know that. They basically are busy enough. It has been explained by Members that they are involved in running their businesses. This is really not an issue so much in terms of small business.

The only people that will be affected by this are the small businessmen or women who get hold of the HMO where they have the insurance and says, look, if any of my employees are going to run up a bill more than $25,000, call me up because I want to know. When that HMO calls up, the employer says: Don't give them the treatment. As a result of not giving that treatment, the child of an employee is put at risk, and perhaps dies, or the wife of an employee, who has breast cancer, is denied access into a clinical trial and may die as a result. This is only if you can demonstrate the employer is actively involved in denying the benefits to those employees. Are we going to say that all these employers, with 15 or fewer employees, are going to be completely immune from this when the only employer that has to worry about this is one who is going to be actively involved in making a decision that puts their employees at risk? We built in the protections with the Snowe-DeWine amendment. We built them in and we have supported them. But it seems to me that workers in these companies, which make up about 30 percent of the American workforce, ought to be given the same kinds of protections against the employers that are going to make that decision.

Make no mistake about it. The great majority of employers do not do that today. Only a very small group do. But if the small group that do do that are able to get away with it, there is an open invitation to other small businessmen and women, in order to keep their premiums down, to get involved in similar kinds of activities. This will offer carte blanche so that 30 percent of the American workforce will not be covered one bit with this legislation. It makes no sense. It didn't make any sense when it was first offered by Senator GRAMM; it didn't make any sense when it was offered previously by Senator ALLARD; and it makes no sense at this time.

The only people who have to worry are those employers that are going to connive, scheme, and plot in order to disadvantage their employees in ways that are going to bring irreparable harm, death, and injury to them. If you want to do that to 30 percent of the workforce and put them at that kind of risk, this is your amendment.

I do not think we should. I hope the amendment will be defeated.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Massachusetts has 9 minutes 23 seconds remaining. Who yields time?

Mr. ALLARD. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

Mr. NICKLES. My friend and colleague from Massachusetts said if you want to do this, you should sponsor this amendment. I am not sure I want to do what he just described, but I want to sponsor this amendment with my colleague and friend from Colorado. I ask unanimous consent to be listed as a cosponsor.

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

Mr. NICKLES. This amendment is vitally important for small business. This bill, the underlying bill, says employers beware, we are coming after you because we do not exempt employers.

Interestingly enough, we exempt Federal employees, we exempt Medicare, we exempt government plans, but we do not exempt private plans. Anybody who has a private plan, employers beware because they can sue you and they can sue the plan.

Oh, I know we came up with a little cover, and maybe you can put the liability under the form of a designated decisionmaker, and they can assume it. But guess what? They are going to charge the employer for every dime they think it is going to cost. And my guess is, the designated decisionmaker will want to have enough cover so they don't go bankrupt, so they are going to charge a little extra to make sure they have enough to protect them from the liability and the costs that are associated with this plan.

The cost of health care is exploding. Health care costs went up 12.3 percent nationally last year. They are supposed to go up more than that this year. That is not for small businesses. The cost of health care for small business is 20, 21, 22 percent, and that is without the cost of this bill.

CBO estimates the cost of this bill is 4.2 percent. But if you assume there is going to be a whole lot of defensive medicine, you can probably double that figure. And with the liability, you are probably looking at another 9 or 10 percent on top of the 20 percent for small business. Those are not figures I am just grabbing out of the air, I think they are the reality.

My friend and colleague from Colorado, Senator ALLARD, is saying: Wait a minute. Let's exempt small employers, those people struggling to buy health care for the first time. Let's protect them and make sure they won't be held to the liability portions.

Federal employees are not able to sue the Federal Government. Why should we say: Oh, yes, you can have a field day on small employers. The only way to purely protect them—to surely protect them—is to adopt the Allard amendment.

I urge my colleagues to vote in support of the Allard amendment to protect small businesses.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 25 seconds remaining.

Who seeks time?

Mr. ALLARD. Mr. President, I say to the majority I would like to be able to wrap up on my amendment, if I might.

Mr. KENNEDY. Why don't you wrap up.

Mr. ALLARD. If you have finished, I will wrap up and then yield the time.

Mr. KENNEDY. Don't get too provocative.

Mr. ALLARD. Don't get too provocative? Maybe the Senator from Massachusetts would like to respond?

Mr. KENNEDY. That is all right.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Thank you, Mr. President.

Mr. President, I have had the experience of starting a business from scratch and having to meet a payroll. As far as I am concerned, too few Members of the Senate have ever had the opportunity to be in business for themselves and had to meet the challenges of meeting a payroll. But I personally know how legislation such as this can affect your business. I have had to face those tough decisions. They are not pleasant.

There are a lot of small business employers all over this country that are sending letters to Members of this Senate about the very same concerns that have been expressed by the Senator from Oklahoma, the Senator from New Hampshire, and numerous other Senators, at least on this side of the aisle, about the impact of this particular piece of legislation on small business.

Let me take one example. There is a Mr. Terry Toler, for example, of Greeley, CO. I represent the State of Colorado. He runs a small construction business. He employs three workers. The health insurance he provides to his employees also helps take care of the needs of his family. Terry cannot afford the costs that would come with the Kennedy bill in its current form.

Last year, Terry's company had a 65-percent increase in health insurance premiums and costs. This increase was on top of Terry's other insurance costs, including equipment insurance, professional liability insurance, and general liability insurance. If this bill is passed in its current form, the company's health insurance rates will increase even further. As a result, he may have to drop the health insurance he provides for his employees and his family.

My amendment will protect Terry and his employees from losing their health insurance. Terry is one of hundreds of small employers in Colorado that would be forced to jeopardize their health care insurance. We need to protect hard-working employees from losing their health insurance.

Let me share some further concerns of this small businessman. Large employers can obtain health insurance at a much lower rate. As a result, small business employers cannot compete with larger companies. In a tight labor market, employers compete for the best employees. These are all competitive issues about which a small businessman is concerned. When this kind of legislation moves forward, you can understand their concerns.

I have heard comments from another small businessman in Springfield, CO, who has expressed his concern. He writes:

> Health care costs are already prohibitive. Adding the law-given right to sue for punitive damages can only increase costs. A patient bill of rights is important, but not at the price of Kennedy's bill.

He further states:

> . . . liability limits are a good way to help cap rising health care costs.

As an employer, he must evaluate the price tag that comes with paying for health care. He believes it is prohibitive.

According to a recent survey of some 600 national employers, 46 percent of employers would likely drop health care coverage for their workers if they were exposed to new health care lawsuits.

This is not a good bill for small business. The adoption of the Allard amendment would make it better. So I am asking my colleagues in the Senate to join me in protecting employees of small business, thus protecting the employees' health care they currently enjoy. If the Kennedy bill passes in its current form, the health care protection of more than 1 million Americans will be jeopardized. Colleagues should support this amendment to protect employees' health insurance and limit small employer liability.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 3 seconds remaining.

Mr. ALLARD. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I say to the Senator, I am going to make a brief statement, and then he can wind up. I will yield him 2 minutes after I make a brief statement.

The PRESIDING OFFICER. The Senator has 9 minutes.

Mr. KENNEDY. I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, we acknowledge the burden that is placed upon small business and the costs of their insurance. The Senator is quite correct that they pay anywhere from 20 to 30 percent more. They are constantly having to look at newer kinds of companies as they are being knocked off the insurance rolls. We understand that. We are prepared to work with the Senator on this.

This is an important issue. I am amazed that small businesses in my own State can really survive with the problems they have. We ought to be able to find ways to help and assist them; but this is not it.

We had $3.5 billion of profits last year from the industry. They have already asked for a 13-percent increase in their premiums this year. They were 12 percent last year. That is generally, without this.

We have been over this during the debate, that the cost of this is less than 1 percent a year over the next 5 years. We have also gone over this and found out that some of the wealthiest Americans are the heads of these HMOs. Mr. McGuire makes $54 million and got $350 million in stock value last year—$400 million. That has something to do with the premiums for those companies.

This is a very simple kind of question. He talks about protecting the employers. We are interested. They are protected unless they go out and change and manipulate their HMO to disadvantage the patients who are their employees and deny them the kinds of treatments that would be protected and with which we are all protected.

I am reminded, myself, that my son had cancer. I was able to get a specialist for him and to be able to get into a clinical trial. I want those employees who are represented by the 15 not to be denied that same opportunity. I did not have someone who was riding over that and denying me that. But that is happening in America. It might not be happening in Colorado, but it is happening in America, where employers are calling up and saying: Don't put them in those clinical trials. We are here to stand and say: We are going to protect them. We will work with you, with the small business, but let us protect the women who need that clinical trial for cancer and the children who need that specialist. Why deny them those protections? That is what this amendment is all about.

I am prepared to yield the last 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the Senator from Massachusetts.

I am continuing to hear from small business employers. And other Members of this Senate, as well, are hearing the same message I am. They are concerned about the rising cost of health care and the impact it will have on their business and the impact this particular piece of legislation is going to have on costs.

They are also concerned about the increased number of lawsuits that will be faced by small business employers if this particular piece of legislation passes.

My amendment provides some relief for small businesses of 15 employees or

fewer. When you first glance at this bill, as I did, you say: It looks as if the employer has been exempted. But when you read the fine print, then you see there is a circle around it, and you find that the small businessman gets pulled in and becomes subject to lawsuits, more lawsuits than he is facing now. That puts at jeopardy the health care he is currently providing for his employees.

I am asking the Members of the Senate to join me to make sure small business doesn't get pulled into this ever-expanding web of tangled lawsuits into which they are going to be pulled if this particular bill passes.

The Allard amendment is a good amendment. I hope Members of the Senate will join me in protecting small business, those of 15 employees or fewer.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. ALLARD. Mr. President, I ask unanimous consent to print in the RECORD an editorial run in the Fort Collins Coloradoan.

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

PATIENTS' BILL OF RIGHTS NOT END-ALL TO HEALTH CARE ISSUES

Physician (and consumer), heal you, should be the motto for the Patients' Bill of Rights now under consideration by Congress.

The legislation, which actually includes several amendments, focuses on whether consumers can sue their health care providers for not approving treatment deemed medically necessary. Congress should restore that power to consumers, but only if the suits are based on actual damages, rather than punitive penalties. Those penalties have led to some outrageous settlements, and those legal costs have been passed on to employers and employees.

But consumers would be unwise to believe that this legislation can solve the broader issues of the rising cost of health care.

Many symptoms combine to make medical care costly: Pharmaceutical companies are advertising directly to consumers rather than doctors, which means patients may demand the more expensive brand-name medicines. Low deductibles for doctor office visits benefits consumers upfront, but health care providers shift their expenses by demanding higher premiums, which have increased sometimes 10-fold in the past decade for employers.

Publicly owned health care providers face the sometimes-conflicting mission of answering to stockholders, who want profits, and their customers, who demand lower premiums and broader access to care. All the while, health care CEOs are receiving bonuses worth millions.

Managed care is not all negative. Without a cooperative system, many individuals could not afford even simple doctor's visits to maintain their health. Those without insurance usually have to turn to acutely expensive emergency rooms for health care. The focus on preventive care came about, in part, from health care providers who were seeking to keep their costs down, but the process also keeps patients healthy.

Legislation will not replace the need for innovation and close scrutiny by consumers and health care professionals regarding how the system works. Some providers are using a triage-type system to evaluate and treat patients efficiently; employers are shopping around to find health plans that fit their needs; providers are considering tiered-cost plans; and patients bear responsibility for keeping themselves as healthy as possible.

Congress should allow patients the right to sue providers and exempt employers who have no control over medical decisions. Still, turning the decision over to the courts in expensive and unwieldy, with lawyers seeing the most benefit. Another option is to rely on a binding mediation process or an independent panel to weigh medical coverage decisions to keep the focus on health care and off litigation.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table the Allard amendment and ask for the yeas and nays. Under the previous agreement, that will be set aside and we will go to the Nickles amendment now.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 850

The PRESIDING OFFICER. Under the previous order, the pending amendment is set aside and the Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 850.

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

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

The amendment is as follows:

(Purpose: To apply the patient protection standards to Federal health benefits programs)

On page 131, after line 20, insert the following:

TITLE III—APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(a) APPLICATION OF STANDARDS.—

(1) IN GENERAL.—Each Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incorporated into this section.

(2) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—Any individual who receives a health care item or service under a Federal health care program shall have a cause of action against the Federal Government under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a group health plan;

(B) the Federal Government shall be deemed to be the plan sponsor of each Federal health care program; and

(C) each individual eligible for benefits under a Federal health care program shall be deemed to be a participant, beneficiary, or enrollee under that program.

(b) FEDERAL HEALTH CARE PROGRAM DEFINED.—In this section, the term ''Federal health care program'' has the meaning given that term under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b) except that, for purposes of this section, such term includes the Federal employees health benefits program established under chapter 89 of title 5, United States Code.

Mr. NICKLES. Mr. President, this amendment expands the coverage of the bill basically to all Americans.

I have heard countless sponsors of the bill say we should cover everybody who needs basic protections. I have heard it time and time again. I have heard it on national TV shows, Sunday morning shows: We should make this apply to everybody. Some argue, shouldn't these protections be reserved to the States because they have historically done it? But the legislation before us says, no, the Federal Government will do it; we will do it for all private plans. Usually they don't even say all private plans. They usually say for all plans.

The truth is, the legislation we have is a mandate on the private sector, but we have exempted the public sector.

It is amazing to me, almost hypocritical—I don't want to use that word, impugning anybody's motives—but it bothers me to think we are so smart and wise that we are going to mandate these patient protections on every plan in America, supersede State protections already present, and we don't give them to a group of employees over whom we really have control. We do have control over the Federal employees health care plan. We can write that plan. We have control. We write the checks. Federal employees pay about a fourth, but the Federal Government pays three-fourths. We have direct control over Federal employee plans, but they are not covered by this bill.

Federal employees in the State of Delaware or California or Oklahoma usually get their health care from Blue Cross or Aetna or whomever. They get it just like any other employee, but they are Federal employees. They don't get the patient protections under this bill. They don't have the appeals process under this bill. They don't have the legal recourse that is under this bill. They don't have the patient protections that are dictated in this bill. All other private sector employees will. Does that really make sense? Is that equitable? I am not sure.

My friend and colleague Senator KENNEDY just talked about clinical trials, and maybe they help somebody. I looked at the language for Federal employees. We are getting ready to mandate a very expensive provision, probably fairly popular, that says under the McCain-Kennedy bill we pay for all trials, for all purposes, if it has any Federal connection whatsoever. Federal employees aren't covered by the clinical trials section of this bill.

They may be under individual plans, but they are not by mandate, by patient protections. Some plans may offer them; some plans may not. There is not a dictate.

We are getting ready to mandate a very expensive comprehensive list of clinical trials for every private sector plan in America, but not for Federal employees. I find that interesting.

We are getting ready to mandate an emergency room provision that includes prudent layperson, poststabilization, and ambulance care provisions. I mention this for the Senator from Delaware because I believe the State of Delaware is passing a patient protection program but they only cover prudent layperson. That is what Federal employees do. Federal employees don't have poststabilization and ambulance. That means our staffs, our employees, don't have the same patient protections that we are getting ready to mandate on every other health care plan in America. I find that to be very inconsistent.

I could go on and on and on. The OB/GYN provision: Federal employees get to have one visit. This is dictated or mandated—one visit to an OB/GYN. Under the bill we have before us, it basically allows the OB/GYN to authorize any OB/GYN care, without any other authorization requirements. That sounds unlimited to me, a much more expensive provision than what we have for Federal employees.

It is almost the case all the way through the bill. For pediatricians under the McCain-Kennedy bill, we allow parents to designate a pediatrician for their children. That sounds fine. I am sure if we voted on that, it would be unanimous. That is not a dictate for Federal employees. Some plans may have it; some plans may not.

My point is, Federal employees don't have these patient protections. We are getting ready to mandate something on the private sector that we forgot to do for the public sector.

It is interesting because I know President Clinton made a big deal out of the fact, saying: Congress is not acting. I am going to have an Executive order and make Federal employees have these patient protections. I will do it by Executive order. Well, he didn't do as much as we are getting ready to do on the private sector. That is my point.

I expect that what we are getting ready to do, that the patient protections we are passing, the examples I have listed—and that is not the total—are much more expansive than what has already been done. The same thing would apply for Medicare. If all these patient protections that have been espoused are so important, shouldn't we give those to senior citizens? Shouldn't senior citizens have the same expedited review process, internal/external appeal process, as we are going to mandate on all the private sector? I would think so. We all love our senior citizens, our moms and dads and grandparents. Surely we should give them the same protections we are getting ready to mandate. They don't have it. They can spend days in an appeals process and never get out of the appeals process.

What about Indian Health Service? What about our veterans? Our veterans aren't covered by this bill. They don't have the same patient protections. They don't have the same expedited review process. Shouldn't they be covered?

Granted, this amendment could cost a lot of money, but this bill will cost a lot of money. I have heard a lot of people say this bill only costs a Big Mac a month, it is not all that expensive, it is only just a little bit. I disagree with that. I am also struck by the fact that we are quite willing to mandate this on every city, every State, every private employer, but we don't mandate it on Federal employees. We don't do it on Federal programs. We do it on State programs. We do it on city programs. We don't have any objection to dictating how other governments have to do it. We will tell them how to do it. We just don't think the Federal Government should do it. We don't think the programs under Federal control should do it. I find that very inconsistent.

If this is that great of a program, and I have some reservations. I think this bill goes too far.

I think we are superseding State regulations, and I have stated that. I lost on that amendment. Maybe that amendment can be fixed in conference, but for crying out loud, we should be consistent. I have heard proponents say time and time again that this bill is not at all expensive. If so, shouldn't it apply to Federal employees? If we are going to mandate Blue Cross/Blue Shield in Virginia to provide this for all private sector plans, union plans, nonunion plans, and they also have governmental plans—the same Blue Cross—shouldn't they apply to governmental plans? They have to do it for Virginia. Shouldn't they have to do it for the Federal Government? That is my point.

There is some inconsistency here. If these are such great protections and they are not that expensive, we should make sure they apply to our employees as well. Senator KENNEDY mentioned clinical trials, as if that was a mandate. Some of the Federal plans cover clinical trials. Not all do. We are getting ready to mandate them for every plan in the country. Shouldn't we have it for Federal employees as well—maybe for the sons and daughters of the staff members working here? Shouldn't they have access to those just as the private sector will now have access to them?

The appeals process: This is one of the real keys. There have been hours of debate on the floor saying that on appeals every individual should have rights of internal review, and then the external review should be done by an independent entity not controlled by the employer. Guess what Federal employees have? If they are denied care, they can appeal. But to whom? They appeal to the Office of Personnel Management—to their employer. The employer might subcontract it, but basically it is the employer, the Federal Government. It is not totally independent when the Federal Government might be making that decision. Shouldn't we give Federal employees that same independent external review?

My amendment would make this bill applying to the public sector include Federal employees, Medicare, Medicaid, Indian health, veterans, and civil service. I think it would help show that if we are going to provide these protections for the private sector and, frankly, mandate them, they should apply to the public sector as well.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have listened closely. I will come to the substance of the Senator's amendment in just a minute. I listened to him very carefully about his great enthusiasm for the Federal employee program. It is a fact that 100 Members have that program here in the Senate. It is interesting because the taxpayers pay for 75 percent of it. So it is always interesting for those of us who have been trying to get a uniform, or a national health insurance program. I favored a single payer for years. I am glad to do it any way that we are able to do it.

But I am glad to hear from my good friend from Oklahoma how much he believes in the value of the Federal employee program of which 75 percent is paid for every Member in here by the Federal Government. When any of us talk about trying to expand health insurance to try to include all Americans, oh, my goodness, we are going to have the Federal Government pay for any of these programs? My goodness. I welcome the fact that the Senator from Oklahoma is so enthusiastic about that concept, about having a uniform concept. It is interesting, you know, Mr. President. Many Americans probably don't know it. When you come in and sign on, there is a little checkoff when you become employed in the Senate. You check it and you are included in the Federal employee program. You have probably 30 or 35 different options. I wish the other American people had those kinds of options. No, we don't get any kind of support for trying to give the American people those kinds of options.

But do you know what, Mr. President? All these Senators who are always against any kind of health insurance for all Americans are down there checking that off as quick as can be to get premiums subsidized 75 percent by the taxpayers. Wonderful. Now they come up and say, well, they don't have all of the protections on it.

I want to say to the good Senator that I am very inclined to take the

amendment. I would like to take the amendment. We are studying now the budget implications because I don't want to take it and then find out that we have the Senator from Oklahoma come over and say we have exceeded the budget limitations and then you have a blue slip and therefore the whole bill comes down. We know what is happening now. The basic protections of this legislation, according to the Congressional Research Service—the patient protections in the McCain-Edwards-Kennedy bill would apply, with the exception of the right to sue. That is what we are checking out at the present time in terms of what would be the estimation. Otherwise, I am all for it.

We have now in the Medicare systems that are involved in HMOs, they have the right to sue on this. As we saw some of those elements on the executive order, they have not been altered by the administration. I would like to make them statutory. No one would like to make them statutory more than I. I am about to wrap my arms around the Senator and bring him in and say I am in on this.

Hopefully, as our leader pointed out, after all the lectures that I have had—I don't say that in a derogatory way to my friend from Oklahoma—about health insurance—we heard about how we are going to increase the numbers of those who are going to lose their health insurance. We are not dealing with that problem, with the 43 million.

We will have an opportunity to invite your participation on these issues. We had some votes on the extension last year in terms of the parents on the CHIP program and virtually every Republican voted against it. To the extent that we saw progress made with the good support of Senator SMITH and RON WYDEN, we now have about $28 billion, $29 billion in the Finance Committee that can be used for the expansion of health care. We certainly want to utilize that. That is only a drop in the bucket. Our attempts in the past to get reserve funds out of the Finance Committee, which the Senator is on, so we could move ahead with a health insurance program have fallen on deaf ears.

I hope that all those—I will have a talk on that later on because I am taking all of those statements and comments made by our Republican friends over the period of the past days, all talking about health insurance, and we will give them a good opportunity. Hopefully, they won't have to eat their words. We will welcome some of their initiatives. We know what they are against. We want to know what they are for in terms of getting some health insurance.

Well, I will say that I am going to recommend to our side that we accept the Nickles amendment. So I am prepared. The Senator made such a convincing argument, and it has taken a little while. He left out HCFA. That was the only thing he left out. That is why we have been so persuaded. I know HCFA is not going to have anything to do with this amendment the Senator offers because, otherwise, I know he would not offer it.

Mr. REID. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. REID. Would the Senator from Oklahoma agree to a voice vote because it appears he is going to win so overwhelmingly?

Mr. NICKLES. I will think about that. How much time remains?

The PRESIDING OFFICER. Five minutes. The Senator from Massachusetts has almost 9 minutes.

Mr. NICKLES. Mr. President, I neglected to do this earlier and I meant to do it. I wanted to compliment Senator GREGG and Senator KENNEDY for their leadership on this bill and their leadership on the education bill because it is kind of unusual that we have two committee chairmen and two people who are responsible for moving two major pieces of legislation consecutively. So they combined and spent about the last 2 months on the floor. That is not easy.

I have always enjoyed debating and working with my friend and colleague from Massachusetts, and we are good friends. Occasionally, we agree. We have had two or three amendments, and we have had great oratory and, occasionally, we still agree on amendments. I appreciate that. We ended up coming together basically on covering union plans today. We got very close to an agreement. We will make that, I guess, in the managers' amendment. I appreciate that. I appreciate his willingness to accept this amendment.

I will be very frank and say we don't know how much this is going to cost, but frankly, we don't know how much this costs in the private sector. There is a point to be made. The Senator said maybe we can accept it, and possibly it can work out to give patient protections, but I don't know about the right to sue. That might be pretty expensive. We are doing that on the private sector as well. We do not know how much that is going to cost, but it will be very expensive.

Federal employees have a lot of protections, but they do not have near the protections we are getting ready to mandate on the private sector.

Medicare has some patient protections. They do not have near the patient protections that we will be mandating on the private sector. They do not have an appeals process that is as expedited as this. I do not have a clue whether Medicare can comply with this language. It takes, in many cases, hundreds of days to get an appeal completed in Medicare. We have a very expedited appeals process in this bill. I happen to support that appeals process, and it would be good if Medicare could have a very concise, complete, final appeals process and one, hopefully, that would be binding. We improved the appeals process in this bill today with the Thompson amendment, and I compliment Senator THOMPSON for his leadership on that bill.

I would be very troubled to go back to my State of Oklahoma and have a town meeting and tell employers they have to do this, this, this, and this; they have to have this in their plans; if things do not work out, they might be sued for unlimited damages, and have one of them raise their hand and say, ''Did you do that for Federal plans,'' and say, ''No, we didn't. We just did it for you. We think maybe we are not going to do it for ourselves.''

We have control over Federal plans. Those are the ones over which we really have control. I would find it very troublesome. I was one of the principal sponsors of the Congressional Accountability Act a few years ago who said Congress should live under the rules like everybody else. I remember some of my colleagues saying: Don't do that; if we make the Capitol comply with OSHA, it is going to be very expensive. If you walk into the basement of the Capitol today, you will find a lot of electrical wires that would not pass any OSHA inspection.

It bothers me to think we are going to mandate on every private sector health care plan: You have to have this, this, this, and this, all very well-intentioned, I might add, but some of which will be pretty expensive. I would find it troubling if we mandate that on the private sector and say: Oops, we forgot to do it for Federal employees.

That is the purpose of my amendment. I appreciate the willingness of my colleague from Massachusetts to accept the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened to the Senator talk about being in a town meeting and the questioner says: How in the world, Senator, can you apply all these provisions to our small business and you are not doing that to the Federal employees?

I would think at a town meeting in my State of Massachusetts someone might stand up and say: Senator, how come your health care premium is three-quarters paid by the taxpayers; why don't you include me? That is what I would hear in my State of Massachusetts. That is what I hear.

Maybe they are going to ask you about the right to sue where hard-working people have difficulty putting together the resources to get the premiums and get the health care. They wonder why the Federal Government is paying for ours. If we are being consistent with that, I say to the Senator from Oklahoma, we ought to be out here fighting to make sure their health care coverage is going to be covered. I do not see how we can have a town meeting and miss that one.

It is interesting, as we get into the Federal employees, we have 34, 35 different choices. What other worker in America has that kind of choice? The people say, what about your appeal? Generally speaking, you do not need an

appeal; you can just go to another health care policy. We have that choice, but working Americans do not. They are stuck with the choices in the workforce. We can get on with those differences. But I am still in that wonderful good moment of good cheer for my friend from Oklahoma. I urge all our colleagues to support this well-thought-out, well-considered amendment. I look forward to working with him on other matters on health care to make sure we are going to do for the others, the rest of the people of Massachusetts and Oklahoma, as well for them as we do for ourselves in health care.

I am ready to yield back the time or withhold my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague. He mentioned the fact that the Federal Government pays three-fourths of the cost of health care for Federal employees. That is correct. With some companies it is more and some companies it is less.

The Federal Government pays 100 percent of my salary. The Senator from Massachusetts might want the Federal Government to pay 100 percent of the salaries in Massachusetts; I don't know. I appreciate his willingness to accept the amendment. I am not going to ask for a recorded vote.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. NICKLES. I yield back my time.

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes remaining.

Mr. KENNEDY. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to amendment No. 850.

The amendment (No. 850) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Regular order, Mr. President.

MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there are now 4 minutes evenly divided prior to the vote on the point of order on the motion to commit. Who yields time?

Mr. REID. Mr. President, the participants are not here. We ask the roll be called.

The PRESIDING OFFICER. All time is yielded back.

Under the precedents and practices of the Senate, the Chair has no power and authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate: Is the point of order well taken? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The yeas and nays resulted—yeas 57, nays 41, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—57

Akaka	Dorgan	Lieberman
Baucus	Durbin	Lincoln
Biden	Edwards	McCain
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Miller
Breaux	Fitzgerald	Murray
Byrd	Graham	Nelson (FL)
Cantwell	Grassley	Nelson (NE)
Carnahan	Harkin	Nickles
Carper	Hollings	Reed
Chafee	Inouye	Reid
Cleland	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kerry	Snowe
Daschle	Kohl	Stabenow
Dayton	Landrieu	Torricelli
DeWine	Leahy	Wellstone
Dodd	Levin	Wyden

NAYS—41

Allard	Enzi	Roberts
Allen	Frist	Santorum
Bayh	Gramm	Sessions
Bennett	Gregg	Shelby
Bond	Hagel	Smith (NH)
Brownback	Hatch	Smith (OR)
Bunning	Helms	Specter
Burns	Hutchinson	Stevens
Campbell	Hutchison	Thomas
Cochran	Inhofe	Thompson
Collins	Kyl	Thurmond
Craig	Lott	Voinovich
Crapo	Lugar	Warner
Ensign	McConnell	

NOT VOTING—2

Domenici	Murkowski

The PRESIDING OFFICER (Mr. BROWNBACK). On this vote, the yeas are 57, the nays are 41. The point of order is sustained and the motion falls.

AMENDMENT NO. 821

Under the previous order, there are now 4 minutes evenly divided prior to voting on a motion to table the Allard amendment No. 821.

Who seeks time?

Mr. KENNEDY. Mr. President, Senator ALLARD isn't going to use his time. I would be glad to yield back at this time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, if I might, I would like to give a brief explanation of what this amendment is all about. The Allard amendment says that if you are a small businessman—you have between 2 and 15 employees—you are exempt from the provisions of this bill. That means you do not have to face the increased burdens of having to face lawsuits. And it means you will not have to face the increased burdens of higher premium costs on your insurance.

So it is a very straightforward amendment. It is an amendment that is strongly supported by the small business community. Probably most of you have been getting calls into your offices from small businesspeople concerned about how this is going to impact their small business. So it is an important small business vote.

I ask for a ''nay'' vote on the motion to table.

The PRESIDING OFFICER. Who seeks time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, over the past several days, Members, in a bipartisan way, have worked very hard and successfully in shielding employers from frivolous suits. As the Wall Street Journal today points out: ''Senate passes rule to shield companies from workers' health plan lawsuits.''

When this bill is passed, the only employers that have to worry in this country are going to be those employers that call their HMOs and tell them to discontinue care when their workers run up a bill of more than $20,000 or $25,000. They are not going to let women into the clinical trials. They won't let children get their specialty care. They will not let the other employees get the rights that they have.

Employers, today, overwhelmingly do not do that; but a few do. If we adopt this amendment, this is going to be an invitation to other employers. The ones that are violating the spirit of the law will get lower premiums, and this will be an incentive for others as well.

This will be the third time we have voted on this issue. It seems to me we have a balance now as a result of a bipartisan effort. We ought to respect that and guarantee to those employees across this country—the workers—the absolute patients' rights which this bill provides.

So I hope we will support the tabling motion by the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered on the motion to table the Allard amendment.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—55

Akaka	Dodd	Lieberman
Baucus	Dorgan	McCain
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Fitzgerald	Nelson (NE)
Byrd	Graham	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Snowe
Clinton	Kennedy	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wellstone
Daschle	Landrieu	Wyden
Dayton	Leahy	
DeWine	Levin	

NAYS—43

Allard	Gramm	Roberts
Allen	Grassley	Santorum
Bennett	Gregg	Sessions
Bond	Hagel	Shelby
Brownback	Hatch	Smith (NH)
Bunning	Helms	Smith (OR)
Burns	Hutchinson	Specter
Campbell	Hutchison	Stevens
Cochran	Inhofe	Thomas
Collins	Kyl	Thompson
Craig	Lincoln	Thurmond
Crapo	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McConnell	
Frist	Nickles	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, we have an order that has been worked out by our friend and colleague. We are in the process now of working toward that. I think we go to Senator SANTORUM next, for 40 minutes, Senator CRAIG for 30 minutes after that, and then Senator BREAUX after that. The general intention is to go to the Senator from Pennsylvania for 40 minutes equally divided, followed by Senator CRAIG.

Mr. REID. If my friend from Massachusetts will yield for a brief inquiry, it is my understanding—Senator JUDD GREGG is not on the floor, but I think he has agreed to this. If there is a problem, I will be happy to reverse it—that the matter to come up would be Senator BREAUX's amendment after Senator SANTORUM, with 1 hour evenly divided. If there is any problem, we will reverse it. JUDD GREGG and I have spoken about that.

Mr. WARNER. Reserving the right to object, I had discussed with one of our managers the appropriate time at which we could consider the amendment which I have at the desk, in sequence, and the yeas and nays have been ordered. What would be a time that you could indicate to the Senator from Virginia it could be taken up?

Mr. REID. We can do it after Breaux.

Mr. WARNER. Will the leader put that in, that it be taken in sequence after Senator BREAUX? Could it be amended so my amendment could be brought up after Senator BREAUX?

Mr. REID. Reserving the right to object, it is my understanding that the Senator wanted a half hour.

Mr. WARNER. Equally divided.

Mr. REID. We have not seen the amendment of the Senator from Virginia, so maybe we should not agree on time but agree on the sequence.

Mr. WARNER. We can have it sequenced. I will submit the amendment and the Senator can establish a time.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. FRIST. Reserving the right to object, I would like to talk to Senator GREGG on the time agreement and also restrictions on the amendment with Senator BREAUX. If I can have an opportunity to check with Senator GREGG.

Mr. KENNEDY. We are operating on good-faith agreements. We have done very well. This is the intention. We will wait to hear from the Senator.

I understand Senator CRAIG and Senator SANTORUM want to change the order. Senator CRAIG will be the next amendment, followed by Senator SANTORUM.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order of the Santorum amendment and the Craig amendment be switched and that the time allotted be the same. Senator SANTORUM is still perfecting a portion of his amendment.

Mr. REID. Mr. President, we were planning on the other order. The person who will be responding to the Senator from Idaho is not here.

Mr. KENNEDY. We prefer to go the other way. We announced the order, and this has changed. We will need to put in a quorum call to get the personnel who will be addressing this amendment.

Mr. CRAIG. I am sorry for this delay.

Mr. KENNEDY. We are moving along, and we will do the best we can. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 851

Mr. CRAIG. Mr. President, there was an agreement that the Santorum amendment would proceed and I would follow. We agreed we would switch those. I think that is the current agreement that has been accepted. I see the Senator from Montana is on the floor, the chairman of the Finance Committee, so with that, I send my amendment to the desk.

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

The clerk will report.

The legislative clerk read as follows:

Mr. CRAIG. 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:

(Purpose: To express the sense of the Senate regarding making medical savings accounts available to all Americans)

At the appropriate place insert the following:

SEC. . SENSE OF THE SENATE REGARDING FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) FINDINGS.—The Senate finds:

(1) Medical savings accounts eliminate bureaucracy and put patients in control of their health care decisions.

(2) Medical savings accounts extend coverage to the uninsured. According to the Treasury Department, one-third of MSA purchasers previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings out of reach for millions of Americans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that a patients' bill of rights should remove the restrictions on the private-sector medical savings account demonstration program to make medical savings accounts available to more Americans.

Mr. CRAIG. Mr. President, I had planned up until an hour ago to offer a detailed amendment on medical savings accounts that I think fits appropriately into any discussion about patient's rights in this country. The first and foremost right is access to health care, relatively unfettered access to health care. The problem with that under the current scenario on the floor is it would bring about a point of order and I do not want this issue to fall based on that.

Certainly it is appropriate we are here and we are taking the necessary and adequate time to debate patient's rights in American health care. I am proud of my party. Republicans have a solid record on protecting patients and their rights. We have fought for patients' rights from the very day we defeated the Clinton health care plan a good number of years ago, which was a massive effort to use government to take over our health care system, which would have largely let bureaucrats decide whether your family would get the medical care they need.

It was a Republican Congress that stood up for patients' rights by creating medical savings accounts for the first time. Medical savings accounts, in my opinion, are the ultimate in patient protection for they throw the lawyers, employers, and bureaucrats out of the examining room and leave decisions about your health between you and your doctor.

What has been most fascinating under the current medical savings account scenario in our country is that we have limited them to about 750,000 policies. Yet, a good many people have come to use them even though we have made it relatively restrictive and we have not opened it up to the full marketplace.

What is most fascinating about the use of medical savings accounts is the category that all Members want to touch. We hear it spoken of quite often. That is the large number in our country of uninsured. Since we offered up a few years ago this pilot program, 37 percent of those who chose to use it were the uninsured of America. In other words, it became one of the most attractive items to them because it offered them at a lower cost full access to the health care system.

It proves something many colleagues do not want proved: That given the opportunity, Americans can afford to

health coverage if the price is right and the strings are not attached and they can, in fact, become the directors of their own health care destiny. I think it is fascinating when you look at this chart. Under the current scenario, of over 100,000 MSA buyers, one-third were previously uninsured.

With medical savings accounts, you choose your own doctor. Also, if you believe you need a specialist, you have direct access to a specialist. You don't need an HMO or an insurance company working with or telling your doctor what you may or may not do. Of course, the debate for the last week has been all about that, all about the right of a patient to make the greater determination over his or her destiny and to have that one-on-one relationship with the health care provider. There is no question that if you are independent in your ability to insure or you have worked a relationship with your employer so you are independent through a medical savings account, then you can gain direct access to an OB/GYN. If your child is ill, you have direct access to a family pediatrician. With MSAs there are no gatekeepers; you are the gatekeeper. There are no mandatory referrals; you are the one who makes the decision, you and your doctor. The only people involved in your personal decisions, once again: Your family, you, and the medical professional you have chosen or to whom your doctor has referred you. That is the phenomenally great independence to which we are arbitrarily deciding Americans cannot have free access.

I hoped to offer a much broader amendment, but I knew it would have to face that tough test of dealing with the Senate rules and all of that because it would deal with taxes and it would deal with revenue. As a result, instead of making the changes in the law that ought to be made because even the program I am talking about that has been so accepted expires this year and it is the responsibility of this Congress to expand it and make it available, here instead we are still talking about the rights of lawyers, not the rights of the patient.

The rights of the patient are optimized if you provide the full marketplace access to medical savings accounts. Since we introduced the limited pilot program, wonderful things have happened. The very people we were trying to reach, the uninsured, are able to afford health coverage. And, in our society today, many of the uninsured are the children of working men and women who can't afford to add them as an extra beneficiary to their health care coverage because of the costs. Yet they found they were able to do that when their employer that allowed them to have a medical savings account.

Medical savings accounts combine low-cost insurance, and a tax-preferred savings account for routine medical expenses. The catastrophic insurance policy covers higher cost items beyond what the savings account covers.

That is why I think it is important that this Senate now express its will and its desire to continue to support medical savings accounts. That is why it appropriately fits inside the broad discussion of a Patients' Bill of Rights.

I do not question any Senator's motive on the floor. Republican and Democrat alike want to make sure all Americans have access to health care. We want a Patients' Bill of Rights that works. We have had a President say very clearly, unless you can provide us with a Patients' Bill of Rights that creates stability, that allows the kind of flexibility we need to assure that employers can continue to provide health care without the risk of being dragged into court because of a health care program that they may be a sponsor of, then he will veto it.

But here is a President who also supports maximizing choices in the marketplace. How you maximize choices in the marketplace for the patient today is to allow open access to a medical savings account program that optimizes all the flexibility we have talked about. You reach out and bring in the uninsured of America and allow them to develop the one-on-one relationship with their doctor that has historically been the standard of health care in our country.

I retain the remainder of my time.

The PRESIDING OFFICER (Ms. STABENOW). WHO YIELDS TIME?

Mr. BAUCUS. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I appreciate the efforts of the Senator from Idaho for small businessmen and women, for families who are unable to afford health care costs to be able to invest in a medical savings account. But I would like to put this issue in the context of this entire debate.

One of the first amendments proposed in this debate was to provide tax relief—not a sense of the Senate but an actual amendment to the pending legislation to provide tax relief for small businessmen and women to get deductibility for their health care plans, at that time 100-percent deductibility on their health care plans.

At that time I said I was willing to support the amendment and I was willing to support two additional tax incentives for low-income American families so they could afford health care. That offer was rejected. That offer was rejected by the opponents of this legislation as not being enough. They needed a multitude of tax provisions in this bill.

At that time I said OK, then I will not support them unless we have some kind of narrowing—as I said, as many as three. That offer was rejected.

Here we are at 2 o'clock on Friday afternoon, after many days of debate, and we are talking about a sense-of-the-Senate resolution on medical savings accounts.

I am sorry. They should have taken advantage of the opportunity that I and the sponsors of this legislation would have provided to provide legislative—not sense of the Senate —relief for small businessmen and women, for allowing families to establish medical savings accounts, and perhaps another bill. That offer was rejected.

At this time I would then have to oppose this sense-of-the-Senate resolution. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Madam President, I yield myself such time as I consume.

This is a Patients' Bill of Rights bill. This is not a tax bill. This is not a Department of Defense bill. This is not a agriculture bill. This is not a foreign policy bill. This is a Patients' Bill of Rights bill.

The amendment offered by my friend from Idaho is not a Patients' Bill of Rights amendment; it is a tax amendment. We will have ample time this year to take up tax legislation. We will take up tax legislation at some time, even though we had a huge tax bill already this year. When I say ''we,'' I mean the Finance Committee. That is because the budget resolution provides $28 billion for health insurance benefits for Americans who are now uninsured.

I guess the committee will report out legislation this year which will include expansion of some benefits, perhaps under CHIP, but perhaps also some tax provisions. There are many Senators who have good ideas to encourage Americans to have more health insurance—credits, deductions, and so forth. MSAs is just one way. MSAs, I might say, are actually, under the law, reserved for the most wealthy Americans. It is a particular kind of savings account which enjoys very lucrative, very beneficial status with respect to our tax laws; that is, contributions are not deductible, inside buildup is not taxed, withdrawals for medical purposes are not taxed, and only withdrawals for nonmedical purposes are, but not in the case when a person reaches the age 65. Essentially, they can be converted by wealthier people into a retirement account beyond a savings account.

They are just one way of, perhaps, providing health insurance for Americans. The main point being this is not a tax bill. The Finance Committee will take up health insurance legislation this year as provided under the budget resolution. At the time we consider MSAs, we will consider other appropriate ways to encourage Americans to have more health insurance. That is the appropriate time for this body to consider health insurance legislation. That is when the Finance Committee can consider all the various ideas and report out a bill to the Senate which, in a more orderly way, because it is a tax bill which is dealing with tax matters, particularly health insurance, will help more Americans.

I also say to my good friend from Idaho, as referred to by my friend from

Arizona, it is now 2 o'clock Friday afternoon. We have been on this Patients' Bill of Rights bill a long time. It is very good legislation. We are going to finally pass a Patients' Bill of Rights, after I don't know how many years, tonight. That is my guess.

We will not pass it tonight—who knows when we will ever get to finally pass it—if we start going down this road of adopting sense-of-the-Senate resolutions.

This is the first sense of the Senate. We have not had one before. This particular resolution says this bill should include expansion of medical savings accounts. If we are not going to add savings accounts here, we are, in effect, deciding we should not add medical savings accounts, a tax bill, on this bill.

I respectfully suggest to all my colleagues, the proper vote here is to vote no because it is, in effect, a tax provision. It is a sense of the Senate. We have not done that before. We are about ready to conclude passage of this bill and we will take up health insurance, tax legislation, at an appropriate time later.

I reserve the remainder of my time.

Mr. GRASSLEY. Mr. President, I want to discuss my vote on the Criag amendment that it is the sense of the Senate that the Senate act to expand access to Medical Savings Accounts.

I commend Senator CRAIG for offering this amendment. I support expanding access to MSAs. I recently introduced S. 1067, the Medical Savings Account Availability Act of 2001, with my colleague from new Jersey, Senator TORRICELLI. My support for MSAs is long standing. Senator TORRICELLI and I introduced in the last Congress a comparable bill to expand access to Medical Savings Accounts. I think we will improve access to MSAs with the support of Senator CRAIG and many other Senators, particularly on my side, who I know want to see MSAs within the reach of everyone.

As my colleagues know, I have argued during this debate that tax material should not be included in this bill. I do not consider this amendment a tax amendment because, if adopted, it would not have the effect of changing tax law.

Earlier in this debate, I sought and received agreement from the Chairman of the Finance Committee that health related tax matters will be considered at a markup of the Finance Committee in the near future. I look forward to pursuing this issue at that time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I inquire how much time remains on my side.

The PRESIDING OFFICER. The Senator has 6 minutes 20 seconds.

Mr. CRAIG. I inquire if the Senator has anyone else who would wish to speak to it on his side. If not, I will wrap up.

Mr. BAUCUS. Madam President, I will wait until the Senator concludes and then I will make a judgment whether I want to make another statement.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I allocate myself 5 minutes so I would like to conclude the debate of my amendment. Let me speak briefly to what the chairman of the Finance Committee said.

First of all, I ask him to read my sense of the Senate. It has nothing to do with taxes at this moment. His underlying argument that the responsibility for MSAs, when you are making substantive changes in current law, is a finance responsibility and a tax provision, is correct. My amendment is not a tax provision.

It is asking the Senate to speak to the importance of doing what the Senator from Montana has said he will do this year. That is what my amendment says—that medical savings accounts are important. Do they belong in a Patients' Bill of Rights? Absolutely they do. If you want to optimize the rights of a patient or of a potential patient in America's health care system, then you give them full access—not limited and restricted access to medical savings accounts.

Let me correct one other thing that I think is important. As to this old bugaboo ''it is just for the rich'' that we heard coming from the chairman of the Finance Committee, will he tell me that one-third of the 100,000 people who are uninsured and have never had insurance before because they couldn't afford it are somehow ''closeted rich'' people? I doubt it very much. These are the working poor of America—not the working wealthy—who found an opportunity to provide health care for themselves, their spouses, and their families because the Federal Government, through the Congress, opened up a limited window of opportunity for them to use a medical savings account to their advantage.

That is what that is all about. The House is looking to provide medical savings accounts in their Patients' Bill of Rights. The President supports medical savings accounts. It is not an agriculture bill. It is not a bill for the Interior Department. It is a bill for Americans seeking health care in the system today.

Why shouldn't we debate that right to have optimum access to the market on a Patients' Bill of Rights? Because it doesn't involve a lawyer? That is a good reason to debate it, because it doesn't involve a lawyer and it doesn't involve a Federal bureaucrat at HCFA, and it doesn't involve an HMO or an insurance company. It involves the patient who holds that medical savings account and his or her doctor.

That is what this issue is all about. You darned well bet it is important that our Congress express to the American people that we should make medical savings accounts increasingly available.

I am pleased to hear the chairman of the Finance Committee speak about addressing that this year because this year it expires. We should not allow that to happen.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I will make a couple of points.

If you read it, it makes clear that this is a sense-of-the-Senate tax provision. It says sense of the Senate, and the Patients' Bill of Rights should remove the restrictions on the private sector medical savings account demonstration program to make medical savings accounts available to more Americans.

Medical savings accounts is a tax provision. This says remove restrictions to make it more available; to, in effect, change the tax law to make it more available.

It is clearly a sense-of-the-Senate tax bill.

Second, it has been asserted that it is for the working poor. I have a distribution chart furnished by the President which indicates what income groups of Americans utilize medical savings accounts. By far, the greatest income level to use medical savings accounts is that with adjusted gross income—the total gross is a lot more—of between $100,000 and $200,000. Those people are hardly the working poor. For those in the lowest category—those with adjusted gross incomes of under $5,000—you get 111 returns. For those in the earlier category that I mentioned—those in the $100,000 to $200,000 adjusted gross income—you get 9,400 returns.

It is not for the working poor. That is not the main point. The main point is that this is a sense-of-the-senate tax provision.

We should not go down this road. We will at the appropriate time later this year in the Finance Committee work on a measure to protect and provide more health insurance for those who do not have health insurance and report that legislation at the appropriate time to the floor.

I yield the remainder of my time. If the Senator from Idaho will yield the remainder of his time, I will make a motion with respect to this amendment.

Mr. CRAIG. Madam President, I believe that we have the opportunity to express the will of the Senate. The Congress has moved slowly but grudgingly toward medical savings accounts and has created flexibility. We have a good opportunity to do so this year. Today, we have an opportunity to express our will to do that once again. I hope we will do so.

I yield the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BAUCUS. Madam President, I am going to move to table.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. I move to table the Craig amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—53

Akaka	Dayton	Leahy
Baucus	Dodd	Levin
Bayh	Dorgan	Lincoln
Biden	Durbin	McCain
Bingaman	Edwards	Mikulski
Boxer	Enzi	Miller
Breaux	Feingold	Murray
Byrd	Feinstein	Nelson (FL)
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Cleland	Jeffords	Schumer
Clinton	Johnson	Snowe
Collins	Kennedy	Stabenow
Conrad	Kerry	Wellstone
Corzine	Kohl	Wyden
Daschle	Landrieu	

NAYS—45

Allard	Gramm	Nickles
Allen	Grassley	Roberts
Bennett	Gregg	Santorum
Bond	Hagel	Sessions
Brownback	Hatch	Shelby
Bunning	Helms	Smith (NH)
Burns	Hutchinson	Smith (OR)
Campbell	Hutchison	Specter
Cochran	Inhofe	Stevens
Craig	Kyl	Thomas
Crapo	Lieberman	Thompson
DeWine	Lott	Thurmond
Ensign	Lugar	Torricelli
Fitzgerald	McConnell	Voinovich
Frist	Nelson (NE)	Warner

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. REID. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 841, AS MODIFIED

Mr. SANTORUM. Madam President, I call up my amendment No. 841, with the modification I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 841, as modified.

Mr. SANTORUM. Madam 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:

(Purpose: To dedicate 75 percent of any awards of civil monetary penalties allowed under this Act to a Federal trust fund to finance refundable tax credits for uninsured individuals and families)

At the end, add the following:

SEC. ___. REFUNDABLE TAX CREDITS FOR THE UNINSURED FINANCED WITH CERTAIN CIVIL MONETARY PENALTIES.

(a) PAYMENT OF CERTAIN PENALTIES TO SECRETARY OF THE TREASURY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, 75 percent of any civil monetary penalty in any proceeding allowed under any provision of, or amendment made by, this Act may only be awarded to the Secretary of the Treasury.

(2) CIVIL MONETARY PENALTY.—For purposes of this section, the term ''civil monetary penalty'' means damages awarded for the purpose of punishment or deterrence, and not solely for compensatory purposes. Such term includes exemplary and punitive damages or any similar damages which function as civil monetary penalties. Such term does not include either economic or non-economic losses. Such term does not include the portion of any award of damages that is not payable to a party or the attorney for a party pursuant to applicable State law.

(b) ESTABLISHMENT OF TRUST FUND.—

''SEC. 9511. HEALTH INSURANCE REFUNDABLE CREDITS TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Health Insurance Refundable Credits Trust Fund', consisting of such amounts as may be—

''(1) appropriated to such Trust Fund as provided in this section, or

''(2) credited to such Trust Fund.

''(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN AWARDS.—There are hereby appropriated to the Health Insurance Refundable Credits Trust Fund amounts equivalent to the awards received by the Secretary of the Treasury under section ___(a) of the Bipartisan Patient Protection Act.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Health Insurance Refundable Credits Trust Fund shall be available to fund the appropriations under paragraph (2) of section 1324(b) of title 31, United States Code, with respect to assistance for uninsured individuals and families with the purchase of health insurance under this title.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

Mr. SANTORUM. Madam President, one of the things I have repeatedly stated when I have spoken on this bill is that in S. 1052 there isn't any provision that provides for access to insurance. There is nothing that increases the number of insured. There are pages and pages and pages in this legislation that will decrease the number of insured and increase the rate of insurance in this country. If you would take a public poll, or take one in this Chamber, and were to ask people what is the biggest problem in the area of health care in this country, I think the overwhelming response would be the lack of insurance for 43 million Americans.

The bottom line is that we should be discussing how we are going to solve the biggest problem in the health care system, and that is providing some assistance for those who don't have employer-provided health insurance. We do not do that in this bill.

In fact, it has been stated over and over again that this bill will add to the ranks of the uninsured. That is not a positive step forward. We can talk about the positive things—and there are positive things in this legislation, which I have been historically in favor of but in my mind they are counterbalanced—in fact, overwhelmed—by the increase in the uninsured that will happen as a result of several provisions of this act.

One of the things I am going to do with this amendment is I hope to take one of those negative provisions—that being unlimited punitive damages in State court and a $5 million cap on punitive damages in Federal courts—and channel some of that cost that is going to be borne by the insurance system and employers, and put that back into the system in the form of a trust fund for those who do not have employer-provided health insurance. So this is an amendment that will take 75 percent of all punitive damage awards that occur as a result of the causes of action provided for in this bill and create a trust fund which will be used to finance those who do not have employer-provided health insurance—in other words, the uninsured.

I think that is a way to ameliorate some of the damage caused by this legislation. The cost pulled out of the health care system through litigation, and through punitive damages in particular, will drive up the cost of health insurance. That money will go to lawyers, to a select few—principally the lawyers, but to a select few clients, patients, such as the gentleman from California who a couple of weeks ago hit the ''lottery,'' with a $3 billion punitive damage verdict.

If that kind of award occurs within the health care system, imagine the impact on all of the insured in this country. Imagine the cost that is going to have to be borne by the millions of people who have insurance with a $3 billion punitive damage award. How much are your insurance rates going to go up if an award such as that is given?

The least we can do is take the potential of a back-breaker award, or a series of back-breaker punitive damage awards, and put that back into the system in a way that helps those who do not have insurance.

So what I am suggesting is really a way to avoid some of the criticism that has been leveled against this bill, that this is full of litigation and costs, without any benefit coming back into the system. Remember, what we are concerned about here—yes, we are concerned about individual cases, obviously. But we also have to be concerned about the greater picture, which is making sure the public generally has

insurance and has quality health insurance.

As you can see from this chart, there is a real difference between the kind of health care people get when they are insured versus when they are not insured. This says ''nonelderly adults with barriers to care by insurance status.'' In cases where they had procedures needed, but did not get the care for a serious problem, only 3 percent of the people who had insurance ended up in that category. So if they have insurance, if they have a serious problem and a prescribed solution, they basically get the care. But if they are not insured, 20 percent—almost seven times the number of the uninsured—do not get the care they need. This says ''skipped recommended test or treatment.'' If they are insured, 13 percent of the people skip those tests. If you are not insured, almost 40 percent skip that.

Did not fill a prescription: 12 percent if you are insured; 30 percent if you are not insured.

Had problems getting mental health care: 4 percent versus 13 percent.

If we are concerned about quality care being provided to everyone, then we have to address the issue of the uninsured. This bill just deals with those who have insurance. I remind people, this bill only deals with people who have insurance. The biggest problem with patient care is those who do not have insurance, and that is displayed on this chart. We all know that is the fact from our own lives, knowing people who do and do not have insurance.

We cannot walk out of here with our arms raised high saying we have a great victory for patients when we accomplish two things: No. 1, we provide a little bit of protection—and that is what we do, provide a little bit of protection—for those who have insurance but cause millions of people who have insurance to lose their insurance and end up with vastly inferior care. We provide a little bit of benefit for a lot, but we harm a lot of people profoundly in the process.

Again, this is a pretty minimal amendment. We allow for 25 percent of the punitive damages to stay with the lawyer—to stay with the client so they get a little piece of this pie. The lawyer gets paid, although if they have a big punitive damage award, they probably get a big settlement in a lot of other areas, too. In this $3 billion award, they got $5.5 million in compensatory damages. Nobody is going poor, from the lawyer's perspective, on filing this case.

When it comes to potential enormous awards for punitive damages, we need to plow some of this money back into the system. I am hopeful the Senate will take a step back and say this is one of the reasonable suggestions that can come about if we are willing to take seriously this matter of providing quality health care, not just for those who have insurance but plowing that money back for those who do not.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from North Carolina.

Mr. EDWARDS. Madam President, I will first talk about what exactly the Senator from Pennsylvania is talking about when he talks about punitive damages. Punitive damages can only be awarded in a case where, in this context, an HMO or a health insurance company has engaged in virtual criminal conduct. They have to have acted maliciously, egregiously, outrageously for there to be a punitive damages award.

Now let's talk about it in the context of a real case. Let's suppose some young child needs treatment or a test and the insurance company executives meet and say: We are not paying for that test, and we do not care what the effect is. If something bad happens, so be it. We will live with that, but we are not paying for it. Even though it is covered by our policy, even though we know we are supposed to pay it, we refuse to pay it, period.

Let's suppose because that child fails to get some treatment or test that they should have gotten, the child was paralyzed for life. Then a group of Americans sitting on a jury listens to the case, as they do in criminal cases every day in this country, and decides the HMO has engaged in criminal conduct and awards punitive damages on that basis.

First of all, I say to my friend from Pennsylvania, I doubt if the parents of that child crippled for life believe they have hit the lottery. That child's life has been destroyed because of intentional criminal conduct on behalf of a defendant, in this case the HMO and the health insurance company.

It is not abstract. This is conduct that was specifically aimed at that child. It is not abstract to the world. This is something that was aimed specifically at the child who is sitting in that courtroom, and the jury found—in order for this to be possible, the court requires that the jury find that the HMO has engaged in outrageous, egregious conduct.

This is what this amendment does: It says we are going to take away 75 percent of that child's punitive damages award. That is what it says. We are going to impose a 75-percent tax on that child.

That is a real case. This is not an abstract academic exercise. This is reality. I say to my colleague, if we are going to start taxing people around this country 75 percent of their money—that would be that child's money in this case. It does not belong to the Senator from Pennsylvania; it does not belong to me and, by the way, it does not belong to the Government unless this amendment is adopted. It belongs to that child. If we are going to start taking 75 percent of people's money, let's not stop at that child. Why don't we consider taking 75 percent of the $400 million that the CEO of one of these HMOs apparently made last year? That will help. We can go around the country and start picking all kinds of groups of people and put that money in a pot and do what we choose with it.

This is not a serious response to a serious problem. My friend from Pennsylvania and I agree that the uninsured are a very serious problem in this country. It is an issue we need to address, and we need to address it in a serious way. None of us suggest that what we are doing with this Patient Protection Act will solve that problem. It will not. We have work left to do. There is no doubt about that. But we need to do that work in a serious, thoughtful, comprehensive way that will deal with the kids and the elderly in this country who do not have access to health insurance and who, as a result, do not have access to quality health care. The way to accomplish that is not by imposing a 75-percent tax on people, families who have been hurt by HMOs.

Mrs. BOXER. I ask the Senator to yield me 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. EDWARDS. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator EDWARDS for using a hypothetical example of why this is a very cruel amendment which I hope will be voted down overwhelmingly. But I have a real case I can talk about in a moment.

This morning—it seemed like a very long time ago, and it was—I voted for an amendment by Senator SANTORUM to protect infants, to say that infants who are born should have the protections of this bill. I said to him: I certainly agree that infants, children, and teenagers all the way up to the elderly, the most frail, should be covered by this bill.

What does my friend now suggest? A 75-percent tax on pain and suffering to go to the Federal Government for a Government program. This is unbelievable to me. A 75-percent tax on families who may be suffering because a child is permanently disabled, made blind, paralyzed, forever in a wheelchair, and then having to pay 75 percent of a punitive damage award that could go to help ease the pain of that child, that could hire people to take care of that child.

This is a cruel amendment. My friend always says he is for the children. This is not for the children. This is not for the families. This is not for the patients. This amendment will take the funds away from those families who are in desperate need of money to build a life for someone deeply harmed by an HMO that had no conscience.

As my friend says, punitive damages are not gotten lightly. It has to be proven that you were willful, that you

were vicious in your intent. And then to say to that family: No, you have to give up 75 percent of that fund that you won because you were a victim. It is a victim's tax. It is a victim's tax that goes to a Federal fund, to a Government program.

I always thought my friends on the other side trusted local people, a jury of our peers. They say: A local judge, someone from the community who can look at that family and understand what it means when they have a child permanently disabled.

A family with a little child in a wheelchair was coming to my office several years ago. The child was hooked up to every conceivable tube imaginable. The child was blind. There were caps on those punitive damages. And there was not enough money to hire the people that family needed to give their child the most decent life possible.

Now on top of this, as I understand this amendment, even in cases where there is a cap on punitive damages, this amendment still takes away 75 percent of the punitive damage. That is a slap at that victim, that child, the parents, the very children my friend said he cared about just 7 hours ago. This is an amendment that says the Federal Government is more important than your family. The Federal Government will reach into a local jury; the Federal Government will take 75 percent of your award, of your punitive damages award, and put it into a Government fund.

This is a terrible amendment. I hope it will be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I make one clarification: There are eight States that currently do this. One of them is the State of the Presiding Officer. The State of Georgia takes 75 percent of punitive damages, less attorney fees, and puts them in the State treasury. That is the State law in at least eight States. Georgia was, in fact, the model we used for this legislation.

By the way, those States are exempt from this provision so we don't take both the State and the Federal. If there is a State law, those are excluded under this act. This is hardly punitive. These are punitive damages, not compensatory damages. These are not pain and suffering.

I yield 2 minutes to the Senator from Louisiana.

Mr. BREAUX. I was not going to say anything, but the arguments have nothing to do with the substance of the amendment. Everybody ought to realize punitive damages have nothing to do with awarding a person who has been injured. A person who has been injured is compensated for economic losses, and there is no cap on economic losses. They are compensated by pain and suffering. There are no caps on pain and suffering. Punitive damages have one purpose. That is to punish the person who has caused the injury. That is the only purpose for punitive damages, to say to a company or an HMO, your conduct has been so outrageous, so egregious, you will be punished. That has nothing to do with the compensation for the injured plaintiff or child. They have already been taken care of.

The concept of taking punitive damages and saying, we will use those damages to help people who do not have insurance, is a novel idea. Other States have done it. It is a good approach. I think we should support it because it has nothing to do with taking away anything to which an injured person is entitled. They have already been compensated in this bill with unlimited, uncapped economic and noneconomic pain and suffering damages. The arguments that I have heard have no merit considering the nature of the amendment.

Mr. SANTORUM. I make clear a couple of issues. Eight States have already passed legislation that redirects punitive damages to specific purposes. I mentioned Georgia is one; Florida allocates money into the medical assistance trust fund; Illinois, into the department of rehabilitative services; Iowa puts money into the civil reparations trust fund; Kansas puts money directly in the State treasury; Missouri, to the tort victims compensation fund; Oregon, to the criminal injury compensation account; Utah, anything in excess of $20,000 in punitive damages goes to the State treasury.

This is not a brand new concept but a concept States have adopted because they understand, as the State of Georgia, that these are punitive damages, not compensatory damages. These are to punish people. We are saying, if you punish a guy who does a bad thing, who is a criminal, the crime is against everyone. Those who are not in the courtroom should be benefiting from this. That is the uninsured.

What will happen if those punitive damages are awarded to the individual or to the lawyer—because they get a big chunk? There will be more uninsured because the cost of health care will go up. This is punishing people who have insurance with higher premiums and higher rates. As the Senator from Louisiana said, we are already compensating the victim. They are getting unlimited compensation. There are no limits in State or Federal court for any compensation that is due this person. Who we are punishing here with punitive damages are the people who are going to lose their insurance because of high rates of insurance because of these punitive damages, and we will punish people who are going to keep their insurance and have to pay a lot more.

This is a modest amendment that tries to lessen the heavy hammer of cost that this bill puts in place. I am hopeful we get bipartisan support for it.

I reserve the remainder of my time.

Mr. EDWARDS. I will respond briefly to the Senator from Pennsylvania and the Senator from Louisiana.

First, I suggest to the Senator from Louisiana, when an HMO does something egregious, criminal, to a child, and in my example that child is crippled for life, that crime is not against all of us; it is against that child. It is that child who is in court. It is that child to whom the jury has awarded these damages. They didn't award it to us or the people in the gallery; they award it to that child. When we go in and take 75 percent of that child's money, it is a tax any way you cut it.

We can talk around this and talk about it for the next 15 minutes or 15 hours. That money does not belong to us. It belongs to that child and that crime was committed against that child and that is whose money we are taking. It is a tax.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 4½ minutes.

I have listened to my friend from Pennsylvania talk about the uninsured. But where was the Senator from Pennsylvania when President Bush asked for $80 billion to develop a program to cover the uninsured in this country, and they reported back $1.6 trillion and wiped that program out? We could have had a real program for the uninsured, but I didn't hear the Senator from Pennsylvania talk about that.

I didn't hear the Senator from Pennsylvania talk about when we were trying to develop the CHIP program; let's get behind it and fight for that program and take on the tobacco companies. They are the ones that are basically funding the CHIP program now, which has been extended to cover 6 million children in this country. I didn't hear the Senator from Pennsylvania talking about that.

Where was he last year when we had the family care, $60 billion to cover 8 million Americans, the parents of the CHIP programs? The Senator from Pennsylvania opposed that.

So with all respect, to offer an amendment to try to help the children of this country with their health insurance has no relevancy in terms of the voracity of the commitment of that side of the aisle in terms of trying to do something for the children of this country.

The record has not been there. To try to offer some amendment this afternoon and cry crocodile tears all over the floor about what we are doing for children when they basically have refused to address this issue in a serious way is something the American people see through.

We understand what is happening, even in this bill where you could have an important impact in terms of children who are covered. They have been supporting the attempts to water it down in terms of the HMOs.

That has been the record: Opposition to this HMO—the Patients' Bill of

Rights, to guarantee the children who do have health insurance are going to get protections. And they have been fighting it every step of the way. Then they say: Oh, well, we are really interested in children because we are going to give them this refundable credit on it.

It doesn't carry any weight. The American people can see through this. Let's get about the business of passing a real Patients' Bill of Rights and then let's go out and try to pass a real health insurance bill that will do something about the remainder of the children who need the care and also the parents of those children who need it in long-term family care. Let's do something to look out after our fellow citizens.

I withhold the remainder of my time.

Mr. SANTORUM. I just want to remind the Senator from Massachusetts that the Smith-Wyden amendment that provided $28 billion for those who do not have insurance passed and that is now law. It was in the budget. So I have been a supporter of money and a substantial amount of money for those who do not have insurance.

I have sponsored a piece of legislation, with Senator TORRICELLI, that is called Fair Care, which provides tax credits for the uninsured at the cost of around $20 billion a year.

So I suggest to the Senator from Massachusetts——

Mr. KENNEDY. Will the Senator yield on my time?

Mr. SANTORUM. One second—I just suggest to the Senator from Massachusetts, to impugn me personally and suggest I am disingenuous by proposing that we provide some money in punitive damages, not damages to compensate for injury but damages to punish someone who did a wrong—why should that go to an individual as opposed to society, which was wronged by that activity, as all criminal activity is. It is a crime against society. We do not compensate, as you know, when we prosecute someone criminally. The individual does not get benefit from that punishment.

So punitive damages are there to punish, not to compensate. I know the Senator from North Carolina knows that. That is why they are called punitive—punish; compensatory—compensate. There is a difference. That language is not there for window dressing; it is there for substantive difference.

What I am suggesting is that these punitive—punishment—damages should not further punish people who have insurance because they are the ones ultimately to be punished. Several States have recognized this and have plowed that money back into the system to help those who would otherwise be punished by this money coming out of the system of health insurance.

So I just suggest that my commitment here is sincere and my object here I think is worthy of support.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. First I say to my colleague, we can keep talking about this. The truth of the matter is the criminal conduct we are describing here is committed against a particular patient; in my example, against that particular child. We are taking 75 percent of that child's money, any way you cut it. It is a tax. The Government is taking their money, and there is no reason to do that. It makes no sense whatsoever.

I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from North Carolina for yielding 5 minutes.

Let me say I am one of the few Members on the floor of the Senate who practiced law before he was elected to Congress, who was in a courtroom, involved in a case which had a punitive damage verdict. That is very rare in American law. It happened to me. I was on the defense side. I was defending a railroad in a lawsuit brought by the survivors of an elderly man who was killed at a railroad crossing in November of 1970 near Springfield, IL.

There was a row of cars, train cars, parked near this crossing. This elderly man, late at night, crept up on the crossing to see if he could get across. His car stalled in the crossing. He tried to get out, couldn't, and the train came through and killed him.

When the jury in Illinois sat down and looked at it, they said if you measure the value of an elderly man's life, there is not a lot of compensation. But when they looked at the railroad I was defending and found out we had done the same thing time and time and time again, they decided this railroad needed to receive a message. So they imposed a punitive damage verdict of over $600,000 on the railroad I represented, to send a message to this railroad to stop parking these train cars so close to a crossing that people could get injured and killed. That was a punitive damage verdict in a relatively small town in Illinois.

The Senator from Pennsylvania now wants us to say that three-fourths of the verdicts just like that should be taxed and taken by the Federal Government. He does not believe the family of the person who was killed at the crossing should get the money. He thinks the Federal Government should take the money.

He has some good purposes for the money to be spent. I don't question that. But this is a rather substantial tax which he said we should take to deal with the uninsured in America. Why is it the Senator from Pennsylvania did not suggest we tax the profits and salaries of the HMOs and the health insurance executives? According to Senator KENNEDY's statement the other day, one of these HMO executives, in 1 year, made $54 million in salary and over $300 million in stock options.

I do not hear the Senator from Pennsylvania suggesting we tax that to pay for the health insurance needs of America. No, let's take it away from the families of those who were killed at railroad crossings. Let's take it away from the families of children who were maimed, with permanent injuries they are going to face for a lifetime. He would not dare reach into the pockets of the executives of these health insurance companies and tax them.

Come to think of it, just 6 weeks ago we gave them a tax break here, didn't we?—a $1.6 trillion tax break for those executives. But a new tax on the family of those who come to court looking for compensation for real injuries and death in their own family?

We should reject this amendment. We know what it is all about. We are this close to passing a Patients' Bill of Rights with two fundamental principles, principles that say: First, doctors make medical decisions, not health insurance companies in America; and, second, when the health insurance companies do something wrong, they will be held accountable as every other business in America.

There are those on the other side of the aisle who hate those concepts just as the devil hates holy water. But I will tell you, families across America know they are sensible, sound values and principles. All of this fog and all this smokescreen about taxing punitive damages for the good of America—why aren't you taxing the executives' salaries at the health insurance companies who are ripping off people across America? Instead, you are passing tax breaks for those very same people.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will be happy to work with the Senator from Illinois to tax HMO executives and lawyers who get big awards out of the health care system equally. If you would like to propose an amendment, I will work with you so all lawyers and all health executives who profit from the health care system will have that money plowed back in. I did not hear that. I don't think I heard that. I think I just heard one side of that argument.

I will be happy to yield a minute to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Listening to all this screaming and hollering, obviously somebody has been stuck by this amendment. What does this amendment do? The bill before us, under the best set of circumstances, is going to cost 1.2 million people in America their health insurance by driving up the cost of health care. And one of the primary factors driving up that cost is litigation.

What the Senator from Pennsylvania has proposed is to take the part of these massive settlements that has nothing to do with compensating the person who has been injured—it has to

do with punishing reckless and irresponsible behavior—and using that to help buy health insurance for the very people who will lose their health insurance as a result of all of these lawsuits.

Are we concerned about people without health insurance or are we concerned about plaintiffs' lawyers? It seems to me I hear more screaming about plaintiffs' lawyers than I do health insurance.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SANTORUM. I yield a minute to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to agree with the Senator from Texas. Essentially, with these increased damages from punitive damages, oddly enough, the way insurance works in America, the premium payers are going to pay more. The more big verdicts that are rendered, the more premium payers will pay, raising rates for innocent people who had nothing to do with the misconduct that resulted in the punitive damages, resulting in higher costs so more people economically will drop off the insurance rolls.

We have a real problem with the uninsured in America. It seems to me this is a solution that is very creative. It is a solution that has been talked about by legal scholars for some time—what to do with punitive damages. Why, the part of it you pay for pain and suffering, you pay for contract laws—the victim gets that. But what about the money that is to punish the company? Where should it go?

I suggest the Senator is correct; it go to the uninsured and help people be insured.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SANTORUM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. EDWARDS. Mr. President, I yield 1 minute to the Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleague for yielding. I see my good friend from Texas. He and I have worked over the years on litigation matters and have authored litigation reform bills and a variety of other measures to reform the legal system.

I think it is important to remember that we have had great debates over the years about victims' rights and how important it is that victims be remembered when crimes are committed.

It seems to me that on this particular proposal and in this case when a person is subject to criminal conduct—that is what this amounts to—they have been victimized. This is not just compensatory damage for a mistake that is made. If you have been a victim of criminal conduct and are going to be deprived of the award that a jury provides you, that is fundamentally wrong. It ought to be defeated on just that point.

I have listened to and have engaged in debates on victims' rights. Victims are sick and tired when criminal behavior is committed and they are not considered when the matters have come before the bar of justice. When an individual, a child, or an adult is found to be injured as a result of criminal conduct, that is what punitive damages are. I think they deserve to receive that award.

Mr. EDWARDS. Mr. President, the Senator from Connecticut is exactly right. When we have a victim, such as a child who has been injured by the criminal conduct of an HMO, it is fundamentally wrong to take 75 percent of that child's money. And that is to whom it belongs. No matter what they say, and no matter how long we talk about it, it belongs to that child. To take 75 percent of that child's money is wrong, and we should vote against this amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I have been listening to this debate, and I think some good points have been made on both sides. But is the standard for recovery of punitive damages in this case criminal conduct, or wanton misconduct, or intentional infliction of distress? I would be surprised if the standard for punitive damages is criminal conduct.

Is that the case?

Mr. SANTORUM. No. If it takes a long time to answer, I am not going to yield the rest of my time to define that answer.

Mr. EDWARDS. If the Senator will yield time to me, I will be happy to answer that question. I can't answer it yes or no.

The answer is reckless, intentional, outrageous conduct.

Mr. SANTORUM. Which is not criminal.

Mr. EDWARDS. Of course, it is criminal conduct.

Mr. THOMPSON. No, no, no. Reclaiming my time, let's not gild the lily. I think you have some good points. Let's not try to convince people that wanton misconduct and willful misconduct is the same as criminal misconduct. It is not.

Mr. SANTORUM. Mr. President, let me reclaim my time. It is quickly running out.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. EDWARDS. Will the Senator yield for a response to that question?

Mr. SANTORUM. Mr. President, I ask unanimous consent for an additional minute to finish this colloquy so it doesn't impinge on my time.

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

Mr. EDWARDS. The language of the legislation is that reckless, intentional conduct is criminal conduct—all over America.

Mr. THOMPSON. No. It isn't.

Mr. EDWARDS. I respectfully disagree. Somebody who engages in reckless conduct in the operation of an automobile has engaged in criminal conduct. Somebody who engages in reckless conduct that causes the death of another person has engaged in criminal conduct. I respectfully disagree with the Senator.

Mr. THOMPSON. If I could respond, conduct that is subject to civil litigation versus conduct that is subject to criminal litigation, the conduct that the Senator described may, in fact, turn out to be also in addition to having civil exposure having criminal exposure, or it may not. But the conduct very well may be reckless, or even intentional, and constitutes conduct that is subject to punitive damages which can still not be criminal.

My only point is that it is not the same. It is not the same. The same conduct can in some cases be both, but in the civil context if——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. THOMPSON. All right.

The PRESIDING OFFICER. The Senator from Pennsylvania has 1 minute.

Mr. SANTORUM. Mr. President, I reiterate that this amendment is about taking money. The concern of this bill is that excessive costs will drive up the rates for insurance. We are taking some of this excessive cost that is built into this bill and plowing it back into the system to make sure that we don't have more uninsured if we don't take care of it.

I wish to make one additional point. Back in 1992, the House sponsor of the McCain-Kennedy bill, JOHN DINGELL, proposed using 50 percent of punitive damage awards to help compensate people—in this case, to prevent medical injuries. This is not a punitive damage measure. This is a measure that understands that punitive damages should go to benefit those in society who could be hurt by their increased cost of insurance. That is what this amendment does.

I hope we can get some bipartisan support for it.

I ask for the yeas and nays.

The PRESIDING OFFICER. All time has expired.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Arkansas (Mrs. LINCOLN) is necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I further announce that, if present and voting, the Senator from Hawaii (Mr. INOUYE) would vote ''aye.''

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—50

Akaka	Durbin	Miller
Baucus	Edwards	Murray
Bayh	Feingold	Nelson (FL)
Biden	Feinstein	Reed
Bingaman	Graham	Reid
Boxer	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Jeffords	Schumer
Carper	Johnson	Shelby
Cleland	Kennedy	Snowe
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Leahy	Thompson
Daschle	Levin	Torricelli
Dayton	Lieberman	Wellstone
Dodd	McCain	Wyden
Dorgan	Mikulski	

NAYS—46

Allard	Ensign	Lugar
Allen	Enzi	McConnell
Bennett	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Smith (NH)
Byrd	Hatch	Smith (OR)
Campbell	Helms	Stevens
Chafee	Hutchinson	Thomas
Cochran	Hutchison	Thurmond
Collins	Inhofe	Voinovich
Craig	Kyl	Warner
Crapo	Landrieu	
DeWine	Lott	

NOT VOTING—4

Domenici	Lincoln
Inouye	Murkowski

The motion was agreed to.

Mr. DASCHLE. Mr. President, the distinguished Senator from New Hampshire has been working with colleagues on his side of the aisle to come up with a finite list. We have an amendment to be offered by Senator CARPER and an amendment to be offered by Senator KENNEDY. Those are the only two amendments on our side. I yield the floor for purposes of describing the list on the Republican side.

Mr. GREGG. Mr. President, the list on our side includes the following amendments. If there is somebody else who has an amendment and I have not spoken to them, raise your hand.

The amendments are: Senator CRAIG, long-term care; Senator CRAIG, nuclear medicine; Senator KYL, alternative insurance; Senator SANTORUM, uninsured; Senator BOND, punitive damages; Senator FRIST, liability. There are pending in the order we talked about, Senator WARNER; Senator ENSIGN on genetics, and I understand his pro bono amendment is being agreed to; and Senator THOMPSON, which I understand also has been agreed to.

Mr. THOMPSON. No.

Mr. GREGG. It has not. And then Senator FRIST has a substitute.

Is there anybody else who has an amendment?

That appears to be our list.

Mr. DASCHLE. Mr. President, I ask unanimous consent that be deemed as the finite list of amendments to be offered to this bill.

Mr. CRAIG. Reserving the right to object.

Mr. DASCHLE. Mr. President, is there an objection?

Mr. NICKLES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I just tell the majority leader, we have not had a chance to run that by our colleagues. We have been shopping amendments, and the Senator from New Hampshire is to be congratulated that he has reduced the number of amendments substantially. We will need a few minutes at least to run this by the rest of our colleagues to make sure they know that if they have additional amendments to be considered, they need to get them on our list.

If the majority leader will please withhold the request, we will shop it around.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, while Senators are working out their amendments, I think there ought to be an Independence Day speech. I assume we are going home for the Fourth of July. So if there is no objection, I have a speech in hand. (Laughter.)

Mr. MCCAIN. Reserving the right to object. (Laughter.)

In admiration of the Senator's tie, how long is the speech?

Mr. BYRD. Well, now, in the face of that extraordinary compliment, I would say it is just half as long as it would have been otherwise. (Laughter.)

Mr. MCCAIN. No objection.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

INDEPENDENCE DAY

Mr. BYRD. Mr. President, the Senate will shortly recess, hopefully, for the Independence Day holiday. Many Members will return home to meet with their constituents. Some will perform a time-honored ritual and take part in bunting-swagged Independence Day parades, sweating and waving from the backs of convertibles somewhere in the line-up between the pretty festival queens, brightly polished antique cars, flashing fire engines, and, hopefully, ahead of the prancing equestrian groups. It is an American tradition as familiar and as comforting as the fried chicken and the apple pie that everyone will enjoy. Families and friends will gather to watch the fireworks light the evening sky.

This first Independence Day of the new millennium calls to mind an earlier year two centuries ago. The year was 1801. Of course, then, as now, there had been a hotly contested election. Control of government passed from one party to another. It took a vote in the electoral college to decide the Presidency, and the House of Representatives put Thomas Jefferson into the White House instead of Aaron Burr.

Passions ran high and many strong words were uttered. Grudges were nursed, and we feel those same passions today, and with the recent change of party control in the Senate, some angry feelings have been fanned anew. It is, perhaps, a good time as we celebrate the 225th anniversary of our country's independence as a new nation, a new government created under God in as thoughtful and inspired a manner as man can devise, to recall these words from President Jefferson's inaugural address:

> During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and write what they think; but this being now decided by the voice of the Nation, announced according to the rules of the Constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possesses their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things.

The language that came from Jefferson's inaugural speech may be archaic, but the message rings true through the ages and is contemporary still. It reminds us of the great luxury of our liberty—the freedom to say what we think and the ability to stand up for what we believe. It also reminds us of the need, then as now, to remember, protect, and preserve our liberty as our greatest common good. For that, we must stand together as a people united in, as Jefferson says later in his speech, ''. . . The preservation of the general government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad . . . .''

Americans are fortune's children. We are the lucky citizens of a great and novel experiment in government, the golden children of a 225-year-old alchemy that blended the best of all governmental forms into a wholly new metal, a grand representative government that has endured the trials of centuries. We enjoy power coupled with restraint; wealth with generosity; individual opportunity with concern for the less fortunate. Though at times it seems that we are consumed by petty squabbles or diverse interests that