

# MEDICARE AND PRESCRIPTION DRUGS

Mr. GRASSLEY. Mr. President, I rise to speak about the new prescription drug bill, a bill that is going to benefit senior citizens starting June 1 of this year on a temporary basis, and then in a permanent program to benefit senior citizens starting November 15, 2005. If somebody wonders why a temporary program, why a permanent program, when we passed the first changes in Medicare in 38 years, very dramatic changes, by adding prescription drugs to the Medicare bill, we asked the people in the Department of Health and Human Services administering this new law how long it would take to put this new expansion and modernization and strengthening of Medicare into operation. They said they needed about 18 months to 2 years, probably about 6 months longer than it took to get the original Medicare bill in place after its passage in 1965. We didn't want seniors to have to wait 18 months to 2 years to get some money from it, so there is a temporary program of the drug card that will save seniors 25 percent on drugs, and also the subsidy for low-income American seniors and disabled who are under \$12,000-a-year income—a \$600 subsidy for that. So we have a new prescription drug program.

This was a relatively close vote on the floor of the Senate. I think about 10 or 12 votes separated those of us for it and those of us against it. We have had colleagues who have opposed this bill continuing several attacks, and some of those as recently as today, on this bipartisan legislation that was passed into law and signed by the President on December 10, last year.

This law represents years of hard work by Republicans and Democrats alike. We had the chance to fulfill a commitment to our seniors last year. We took that opportunity and we have delivered. I am glad we did. For the first time in the history of Medicare, seniors will have a voluntary prescription drug benefit. For the first time seniors will receive, in addition to a drug benefit, a coordinated disease management program, better coverage of preventive screenings, and protection against catastrophic drug costs.

In regard to the coordinated disease management program, what we are trying to do is zero in on the 5 percent of the seniors who are responsible for 50 percent of the costs from Medicare. By zeroing in on them, we can enhance our quality of life during retirement and we can also save taxpayers some money by keeping people out of the hospital who otherwise might go immediately to the hospital if you were only concerned about getting sick people well. If you are concerned about keeping sick people from getting sicker, or keeping people from getting sick in the first place, it is always cheaper. It is always cheaper to prevent a sickness than it is to cure one. That is why we zero in on that 5 percent with coordinated disease management.

The plan we passed helps to reduce drug costs by harnessing the buying power of 40 million Medicare beneficiaries to negotiate lower prices, and by speeding up the entry of lower cost generic drugs into the market. I remind my colleagues who insinuated that the bill was some fly-by-night idea cooked up in some back room and passed in the dark of night that over 350 outside groups supported this law, and that includes the AARP, the Alzheimer's Association, the National Council On Aging, and 347 other organizations. Do you think that 350 organizations in America that are concerned about the welfare of our seniors and the welfare of the disabled are going to put their reputations on the line for something that was hastily put together and passed at the midnight hour? That sort of statement does not do justice to Members of this body and some who are not even Members of this body now because it started 4 or 5 years ago. People then were working on a prescription drug program for seniors.

This is something that was well thought out, well considered, compromised as necessary under the way we do business in the U.S. Congress, particularly in the Senate to accommodate bipartisanship because nothing gets done in the U.S. Senate that is not bipartisan.

Now I would like to speak directly to some of the criticisms from my colleagues about this new prescription drug program, the strengthening and improvement of Medicare that prescription drugs bring to it.

The first criticism is toward the administration because they are advertising on radio and television to the 44 million seniors and disabled of America. Probably a large percentage of them do not even know this program exists. The advertising is to tell them about the opportunities they will have under this new legislation. It is to alert them to the legislation and encourage them to get information about the legislation.

Once a senior sees this sort of advertisement, then as I am talking to the seniors, I think of them having at least four areas where they can get help, at least four areas in the State of Iowa. One is the 1-800 Medicare number. No. 2 is the AARP and the very good booklets they put out describing this. No. 3 in my State is the Department of Insurance that administers the federally funded SHIPP program where they can get one-on-one counseling from that program. Number 4, they can go to any congressional office and get help.

What is this criticism about the administration advertising on TV? It is exactly what the law requires. Wouldn't you expect the President of the United States and the Secretary of HHS to carry out the law if we in this Congress said take X number of dollars and educate people about this legislation? I am surprised some of my colleagues would oppose providing seniors with timely and accurate and clear in-

formation about changes made in this law.

Do you know why seniors need to know? Because this is not a program Congress and the President is shoving down anybody's throat. There are three words about this program that seniors ought to remember. One is it is voluntary. Second, it is universal; anybody who wants to participate can participate. Third, it is targeted because of the limited resources we have. It is targeted toward heavy subsidy to people with incomes under 150 percent of poverty, and targeted with a heavy subsidy to those who have catastrophic drug costs. But everybody benefits. On average, seniors are going to benefit to the tune of 50-percent reduction in drug costs.

In January of this year several Democratic Members of Congress accused the administration of robbing the Medicare Program. Those are their words. Then they asked the General Accounting Office to investigate whether the ads constitute a misuse of Federal funds.

I use the General Accounting Office quite often to do investigations for me, so I don't have any problems with anybody asking the General Accounting Office to investigate anything. That is their job. They do a good job of it. But the General Accounting Office confirmed for these Democratic Members of Congress that the law mandates the Department of Health and Human Services to educate seniors, and that the ads are not political, as they were accused of being political. The General Accounting Office report makes clear that the Department has a responsibility, in fact, to inform seniors and to make sure they understand the new benefits and how they might help the seniors and disabled of America.

What information is currently available to seniors may be coming from unscrupulous sources as well, because in the February 17, 2004, New York Times there was a feature story about people going door-to-door offering what they called Medicare-approved cards though none at that point, nor maybe even at this point, have, in fact, been approved. And enrollment doesn't even begin until May. Don't you think, for consumer protection, people ought to know something about this legislation?

Again, in regard to scam artists, one Federal official said these artists are fraudulently impersonating or misrepresenting Medicare by telephone and by door-to-door visits to beneficiaries' homes. In some cases, a caller obtained personal information about beneficiaries before even visiting their homes.

These ads are not propaganda as confirmed by the GAO. They fill an important void that not only educates American seniors but will also prevent criminals and scammers from taking advantage of and potentially harming America's seniors and disabled.

Educating our seniors on the new Medicare Drug Modernization Act is

not only required by law, it is the right thing to do.

If I could refer to another criticism of this legislation or maybe something that happened since the legislation, these accusations we have heard, that the so-called true cost of the Medicare bill was somehow hidden from Congress before the final vote, is simply political election year hyperbole.

The opponents of the drug benefit are making this claim because the final cost estimate from the Center for Medicare Services, Office of the Actuary, was not completed before the vote took place.

Let us be very clear. The cost estimate was not withheld from Congress because there was not any final cost estimate from the Center for Medicare Services to withhold in the first place. Their cost estimate wasn't even completed until December 23. That was 2 weeks after the President signed the bill, and a month after Congress passed it.

So let us again be clear. We did not have from the Center for Medicare Services the official cost estimate on the Medicare bill before the vote because the bill had to be passed before they were going to come to a final figure. But we did have what Congress uses and the only figure we use in official estimates of anything. We had Medicare bill estimates from the Congressional Budget Office before we voted. And that is what Congress goes by.

Even if we had had the Center for Medicare Services with some figure out there, that may have meant something to some people but there could not have been a point of order made on some estimate of the Center for Medicare Services because the only point of order is if it is contrary to the Budget Act. The Congressional Budget Office makes that determination.

Around Congress, the Congressional Budget Office is God. Even if they are wrong, they are still God. They are the basis for determining whether a supermajority has to be required to move to legislation. If you violate the Budget Act and exceed the estimate of the cost, then you have to have a supermajority. We only go by the Congressional Budget Office.

I happen to believe, as some people have criticized, maybe some Government official was muzzled not to communicate with Congress on something they believed. I happen to believe that no Government official should ever be muzzled from providing critical information to Congress. If that happened last year, that was wrong.

These accusations about whether the information was withheld have raised questions as to whether Congress had access to a valid and thorough cost estimate for the prescription drug bill before the final vote. It should also be made clear that, while the cost analysis by the Office of the Actuary is perhaps helpful, it is not the cost analysis that Congress relies on, and it is not

the one that Members make points of order against because we rely exclusively upon cost estimates of the Congressional Budget Office. It is CBO's cost estimate that we use to determine whether legislation is within authorized budget limits. For Congress, if there is a true cost estimate, it happens to be from the Congressional Budget Office. We had a true cost estimate from them. It is the only one that matters.

When Congress approved a \$400 billion reserve fund to create a Medicare prescription drug program, this meant \$400 billion according to the Congressional Budget Office, not \$400 billion according to the Center for Medicare Services.

With all due respect to the dedicated staff who work at the Center for Medicare Services, Office of the Actuary, their cost estimates are irrelevant to our process of legislating, except to the extent to which a Member might want to have that as a factor. But it surely isn't going to govern what a majority of this body does.

The Congressional Budget Office worked closely with the conferees, and the staff, on the prescription drug bill to ensure that a full analysis of projected costs was completed. The conferees and staff regularly and constantly consulted with the Congressional Budget Office throughout the development of the Senate bill, and also through the 3 months of arriving at a conference committee compromise between the House and the Senate. The Congressional Budget Office had to work nearly around the clock and on weekends for a month to do a complete, thorough, and rigorous cost analysis on the prescription drug bill. That official cost estimate was available to every Member of Congress before the measure was presented to the House or the Senate for a vote.

It is also pretty disingenuous for the opponents of the Medicare bill on the other side of the aisle to suggest that the pricetag for the Medicare bill causes them concern. The fact is, they have supported proposals that cost hundreds of billions of dollars more. Don't complain to me about a bill costing \$359 billion, or maybe it was CMS coming up with a larger number when in the first place those individuals are supporting bills that cost \$600 billion or \$800 billion—or in the other body.

Last year, the Democratic proposal over there would have cost nearly \$1 trillion, \$605 billion more than our bill. In fact, as to the Senate Democratic proposal in 2002, when we had the debate on the tripartisan bill, when we had the debate on bills on that side of the aisle, we didn't pass them. But we had a long debate that summer. That Senate Democrat proposal was \$200 billion more than the bill we enacted into law this year. Further, there were more than 50 amendments offered on the floor of the Senate during the debate on this Senate bill that would have increased the cost of the bill by

tens of billions of dollars. Then people are complaining about \$395 billion, or people are complaining about the cost estimate by the Center for Medicare Services, which is higher.

The bottom line is there should be no doubt in anyone's mind that we had a true cost estimate for the prescription drug bill last year, and everyone had access to it before the vote. That source was our congressional God, the Congressional Budget Office.

The impact on the Medicare trust fund is something also that needs to be addressed. I will speak about that a little bit. The trustees' report revealed yesterday the Medicare trust fund insolvency date has been moved up 7 years, to the year 2019. Most of the change is due to higher health care costs, changes in the economy, better data analysis and projection, and improved data on the health of beneficiaries.

In the Medicare bill we just passed, we put money in there for enhanced quality care, particularly in rural America. Thirty States are below the national average of reimbursement. We gathered together in this Senate to pass overwhelmingly a bill to give equal treatment to rural areas that we give to urban areas on reimbursement for doctors and hospitals. That is responsible for 2 of the 7 years that Medicare is closer to insolvency than last year based upon the trustees' estimate.

We all have to admit we have concern about the future solvency of Medicare. We have to stay focused on improving and protecting Medicare for future generations. We have to do this while not jeopardizing access to care.

Another topic discussed this morning was the prohibition on negotiating. There is a paragraph in the bill that says the Federal Government cannot be involved in the negotiation for drugs. That was put there for a specific purpose. We want to keep the Federal bureaucrat out of the medicine cabinet. We learned our lesson from the VA. I will give a personal experience I had in the last month. I have been holding several town meetings since the first of the year in my State to help seniors understand this prescription drug program they have to make some choices on. Since the first of the year, I have held meetings in 32 different counties. In Des Moines, IA, the first question I had after my presentation was from a woman who said her doctor said she ought to have such and such a pill, but the Veterans' Administration was not going to pay for it. Why? Because it probably cost more than some other drug VA thinks is just as good. But the doctor does not think it is just as good.

We could have the same thing happening if the Federal Government is going to negotiate for all seniors. We do not need to have that. Our bill provides every therapeutic class have one of a kind available of every drug that is known to meet that need. We want the doctor and the patient to have access.

We want to keep the Federal Government out of the senior citizen's medicine cabinet.

Let me go into detail why we have it this way. First of all, the accusation is this legislation prohibits negotiation with drug companies. We have learned from 40 years of Federal employee health benefit plan about plans negotiating with drug companies and other health care providers to bring down costs. It has worked very well. We have different plans seniors can join to decide what kind of service they want. Then the plans are going to negotiate the drugs down. It has worked before. It can work now. It will work now. In fact, this is the only thing in the bill the Congressional Budget Office said was going to bring down the costs of the program. If the Government did it directly, it was going to cost more. That is what the Congressional Budget Office said.

We are going to have negotiation with drug companies. This accusation could not be further from the truth. The truth is the Medicare prescription drug plans will be negotiating directly with drug makers. These negotiations are at the heart of the new Medicare drug benefit. The absurd claim the Government will not be negotiating with drug makers comes from the non-interference clause in the Medicare bill. This clause did not prohibit Medicare from negotiating with drug makers. It prohibits the Center for Medicare Services from interfering in those negotiations.

Let me be clear. The noninterference clause is at the heart of the bill's structure for delivering prescription drug coverage to seniors and disabled. This clause ensures those savings will result from market competition rather than through price fixing by the Center for Medicare Services bureaucracy.

This same noninterference clause was in the Daschle-Kennedy-Rockefeller bill and the Gephardt-Dingell-Stark bill in 2000. It is almost identical to the noninterference clause in the Gephardt-Dingell-Stark bill and the Medicare Modernization Act which was signed into law.

The Congressional Budget Office has concluded the market-based approach in the new Medicare bill will result in higher prescription drug costs management factor for Medicare than any other approach being considered last year by the Congress.

Here is what the Congressional Budget Office said about eliminating the noninterference clause in a letter earlier this year:

The Secretary would not be able to negotiate prices that further reduce federal spending to a significant degree.

The Congressional Budget Office said in the letter:

CBO estimates substantial savings will be obtained by private plans.

Let me be clear. Direct government negotiation is not the answer. We ran into that with the VA, the VA bureaucrats getting in the medicine cabinet

of the veterans of America. The Government does not negotiate drug prices. The Government sets prices. The bill's entire approach is to get seniors the best deal through vigorous market competition, not through price controls.

Even the Washington Post editorial page wrote on February 17:

Governments are notoriously bad at setting prices, and the U.S. government is notoriously bad at setting prices in the medical realm.

Price controls won't work, whether we are talking about all drugs or just so-called single-source drugs, as one of our colleagues from Oregon has proposed.

The Congressional Budget Office said such a proposal would "generate no savings or even increase Federal costs."

It would seem, then, the devil is in the details.

We did not rely on the Center for Medicare Services for price fixing but instead created a new drug benefit that relies on strong market competition and creates consumer choices. This approach has been analyzed by experts as getting the best deal for seniors on lower drug prices.

To sum up, it is an election year and plenty of people are using Medicare to play politics. The new Medicare law is a bipartisan proposal that resulted from years of work by both Republicans and Democrats. The new law creates a volunteer benefit that is targeted to low-income seniors and those with high drug costs. The new law lowers drug costs by speeding the delivery of new generic drugs to the marketplace, lowering costs to all Americans, not just those on Medicare. The new law also revitalizes the rural health care safety net with the biggest package of rural payment improvements in the history of the program. The AARP has made that clear when providing its strong endorsement that the Medicare bill "helps millions of older Americans and their families" and is "an important milestone in the Nation's commitment to strengthen and expand health security for its citizens. . . ."

I yield the floor.

#### JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 a.m. having arrived, the Senate will resume consideration of S. 1637 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1637) to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Pending:

Harkin amendment No. 2881, to amend the Fair Labor Standards Act of 1938 to clarify provisions relating to overtime pay.

McConnell motion to recommit the bill to the Committee on Finance, with instructions to report back forthwith with the following amendment:

McConnell (for Frist) amendment No. 2886, in the nature of a substitute.

Grassley amendment No. 2898 (to the instructions (amendment No. 2886) of the motion to recommit (listed above)), relative to the effective date following enactment of the Act.

Grassley amendment No. 2899 (to amendment No. 2898), relative to the effective date following enactment of the Act.

The PRESIDING OFFICER. Under the previous order, the time until 11:30 a.m. shall be equally divided between the two leaders or their designees.

Mr. GRASSLEY. How much time do I have?

The PRESIDING OFFICER. Nineteen and a half minutes.

AMENDMENT NO. 2899, WITHDRAWN

Mr. GRASSLEY. Mr. President, as the first order of business, I withdraw the pending amendment No. 2899.

The PRESIDING OFFICER. The Senator has that right.

AMENDMENT NO. 2888 TO AMENDMENT NO. 2898

Mr. GRASSLEY. On behalf of Senator HUTCHISON, I call up amendment No. 2888.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mrs. HUTCHISON, for herself, Mr. FRIST, Ms. CANTWELL, and Mr. ALEXANDER, proposes an amendment numbered 2888 to amendment No. 2898.

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

Mr. REID. Reserving the right to object, Mr. President, will the distinguished Senator tell us the subject matter of the proposed amendment?

Mr. GRASSLEY. I ask the Senator from Texas to answer the question of the Senator from Nevada, if she would, please.

Mrs. HUTCHISON. Mr. President, I thank the chairman for allowing me to offer this amendment. It deals with sales tax equity for States.

Mr. REID. I withdraw my reservation of objection.

The amendment is as follows:

(Purpose: To allow a deduction for State and local sales taxes in lieu of State and local income taxes)

At the appropriate place, insert the following:

#### SEC. \_\_\_\_ DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

"(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

"(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

"(I) without regard to the reference to State and local income taxes,