

# MEDICARE PRESCRIPTION DRUG PRICE NEGOTIATION ACT OF 2007—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 3, which the clerk will report.

The bill clerk read as follows:

Motion to proceed to calendar No. 118, S. 3, a bill to amend part D of title XVIII of the Social Security Act to provide for fair prescription drug prices for Medicare beneficiaries.

## CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 118, S. 3, Prescription Drugs.

Dick Durbin, Amy Klobuchar, Ken Salazar, Edward Kennedy, Mark Pryor, Blanche L. Lincoln, Daniel K. Inouye, Byron L. Dorgan, Chuck Schumer, Max Baucus, Kent Conrad, Jeff Bingaman, John F. Kerry, Ron Wyden, Debbie Stabenow, Jay Rockefeller, Maria Cantwell, Harry Reid.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 3, a bill to amend part D of title XVIII of the Social Security Act to provide for fair prescription drug prices for Medicare beneficiaries, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

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

The yeas and nays resulted—yeas 55, nays 42, as follows:

[Rollcall Vote No. 132 Leg.]

## YEAS—55

Akaka	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Hagel	Obama
Biden	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Kennedy	Rockefeller
Brown	Kerry	Salazar
Byrd	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Smith
Carper	Lautenberg	Snowe
Casey	Leahy	Specter
Clinton	Levin	Stabenow
Coleman	Lieberman	Tester
Collins	Lincoln	Webb
Conrad	McCaskill	Whitehouse
Dodd	Menendez	Wyden
Dorgan	Mikulski	
Durbin	Murray	

## NAYS—42

Alexander	Dole	Martinez
Allard	Domenici	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Reid
Bunning	Graham	Roberts
Burr	Grassley	Sessions
Chambliss	Gregg	Shelby
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Corker	Inhofe	Thomas
Cornyn	Isakson	Thune
Craig	Kyl	Vitter
Crapo	Lott	Voinovich
DeMint	Lugar	Warner

## NOT VOTING—3

Brownback	Johnson	Mccain
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The ACTING PRESIDENT pro tempore. On this vote, the yeas are 55, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. Mr. President, I enter a motion to reconsider that vote.

The ACTING PRESIDENT pro tempore. The motion is entered.

Mr. OBAMA. Mr. President, I am extremely disappointed by the Senate's failure to consider a bill that would have placed the needs of seniors ahead of the profits of the health industry. Once again, a minority of the Senate has allowed the power and the profits of the pharmaceutical industry to trump good policy and the will of the American people.

We have a major crisis in this Nation, and that is the rising cost of health care. Over the last century, the Nation has witnessed tremendous advances in medical science and technology, and we now have treatments and cures for diseases and conditions that were at one time surely fatal.

Yet we are paying the price for this success. Health care, particularly the cost of drugs, is becoming increasingly unaffordable. Over the last decade the cost of drugs has quintupled, now totaling almost \$200 billion. In 2005, the drug companies' profit was 16 percent of their revenues, compared to only 6 percent for all Fortune 500 firms. The total profit of the top 7 U.S. based drug companies was \$34 billion in 2004, and, if you add it up, their CEOs were paid \$91 million that same year. Clearly, the new drug benefit in Medicare has been a tremendous boon for the drug companies, adding to these extreme profits.

The growth in the cost of drugs has slowed in recent years, in part because of greater use of generic drugs. But given the pricetag, and the financial challenges of our health care system, we can—and must—take additional steps to curb how much we are spending on drugs.

Allowing the Federal Government to negotiate for lower drug prices in the Medicare Program would have been an important step forward in this regard. When you look at the prices the Federal Government has negotiated for our veterans and military men and women, it is clear that the government can—and should—use its leverage to lower prices for our seniors as well.

Drug negotiation is the smart thing to do and the right thing to do, and it is unconscionable that we were not able to take up this bill today.

Mr. WHITEHOUSE. Mr. President, I speak today in outrage that my colleagues on the other side of the aisle have chosen to block S. 3, the Medicare Prescription Drug Price Negotiation Act, from coming to the floor.

You meet a lot of people when you campaign for a seat in this esteemed body. You meet people of all ages, from all socioeconomic levels, from all ethnic and cultural backgrounds, liberal and conservative, rural and urban, healthy and ailing—you meet them all. These individuals bring personal voices to national issues. They educate us with their stories, and they trust us to be stewards of their experiences. I am sure my fellow freshman Senators will agree with me when I say that listening to these stories was the best part of running for U.S. Senate.

Sometimes these stories are uplifting tales about the triumphs of government: SCHIP providing health insurance to at-risk children, AmeriCorps helping young people serve communities throughout the Nation, The Family and Medical Leave Act allowing parents, spouses, and children the time to care for loved ones. But sometimes these stories are just the opposite—depressing, discouraging, disheartening tales of how the government has failed in its duty to support and safeguard our most vulnerable citizens.

I have hosted community dinners throughout my State. Some of the very saddest stories that Rhode Islanders shared with me were about their experiences with the Part D drug benefit. I would like to share with you a particularly touching story from Travis, who came to one of my community dinners in Woonsocket. Travis told me of his great-grandmother, a woman over 90 who was living independently, in a second or third story walk-up apartment building in Woonsocket. She, like other women her age, had signed up for a Part D plan, and was taking a number of prescription medications. One day, Travis's great-grandmother arrived at the pharmacy, only to be told that she was in the donut hole, that she would now be responsible for almost the entirety of her drug bill. His great-grandmother called Travis in despair. She would no longer be able to afford her apartment, or her independent lifestyle. She was forced to choose between her spirit of self-reliance and her health.

This is a tragedy. It is a human tragedy because no human being should be forced to choose between her dignity and her life, and it is a moral tragedy because this is a totally unnecessary choice. The Congressional Budget Office concludes that the privatization of the drug benefit—the choice not to simply add the drug program onto the established Medicare benefit—costs almost \$5 billion a year. The Center for

Economic and Policy Research reveals that the combined cost of privatization and failure to negotiate prices is more than \$30 billion a year. I do not know about you, Mr. President, but I cannot look Travis in the eye and tell him that the reason his great-grandmother cannot afford her apartment is that the government needed to give it to pharmaceutical manufacturers, an industry that, in 2004, was three times more profitable than the median for all Fortune 500 companies—an industry that from 1995 to 2002 was the most profitable industry in the entire country.

I was not in the Senate when the drug benefit was created. I was not privy to the debates that went on here regarding the complexities and particulars of the bill. But I have a very hard time understanding how, with a successful Federal drug benefit model in place at the VA, this body created a new program that pays, on average, 70 percent more for drugs than the existing VA program, according to the Center for Economic and Policy Research. I understand that there are fundamental differences between the Veterans population and the senior population, between the Veterans system and the Medicare system, but 70 percent? This seems, to me, like a de-evolution of the policy making process. We are creating new programs that function less effectively and less efficiently than the ones we already had in place.

The real question is why. Have we gained something valuable for this extra cost? Can we justify the expensive and byzantine architecture of this program based on the promotion of other values? Some of my colleagues argue that the Part D drug benefit maximizes choice, and that choice is of fundamental importance in health insurance markets. Indeed, the bill succeeds here. In 2006, there were nearly 1,500 prescription drug plans offered throughout the Nation. Beneficiaries in 46 States had over 40 plans to choose from. This year, seniors everywhere in the country can choose between at least 45 plans. In my small state of Rhode Island alone, there will be 51 plans available.

But study after study, survey after survey, has shown us that, beyond a reasonable point, more plans do not add up to beneficiary or provider satisfaction. In fact, 73 percent of seniors think the Medicare prescription drug benefit is “too complicated.” Sixty percent agree with the statement, “Medicare should select a handful of plans that meet certain standards, so seniors have an easier time choosing.” Thirty-three percent think it is “somewhat difficult” or “very difficult” to enroll in a plan. In addition, 91 percent of pharmacists and 92 percent of doctors think the benefit is too complicated. It is time to admit that a plethora of plans does not add value to the program; it adds bewilderment and burden.

And do we have a system in place to deal with the confusion we have

caused? No. We have 1-800-Medicare, which is adequate at its best, and inaccurate, unreliable, or altogether unreachable at its worst. But we need not rely on anecdotal evidence. GAO itself placed 500 calls to the Medicare help line in the middle of last year to make its own determination about the usefulness of the feature. Eighteen percent of calls received inaccurate responses, 8 percent of the responses were inappropriate given the question posed, 5 percent of the calls ended in disconnection, and 3 percent of responses were incomplete. In total, one-third of calls placed by GAO in this study were handled in an unacceptable fashion. Our mechanism to demystify the drug benefit for the average consumer is furthering the confusion of one-third of callers. This is a catastrophe.

A second value that some of my colleagues argue excuses the convoluted and costly nature of the drug benefit, is expanded coverage. More seniors have drug coverage now than they did before January 2006. No one disputes this. But insurance is not insurance unless it is there for you when you really need it. Our sicker seniors are reporting far more problems getting their prescription drugs than our healthy seniors are. Over 40 percent of seniors who describe themselves as in “fair” or “poor” health report problems filling a prescription under their Part D coverage, while only 12 percent of seniors in “excellent” or “very good” health report a problem. If Part D is failing to help the sick, it is failing to meet the basic definition of insurance.

Do I mean to say that providing some coverage is worse than being uninsured? No. But that was not the option on the table in 2003. We had the option to provide everyone with excellent coverage. We had the option to care equally and comprehensively for every elderly person in this country, healthy, sick, or in between. We did not. Instead, we chose to write checks to the pharmaceutical industry, we chose to write checks to private insurers, and we left our seniors to write their own.

What, then, can we do to fix this broken benefit? There is a lot we can do, and today is the first step. Today, we can allow the Secretary of Health and Human Services to negotiate directly with drug companies to lower prices for consumers. We can require the collection of data from prescription drug plans, so that our experts at CRS, at CBO, at GAO, or at MedPAC can better understand the operations of this program. We can require CBO to study whether or not market competition is truly reducing prices, as was the intent of privatization. We can increase transparency for our seniors, by making the prices of covered drugs available to the public on the CMS website. We can pass S. 3—the only thing standing in our way is Republican obstructionism.

I thank the majority leader and Senator BAUCUS for their commitment to our Nation's seniors, and I hope that

my colleagues on the other side of the aisle will drop their obstructionist tactics and let us get to work on this bill. As important as it is, it is only a first step to fixing our Medicare Part D program. I hope we can soon take that step and then move on to the broader issues, for I believe there is much, much more to be done.

Mr. SPECTER. Mr. President, I voted for cloture to cut off debate on the motion to proceed because I think that the Senate should proceed to give full consideration to the proposed legislation which would authorize the Secretary of Health and Human Services to negotiate with the pharmaceutical companies under Medicare Part D coverage. In the past, I have favored such proposals because of the argument that the Secretary's bargaining power would result in lower negotiated prices.

In light of the conclusion by the Congressional Budget Office in a letter dated April 10, 2007 from Director Peter R. Orszag to Chairman MAX BAUCUS that the new authority to the Secretary “would have a negligible effect on federal spending because we anticipate that under the bill the Secretary would lack the leverage to negotiate prices across the broad range of covered Part D drugs that are more favorable than those obtained by PDPs [prescription drug plans] under current law,” I have reviewed the negotiation process under existing laws.

The underlying facts are that the pharmacy benefit managers who negotiate prices for the prescription drug plans represent substantially more people than the Secretary would under Part D. For example, Medco represents 62 million people, Caremark represents 80 million and Wellpoint represents 30 million, contrasted to the 29 million people covered under Medicare Part D. Accordingly, it may be that the pharmacy benefit managers have even greater leverage than the Secretary would if the Secretary were authorized to negotiate prices. That is not certain because the negotiations between the pharmacy benefit managers and the pharmaceutical companies are conducted on a confidential basis, so that it is not known with certainty that the lowest prices are obtained or that the cost savings are all passed on to the prescription drug plans.

The latest Congressional Budget Office estimate for Part D costs is \$388 billion below the original estimates, for the 10-year period from fiscal year 2007 to fiscal year 2016. That suggests the current system is working well.

Extended Senate floor deliberation would provide an opportunity to debate these issues and obtain greater detail on the facts.

One of the additional arguments favoring giving the Secretary power to negotiate was the analogy to the savings achieved through the negotiating power of the Department of Veterans Affairs. In analyzing the VA's bargaining power, it must be noted that the Veterans Department represents 4.4

million veterans, a much smaller number than represented by the pharmacy benefit managers. It is also important to note that among brand-name drugs listed on the 300 most popular drugs for seniors, only 42 percent are available to the VA plan because the pharmaceutical companies declined to provide some of the drugs because of their unwillingness to meet the price determined unilaterally by the VA. On the other hand, it is estimated that PDPs under Medicare Part D have access to 97 percent of the brandname drugs among the most favored 300 drugs. The Medicare Part D beneficiaries have an opportunity to select the prescription drug plans that best meet their prescription drug needs, with the opportunity to select a new plan on an annual basis.

Notwithstanding these factors, there may be answers and compelling arguments in support of the proposed legislation to give the Secretary negotiating authorities. A full debate by the Senate on these important issues would pose the opportunity to resolve these complicated questions and come to a reasoned judgment. The Senate will doubtless revisit this issue in the future. In the interim, I intend to inquire further and consider these issues in greater depth to determine what policies would best serve the interests of the beneficiaries of Medicare Part D.

#### COURT SECURITY IMPROVEMENT ACT OF 2007—MOTION TO PROCEED—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided between the Senator from Vermont, Mr. LEAHY, and the Senator from Pennsylvania, Mr. SPECTER, prior to a vote on a motion to proceed to S. 378.

The Senator from Vermont.

Mr. LEAHY. Mr. President, this week we join in mourning the tragic killings at Virginia Tech on Monday. The innocent lives of students and professors are a terrible loss for their families and friends and for their community. It affects us all. We honor them and mourn their loss. I expect that in the days ahead, as we learn more about what happened, how it happened and perhaps why it happened, we will have debate and discussion and perhaps legislative proposals to consider.

For example, I know that Senator BOXER has introduced a School Safety Enhancement Act, S. 677, to allow matching grants for school security, including surveillance equipment, hotlines and tip lines and other measures.

We may need to further enhance the COPS in Schools Program begun by President Clinton. I look forward to working with Regina Schofield, the Assistant Attorney General for the Office of Justice Programs at the Department of Justice, Domingo Herraiz, the Director of the Bureau of Justice Assistance, and others to make improvements that

can increase the safety and security of our children and grandchildren in schools and colleges.

Today, we may finally make progress on security in another important setting by turning to the Court Security Improvement Act of 2007, S. 378. Frankly, this legislation should have been enacted last year but was not. It should not be a struggle to enact these measures to improve court security. We are fortunate that we have not suffered another violent assault on judges and their families.

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

Mr. SPECTER. Mr. President, I concur with the statements by the chairman. We introduced court security during the 109th Congress after we had the brutal murders of the family of a Federal judge in Chicago. We have continuing problems. Rat poison was mailed to each of the nine Justices on the Supreme Court. There is no doubt that there is an urgent need for additional court security, in light of the attacks on the judges. The independence of our judiciary is fundamental in our society for the rule of law.

This bill passed by unanimous consent last December, but, unfortunately, it was not taken up by the House. We ought to consider it expeditiously, and I urge my colleagues to vote to invoke cloture.

#### CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 107, S. 378, the Court Security Improvement Bill.

Harry Reid, Jeff Bingaman, Chuck Schumer, Jack Reed, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Dianne Feinstein, Daniel K. Inouye, Daniel K. Akaka, Jim Webb, Dick Durbin, Jay Rockefeller, S. Whitehouse, Barbara A. Mikulski, Ken Salazar, Edward M. Kennedy, Pat Leahy.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to consideration of S. 378, a bill to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHN-SON) and the Senator from West Vir-

ginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

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

The yeas and nays resulted—yeas 93, nays 3, as follows:

[Rollcall Vote No. 133 Leg.]

#### YEAS—93

Akaka	Domenici	Menendez
Alexander	Dorgan	Mikulski
Allard	Durbin	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Graham	Pryor
Bond	Grassley	Reed
Boxer	Hagel	Reid
Brown	Harkin	Roberts
Bunning	Hatch	Salazar
Burr	Hutchison	Sanders
Byrd	Inouye	Schumer
Cantwell	Isakson	Sessions
Cardin	Kennedy	Shelby
Carper	Kerry	Smith
Casey	Klobuchar	Snowe
Chambliss	Kohl	Specter
Clinton	Kyl	Stabenow
Cochran	Landrieu	Stevens
Coleman	Lautenberg	Sununu
Collins	Leahy	Tester
Conrad	Levin	Thomas
Corker	Lieberman	Thune
Cornyn	Lincoln	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	Webb
Dodd	McCaskill	Whitehouse
Dole	McConnell	Wyden

#### NAYS—3

Coburn	Gregg	Inhofe
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#### NOT VOTING—4

Brownback	McCain
Johnson	Rockefeller

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 93, the nays are 3. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, the motion to proceed has just passed, 93 to 3. We will bring before the Senate in fairly short order the Court Security Improvement Act of 2007. I rise today to speak in support of that act. It is a bill that is as simple as it is important.

At a time when judges are the subject of sometimes vitriolic criticism, when judges and their families have been made the targets of acts of violence and murder, when the independence of the judiciary must be maintained in a climate of violence, we should take these important steps to improve the safety of our judges and their families. This bill will do that by requiring the U.S. Marshals Service—which has oversight over the safety of the judicial branch—to consult with the Judicial Conference to determine security requirements of the judicial branch, and it authorizes \$20 million for the Marshals Service to protect the judiciary further.