

and create jobs, an additional \$135 billion penalty.

It is important to remember this so-called pay-or-play mandate is essentially a tax on workers and take-home pay. Most of the increased costs of this new mandate on employers will simply be shifted to workers in the form of lower wages. Employers may also respond by cutting jobs, particularly for low-income workers, or deciding to outsource more jobs or relying more on part-time workers. You don't have to take my word for it. Let me cite Ezekiel Emanuel. That name may sound familiar because he is the brother of chief of staff Rahm Emanuel. He writes with Victor Fuchs in the *Journal of the American Medical Association*:

It is essential for Americans to understand that while it looks like they can have a free lunch—having someone else pay for health insurance—they cannot. The money comes from their own pockets.

Harvard professor Kate Baicker has said:

Workers who would lose their jobs are disproportionately likely to be high school dropouts, minority, and female. . . . Thus, among the uninsured, those with the least education face the highest risk of losing their jobs under employer mandates.

We also know there are members of the administration—the Cabinet—who are, I guess as every Cabinet does, cheerleading for the proposals of the administration which they serve. Certainly that is the case with Secretary Sebelius. The Secretary of Health and Human Services has made the claim on the agency Web site, among other places, that health care reform would be good for job creation. But I suggest that the report of Secretary Sebelius is riddled with errors and false assumptions.

Independent, nonpartisan studies have shown that these proposals will actually raise premiums on people who already have insurance. So when the President says: You can keep what you have if you like it—well, you are not going to be able to keep it at the same price. You are going to end up paying a lot more for it.

The Congressional Budget Office has found these “reforms” will also increase taxes on the middle class, as well as hurt jobs, as I have explained, and small businesses. Of course, in order to pay for it, the Senate Finance Committee bill—which I presume will be included in the Reid bill, but we have not seen it yet—will actually cut Medicare benefits for seniors in order to pay for it.

I suggest it is not helpful to the cause of health care reform to release flawed reports filled with false promises. I hope the Obama administration and all of our colleagues in the Senate will try to work together on a step-by-step approach to try to address the problems that make health insurance unaffordable and to cover people who currently are not covered.

I think the American people would be better served if Secretary Sebelius di-

rected her attention instead to addressing shortages and delays in the distribution of the H1N1 vaccine. In Texas, we were promised 3.4 million doses of vaccine by October, and we have been delivered about half of that, 1.7 million, even though the peak of the swine flu, H1N1 season is upon us in the next couple of weeks.

I am afraid it doesn't build a lot of confidence when this government-run health care plan or program delivers about 50 percent of what it promises. It is not a confidence builder.

Going back to the health care plans, let me just say that every independent analysis of the health care bills we have seen so far, whether they are Speaker PELOSI's bill or the one that came out of Senator DODD's committee or Senator BAUCUS's committee, have found that costs will actually increase, not go down, for small businesses.

The Pelosi health care bill released yesterday increases taxes on small businesses. Specifically, it imposes a 5.4 percent surtax on individuals with incomes over \$500,000 and families with income greater than \$1 million. One may say these are rich people; they can afford it. But half of the people who will be captured are small businesses that are not big corporations. They are individuals, they are sole proprietors, they are partnerships, they are subchapter S corporations where the principal employer receives their income as a flowthrough and paid on a personal income tax return.

These kinds of additional fees and taxes on small businesses and job creators have the opposite result of what I thought we were about, which is to encourage job creation and retention.

All told, just the surtax in the Pelosi bill would cause small businesses to face the highest marginal tax rate in 25 years. And, of course, it also imposes the pay-or-play mandate on employers that I talked about earlier.

Former Congressional Budget Office Director Peter Orszag, who now serves in the Cabinet at the Office of Management and Budget, has indicated a pay-or-play mandate will hurt workers' wages. He said:

The economic evidence is overwhelming, the theory is overwhelming, that when your firm pays for your health insurance you actually pay—

The worker—

through take-home pay. The firm is not giving it to you for free. Your other wages or what [you would have earned otherwise] are reduced as a result. I don't think most workers realize that.

I agree with him when he said that workers actually end up paying a higher cost. It is not absorbed by the employer, but it also ultimately results in reduced wages.

The Congressional Budget Office has said:

[I]f employers who did not offer insurance were required to pay a fee—

Here again talking about the pay-or-play mandate in the Pelosi bill and Senate bill—

employees' wages and other forms of compensation would generally decline by the amount of that fee from what they would otherwise have been—just as wages are generally lower (all else being equal) to offset employers' contributions toward health insurance.

Again, I end with the question that I asked earlier: Is what we are doing in Washington on health care or in a variety of other areas actually killing jobs rather than encouraging and facilitating jobs? I think, unfortunately, in the examples I mentioned, we are considering job-killing policies. The American people are worried about it. That is why they want to be able to read the bills.

I hope we will be able to read the Reid bill soon—the bill the majority leader has written behind closed doors—because the American people are entitled to see how it will impact them; whether they will pay higher premiums; whether they will pay more in taxes, even if they are middle-class workers; and whether, if they are a senior, their Medicare benefits are going to be cut, as I fear they will be.

The Gallup Poll says the American people are understanding the consequences of this debate well. It says Americans have become more likely to say the cost their family pays for health care will get worse, not better, if these proposals pass; 76 percent say their costs would get worse or not change, only 22 percent believe their costs would be reduced by these proposals.

I think this is another reason why we need to slow down, be careful, and let's read the bill. Let's show the bill to the American people, get input from our constituents so we don't engage in job-killing policies, either intentionally or inadvertently, at a time when we ought to be very gravely concerned about growing unemployment and more and more people losing their homes due to foreclosures. Certainly, we should not be doing anything which would make the matter worse rather than better.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

#### HEALTH CARE REFORM

Mr. LEMIEUX. Mr. President, I rise to talk about issues very similar to those of my friend from Texas and echo his concerns about the current proposal for health care. We found out yesterday the proposal that was put forth by the Speaker of the House is nearly 2,000 pages. It is a \$1 trillion proposal. That is \$½ billion per page. It is sort of staggering to think about.

When I came to Washington, just a couple months ago, appointed by my Governor—Charlie Crist of Florida—it was my cause to come and be a problem solver, to help work on issues that both Republicans and Democrats could work on together. I learned from Gov. Charlie Crist that there are lots of issues we can disagree about principally, but there are plenty of issues

we can work on together and do things that are right for the people. That may not be in vogue in Washington, DC. It may not be in vogue to try to find issues—the low-hanging fruit—we can work on together to solve problems, but it is something I wish to pursue.

Additionally, when I came to Washington, I recognized—and I spoke about this last week in my first address in this August body—there are lots of times most folks in Congress would like to discuss grand new plans, grand new ideas for the future of this country. That is exciting to talk about—a new program or a new administration, more government employees working on a new program, perhaps, in some new government building. But I don't have a passion necessarily for following up on those great ideas for future plans. I have a passion for helping us do better what we already do. Oftentimes, in government, that is not the case. We spend billions, trillions of dollars a year on existing government programs, but many times we don't do it effectively and efficiently. If we spent as much time caring about the money we are spending now, as opposed to the money some in this Chamber want to spend, I suspect we could find plenty of money to either return to the people or to find money for these new programs.

Today, I wish to talk about just such an idea, an idea to recover some of the waste, fraud, and abuse that is currently happening in our system of government. We know in our current provision of health care—in Medicare and Medicaid—there is tremendous waste, fraud, and abuse. Estimates are that some \$60 billion to a staggering \$226 billion a year to waste, fraud, and abuse.

This health care proposal that was put forth by Speaker PELOSI and that we are discussing in the Senate, just for comparison purposes, is \$1 trillion over 10 years. I think anybody who has watched the government knows that if you estimate something is going to cost \$1 trillion, it is going to be a whole lot more than that when it actually gets implemented because we don't do much in government that comes in under our estimates. Most times, almost every time, it is a lot more than is estimated. But let us compare these numbers, \$1 trillion over 10 years. That is about \$100 billion a year. We may be wasting \$226 billion a year.

If we captured just half of that, we might be able to pay for this program. Better still, we could take those dollars we are wasting in fraud and abuse and we could put them back into the Medicare Program to pay for health care for seniors. Wouldn't that be a good idea? Because the estimates tell us that in 8 years we are going to be in a situation in Medicare where we are going to be in a deficit. We are going to be taking in less money than we need to spend. Workers will be paying in less than retirees need for their health care. We will have to, as the Federal

Government, shore up Medicare certainly at that point. So why don't we concentrate now, while we can, on an issue Democrats and Republicans can agree upon, which is trying to stop waste, fraud, and abuse.

Yesterday, I had the honor of filing my first bill in the Senate—S. 2128—and I wish to talk to the Senate and the American people about that bill. S. 2128 is the Prevent Health Care Fraud Act of 2009. What this bill simply will do is try to go after the waste in the health care system the government currently runs. It is estimated that \$1 out of every \$7 we spend on health care for seniors is captured by criminals or is wasted and is not going to help seniors—\$1 out of every \$7. That is where we get to that number of potentially \$226 billion a year.

I have a lot of experience in this. Before coming to the Senate, I had an opportunity to serve as the deputy attorney general in Florida and to run—under then-attorney general Charlie Crist—an office of about 400 lawyers. Within that office, we had a Medicaid fraud control unit where we focused on fraud in Medicaid. We were able to recover \$100 million a year—just in Florida—by stepping up enforcement actions to capture bad guys who were taking dollars out of the system. What I wish to try to do with this new act, in S. 2128—the Prevent Health Care Fraud Act of 2009—is not just go after these bad guys once we have figured out they have taken the money but to prevent them from getting the money in the first place.

The American people would be shocked to know how little we do to prevent health care fraud. You might expect, sitting at home in Orlando or wherever you are in the country listening to this address today, that we have a very comprehensive system to stop health care fraud; that if the government is spending billions of dollars, trillions of dollars over time on health care, that we would have hundreds and thousands of people who would be working to stop health care fraud; that we would have sophisticated computer models that stopped health care fraud before it happened. That is simply not true.

I introduced this bill yesterday, and I am speaking about it today, to help try to stop this fraud before it starts. My goal is to be a problem solver in Washington, to work on issues everybody can agree upon. Let me tell you about what S. 2128 does. It does three things, basically. We are going to create, within the Department of Health and Human Services, a Deputy Secretary who will be the chief health care fraud prevention officer of the United States. That individual will be in a No. 2 role in that agency. That person will report directly to the Secretary and will be nominated by the President of the United States. That Deputy Secretary will not have seven different jobs. He or she will have one job—to prevent health care fraud. If that Deputy Sec-

retary does not do his or her job, they will come to the Senate and the House of Representatives and be called on the carpet. This chief health care fraud prevention officer of the United States is going to run a division that is going to work every day to stop this health care fraud before it starts.

How are they going to do it? Oftentimes, the private sector gives us a model that we can use and we can copy in the government to help us prevent health care fraud or anything we do in government, to do it more efficiently and more effectively. So what model is out there to prevent fraud that is being used every day and that affects all our lives, that stops fraud before it starts? That model is the credit card business, a business that is roughly the same size as the health care business.

A couple of trillion dollars a year passes through the exchange of credit cards for the purchase of goods and services. The health care industry is a multitrillion-dollar-a-year industry as well. The level of fraud in the health care industry is \$1 out of every \$7. The incidence of fraud in the credit card industry is 7 cents for every \$100—\$1 out of every \$7 versus 7 cents for every \$100. How do they do it? Well, we all have had this experience. You use your credit card to purchase something and then a couple minutes later you get a phone call or e-mail which asks: Did you authorize the purchase that just happened with your credit card?

This just happened to me a week ago. I went to buy a television, in Washington, DC, at Best Buy. I have my family here so they can be close to me during my time in the Senate, and we have to have a television. So I go to Best Buy and use my credit card. I walk out the door and my BlackBerry vibrates. There is an e-mail from my credit card company asking: Did you authorize the purchase of a television at Best Buy? Why did that happen? They have a computer modeling predictive system that says this is a questionable transaction. George lives in Tallahassee, FL; someone is using his credit card to buy a television—which is something that is probably bought a lot of times on a stolen credit card—something is up. The computer—no person does this, this has been programmed—goes into action and I get an e-mail. That transaction is not authorized for payment until I call my credit card company and tell them, yes, I actually authorized that purchase.

Why can't we do the same thing the credit card companies are doing for health care? Why can't we use a predictive modeling system that says a health care claim is not going to be paid when a red flag comes up? Right now we are on a pay-and-chase system. We pay these people who provide health care, allegedly—many of whom are not providing health care because a good portion of them are criminals, frankly—and then we try to go after them to enforce the law, and we barely

ever capture the money back. We capture some but not near enough. If we put this model in place, it stops the fraud before it happens.

S. 2128—the Prevent Health Care Fraud Act of 2009—would put this predictive modeling system in. The Federal Government would have to go out and hire folks to do it. We would have a competitively bid process. It is no different than what we do in other parts of the government. In the Defense Department, we go through a bunch of checks before there is an acquisition for the Defense Department. Why can't we put this predictive modeling system over in health care to use real-time data to stop these fraudulent transactions before they happen?

According to Harvard University Professor Malcom Sparrow, the credit card industry establishes benchmarks for acceptable business risk and their threshold is one-tenth of 1 percent. By contrast, fraud losses in the health care business run from 3 to 14 percent. That is 100 times the acceptable business risk.

Another thing this bill does is it requires background checks for all health care providers. If you are supposedly providing health care, whether you are providing a wheelchair or a doctor providing actual health care services—someone who is a physician's assistant or whoever it may be—if those folks are being reimbursed by the Federal Government, getting paid for the health care they are providing, they should not be criminals. You might think that right now we are doing background checks on all these health care providers, but we are not.

I know this, specifically, because Florida, unfortunately, is ground zero for health care fraud. We have tremendous problems in Florida, especially the southeast part of Florida, where I am from—Fort Lauderdale, Miami-Dade County—with health care fraud.

Let me cite some examples.

Mr. President, "60 Minutes," last week, aired a special on this. They talked about the rampant fraud in south Florida. One of the perpetrators was responsible for \$20 million of health care fraud alone, and he said: We get a Medicare book of codes and our bidder tells us which ones to use and we run the codes. So they get one wheelchair and they sell it a thousand times and get reimbursed a thousand times for it. There is no computer modeling system that puts the red flag up, such as there would be on your credit card, that says: Stop that; wait a minute; after the third wheelchair is sold in 60 seconds, maybe we should not pay this guy's claim.

It has gotten so easy to steal money from the Federal Government that organized crime has gotten involved. There have been stories of a Russian-Armenian organized crime ring that defrauded Medicare by \$20 million, and they said it was easier than trying to be involved in the illicit drug business because there was no one going after them.

I wish to take a moment to applaud my colleague from Delaware, Senator KAUFMAN, who just introduced some legislation called the Health Care Fraud Enforcement Act of 2009 to increase the penalties for health care fraud.

I think that is great. We should be doing that. But in combination with that, we should do what we propose in S. 2128, which is to stop the fraud before it happens. These instances of fraud across the country are rampant.

I will give you another example. South Florida is home to 8 percent of the Nation's AIDS patients, but 72 percent of Federal AIDS medication payments are paid in South Florida. That is 72 percent, when we only have 8 percent of the patients. Why is this happening? These medications for AIDS are extremely expensive. Some bad guy runs the code all day and says: I have given this many injections of AIDS medication at \$2,500 a pop; runs 1,000 codes and we pay them. We pay them.

It makes no sense to me. So we have had big disagreements about how we are going to solve health care, how we are going to provide more affordable health care to our people in this country, how we are going to provide more access to health care.

But we certainly can agree we should run whatever program we have efficiently and effectively. We can certainly agree we should not have waste, fraud, and abuse. If we can reduce the \$60 billion to more than \$200 billion in fraud a year by simply putting somebody in charge of health care fraud prevention, put predictive modeling in such as we have in the credit card industry, and not let people be health care providers unless they have a background check and, if they are a criminal, not let them provide health care, we can save billions of dollars.

Those dollars can go back into Medicare, which is running at deficits. As I said when I opened my remarks today, it is very much in vogue in Washington to propose brandnew plans. I understand that. But we need to be focused and have as much zeal about brandnew plans as running the programs we have efficiently and effectively.

I hope my colleagues will join me in supporting this piece of legislation, S. 2128, the Prevent Health Care Fraud Act of 2009.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### FAILURE IN THE JUSTICE SYSTEM

Mr. SESSIONS. Mr. President, I rise to discuss a serious failure in our jus-

tice system, something we are going to need to talk and think about. It has been talked about before, but the matter drives home the issue in a specific way.

Ali Saleh Kahliah al-Marri—al-Marri, as he is now usually referred to—is a terrorist who entered the country under the instructions of 9/11 mastermind Khalid Shaikh Mohammed. While here, he researched hazardous chemicals and his potential targets included dams and reservoirs. He was apprehended in 2001. In 2003, he was held as an enemy combatant under the orders of the Bush administration. He was seen at that time as an individual at war with the United States since he was associated with al-Qaida and al-Qaida had declared war on the United States.

The Nation made a firm decision that these kinds of cases should not be handled in the normal course of prosecutions of crimes but should be treated under the historic and well-established rules of war for these individuals.

The Obama administration has moved him into a civilian justice system and decided they would try him for this offense as a crime. He ended up pleading guilty, which seemed dubious as a plea by the Department of Justice, but they chose to allow him to plead guilty to the charge of conspiring to support terrorists. He was sentenced yesterday. How much time will this terrorist be spending in jail? How long before he is released and then could reassume his mission of waging jihad against America? Five years. That is right, 5 years. The judge in Peoria, IL, sentenced him to only 8 years and gave him credit for time served in military prisons, apparently, and he is expected to be released in 5 years. This is an outrage. Our brave soldiers and intelligence agents risk their lives every day to find and capture these terrorists.

I received a phone call from a friend I have known for a number of years whose son is in Iraq now as a marine. He wants to talk about what we are doing there. We have American soldiers, some of the finest people this country has ever produced, at risk at this moment fighting against these kinds of terrorists who are committed to attacking us. In recent days, we have seen plot after plot, fortunately being frustrated by good investigative agents. We have investigators and our military out there at risk today. We capture terrorists. What do we do? Do we put them in jail a few years and then let them go?

Not only did the Justice Department pursue a lesser charge against al-Marri, but the judge only sentenced him to 8 of the possible 15 years he could have served on that charge.

Without doubt, as a former Federal prosecutor—and the Presiding Officer is a former U.S. attorney—there are real procedures every American is provided under our legal system for trials in Federal courts. We are proud of