pay physicians what they require just to stay in business, just to have their office practice continue.

The Medicaid Program, which is the other government program, is already so low in its reimbursements to physicians that—the numbers differ, but 50 to 60 percent of physicians are no longer taking Medicaid patients. As a result, these government programs end up getting very close to rationing care because there aren't enough physicians and facilities to take care of the people who are enrolled in the programs. Imposing yet another entitlement for even more people to have this care with fees regulated by the Federal Government and reimbursements at levels too low for physicians to take advantage of will simply continue to drive physicians away from the treatment of the patients they have treated over the years and want to continue to treat.

It would be our hope we could bring the incentive for physicians to continue to treat these patients, rather than the disincentives the Mayo Clinic is pointing to in backing out of the treatment of folks in Arizona.

Mr. COBURN. Mr. President, if the Senator will yield, one of the important points he made a moment ago is a doctor sitting down and listening to their patient. Mayo has it right. If you are not going to pay us enough to sit down, we refuse to practice medicine the way Medicare is directing us to practice: Listen a little bit and then cover it with tests.

The reason costs are out of control is because Medicare wouldn't pay for a physician to sit down and truly listen and come to a centered point on what the patient's problem is and the way to get around it. Consequently, what we have seen in the Medicare Program is doctors have to see so many patients that they don't get to listen to them and they consequently cover that lack of listening by ordering more tests.

What do we know about tests? We know we order $¼ trillion worth of tests every year that aren't needed. There are two reasons we are ordering them. No. 1, the reimbursement to sit down to listen to the patient is so low the doctors can't afford to take the time to cover the test; and No. 2 is the threat of tort litigation. So now we are ordering tests not for patients, but we are ordering them for doctors. If we want to change health care, we have to drive costs down. I am proud Mayo recognizes we are not going to sacrifice our quality, so, therefore, we are saying: No, we are not going to take any more Medicare patients because we can't do it in a way that lends a quality outcome at an appropriate cost.

Mr. KYL. Mr. President, I remember sitting back in the cloakroom and listening to Dr. COBURN when he was talking about how he treats patients who come into his office. A child, he said, comes in who has had a fall on the playground and the parents, understandably, are very concerned. Dr. COBURN said to me: If I just sit down and talk to that young man, that child, talk to his parents for a while, I can usually figure out what kind of treatment is going to be necessary without necessarily ordering a bunch of tests. But under the medical malpractice situation we have to work under today, I am almost required to order those tests or, if something should go wrong, be accused of malpractice. I wonder if my colleague could relay that story.

Mr. COBURN. Every summer, we have thousands of kids hit the ER, whether they ran into a pole or they had a baseball bing them in the head. The standard of care now is to put that child through a CT scan. These are children the vast majority of whom have no neurologic signs whatsoever. But now we are not only spending that $1,200 per child, we are exposing those children to radiation they don't need.

So there are two untoward events for what has happened as we see the hijacking of medicine by the trial bar. No. 1 is we spend a whole lot more money unnecessarily, but No. 2 is we are actually now starting to hurt people by exposing them to radiation they don't need.

That is another cost. We know we can bring down costs if we change the tort system in this country to one that is sensible and reasonable and still allows, when doctors make mistakes, for them to be compensated for their economic damages and the harm that was caused to them. No one is saying we should eliminate that. What we are saying is, it should be appropriate and in a venue that represents the real risks without disturbing the practice of medicine because we cannot afford it, and the children who are getting these tests, their bodies cannot afford it. It is just common sense that we would go that way.

I wonder if the Senator will yield for a moment before we lose our time that I might discuss the amendment I am going to have up in a moment.

Mr. KYL. Mr. President, might I just inquire how much time remains on the Republican side?

The ACTING PRESIDENT pro tempore. There is 3 minutes 15 seconds remaining.

Mr. COBURN. Mr. President, I ask unanimous consent to take that time, if I may.

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

TAX EXTENDERS ACT

Mr. COBURN. Mr. President, we are going to have an amendment on the floor in just a moment that simply requires the Senate to post every time they create a new program and every time they spend money outside of pay-go so that we truly are transparent with the American people about what we are doing.

With great fanfare, we passed pay-go. We made it a statute. The last three bills in a row, we have allocated up to $120 billion outside of pay-go. With all the claims, with all the fanfare, we said we are going to now start paying for everything we do, and the first three bills to come before the Senate, what do we do? We simply say: Rules off; doesn't count; we are going to spend our grandkids' money.

For the life of me, I do not understand the controversy around this amendment. It is about us being transparent with the American people. No more games. No more saying we are doing one thing and doing another. All this amendment says is, when we violate our own rules and we spend money we do not have and we do not pay for programs by eliminating programs that are not effective, that are not a priority, that we are going to list it on our Web site. Nothing could be simpler.

We have offered the Secretary of the Senate our staff to do that work. It takes about 5 minutes a day to post that information and probably 5 minutes every third or fourth day. We will happily pay for that or we will offer one of our staff to put that information on the computer.

We are going to have a side-by-side amendment that does nothing. We understand that. That gives people a way to not vote for our amendment.

If we want to solve the problems in America and we want to solve our financial problems, the first thing we have to do is have real information about what this body is doing. This amendment will do that.

I yield back the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I ask unanimous consent that my amendment No. 3431 be in order when we return to H.R. 4213, with up to 10 minutes to speak regarding that amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. COBURN. Mr. President, I object on behalf of the managers who are not present at this time.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. NELSON of Nebraska. Mr. President, I still ask for up to 10 minutes to speak on behalf of this amendment, even though the action has been heard and registered.

The ACTING PRESIDENT pro tempore. The Senator may speak.

Mr. NELSON of Nebraska. The amendment I rise today to speak on is straightforward. It would provide an offset for all known emergency provisions included in the bill, H.R. 4213. The amendment would direct the Office of Management and Budget to rescind $35 billion in unobligated American Recovery and Reinvestment Act funds on a prorated basis. The amendment would exclude military construction and veterans affairs stimulus funding from the rescission.

This rescission would offset all remaining nonemergency items in the

American Workers, State, and Business Relief Act, which is H.R. 4213.

As a result of my amendment, all provisions in the bill would be paid for minus the emergency extension of unemployment insurance and COBRA.

My colleagues on the other side of the aisle just made the best case I have heard for this amendment. They raised concerns about the underpayments for Medicare and Medicaid patients and patient care. In this underlying bill, doctors would have their fees increased for payment purposes so the concerns that were raised by my colleague from Arizona would be, in part, answered by the increased payments the Mayo Clinic was not receiving and, therefore, made the decision to reduce their care to Medicare patients.

It seems to me it would be appropriate to support this bill. I suspect they will not, but it would seem appropriate to support this bill then and also support having it paid for under pay-go rules applying to the unused stimulus funds that would be available through this act.

If we are going to see that Medicare patients are treated and are not excluded from treatment, it is going to be because the providers are adequately compensated. That is one of the provisions of this bill. What we are seeking to do is to make sure that is paid for, among other things.

The Governors of the States have come to us and said they cannot afford to make their part of the Medicaid match that they are required to make under the Medicaid Program that is approved in virtually every State. As a result of that, a good portion of this bill is seeking money to pay the States, compensate them for that unfunded mandate that the States are currently facing.

In other words, they come in and say: You forced us to do this. We don't have the money to do it. We are asking that you make it good. You pay for it.

The challenge is, if Medicaid is decreased or payments to providers are decreased, then the concerns they raised about the Medicaid Program underfunding providers will be a self-fulfilling prophecy. It seems to me there is an opportunity for the other side to take a very positive look at this particular bill.

I can look at it positively if we pay for it. My concerns are that we pay for the nonemergency provisions within this bill, that we pay for the FMAP fix, that we pay for the other parts of this bill minus the emergency extension of unemployment insurance and COBRA. That would make us consistent with the pay-go rules we forced upon ourselves—I think appropriately so. But it is important that we follow the rules we set for ourselves. This is one of the ways we do it—by paying for these nonemergency items in the underlying bill.

That is my argument. That is why I have offered this legislation. I think it is unfortunate the other side has chosen to object to it, but they have and that is it. The amendment will fail unless the other side finds that it makes sense to simply begin to pay for things. I thought the other side was interested in seeing that these requirements are paid for, particularly when they make such a strong case for the payment to physicians for Medicare and Medicaid patients. That does not seem to be the case.

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

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

The legislative clerk proceeded to call the roll.

Mr. ISAKSON. 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. 3430, AS MODIFIED

Mr. ISAKSON. Mr. President, I ask unanimous consent that my amendment No. 3430 be modified with the changes at the desk.

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

The amendment, as modified, is as follows:

Strike title III and insert the following:

TITLE III—PENSION FUNDING RELIEF

Subtitle A—Single Employer Plans

SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following subparagraph:

''(D) SPECIAL ELECTION FOR ELIGIBLE PLAN YEARS.—

''(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an 'election year'), then, notwithstanding subparagraphs (A) and (B)—

''(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

''(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

''(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

''(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

''(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

''(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

''(iv) ELECTION.—

''(I) IN GENERAL.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

''(II) AMORTIZATION SCHEDULE.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

''(III) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. The Secretary of the Treasury shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

''(v) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term 'eligible plan year' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

''(vi) REPORTING.—A plan sponsor of a plan who makes an election under clause (i) shall—

''(I) give notice of the election to participants and beneficiaries of the plan, and

''(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

''(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).''.

(2) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following paragraph:

''(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

''(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.