improve the quality of care, avoid medical errors, coordinate care better, reward prevention and primary care, reduce administrative overhead, and reward who gets the best health outcomes, not who orders the most treatment procedures.

I worked with Senator MIKULSKI on this project. She authored the key delivery provisions of the law and has great expertise in this area.

These changes will make a real difference for millions of Americans, and I look forward to sharing the report and its findings with my colleagues next week.

Before I close, I would like to acknowledge Rhode Island's work on a State health insurance exchange provided for by the affordable care act. Rhode Island is leading the way as the first State to receive level two grant funding to set up the exchange. The exchanges are commonsense, local, competitive marketplaces where individuals and small businesses will be able to purchase health insurance, with the prices and benefits out there on display. When insurance companies compete for your business on a transparent, level playing field, it will drive down costs. Exchanges will let individuals and small businesses use their purchasing power to drive down costs, much like big businesses are able to do.

Progress has been made by State leaders such as our Lieutenant Governor Elizabeth Roberts, who is leading this effort to get to this point. They are remarkable. I urge them to keep up the good work.

Whether it is changing the lives of Gregg and Will or Olive or Brianne or Geoff and his employees or whether it is building our community health center infrastructure or supporting the private sector leaders who are pivoting to a new and better and more efficient delivery system or whether it is something as simple as a marketplace for health insurance that is open, fair, and on the level, the affordable care act has made a real difference for hard-working families in Rhode Island. I will continue to work hard alongside these leading health care providers, alongside the Obama administration, and alongside my colleagues in the Congress to see the full promise of the affordable care act realized for this great Nation's advantage.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. ENZI. Mr. President, it is my understanding that the other side will not have their speakers use the last minutes, so we will start on our side.

I ask unanimous consent that we be allowed to do a colloquy and have several Senators join in.

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

HEALTH CARE

Mr. ENZI. Mr. President, we are going to talk about Medicare today and the way the Patient Protection and Affordable Care Act cuts into Medicare, destroys Medicare.

Two years ago the President wanted a health care bill in the worst way, and that is exactly what he got, and that is exactly what America got.

Anybody out there on Medicare or about to be on Medicare or young enough that someday they will be on Medicare should be very concerned about what happened under this act. All of you, I am sure, are aware of somebody who is on Medicare who has already been denied a doctor; they are being denied because they are not being paid what they ought to be paid.

To call it the ''patient protection'' and ''affordable'' care act is a major mistake. It neither protects Medicare patients nor makes it more affordable. In fact, one of the things we will bring out today is that there has been a theft of $500 billion from Medicare to fund other parts of the program. There is some fraud in it because it was spent, but it still shows up in the account. That is how they show that this really doesn't add to the debt. To solve the whole thing, they have a whole new board of unelected bureaucrats to make additional cuts to Medicare to make it look as though it is OK. And then there is the accounting sleight of hand. I am one of the two accountants in the Senate now, and you have to pay attention to see it. It goes back to the fraud because if this same sort of thing were being done in the private sector, people would go to jail.

There are a number of ways that we will bring out how that is not just budget gimmicks and sleight of hand but is actually taking advantage of seniors.

The Chief Medicare Actuary said that Medicare will go broke in 2024. That is 5 years earlier than last year's report by the Chief Medicare Actuary. He is the guy who works for Medicare; he doesn't work for us. He has to figure out each year how much in the hole it is and what needs to be done to fix it.

My contention, of course, is that you can't steal $500 billion out of a program that is already going broke and expect it to be fine. We warned about that as we were going through the passage of this Patient Protection and Affordable Care Act, which, as already mentioned, was passed 2 years ago tomorrow. It could have been fixed. There were three plans on the Republican side that would have done what is claimed to be done by this act. Those ideas were largely rejected.

Today we are going to talk about some thefts, fraud, unelected bureaucrats, and accounting sleight of hand. I have some people here who want to respond to some of the things that have been said.

Senator COBURN has listened to some comments made on the other side celebrating this great day.

Mr. COBURN. Mr. President, I listened very intently to the first two speakers this morning. As somebody who has now been a physician for almost 30 years—I practiced full time for over 25 years—I heard the Senator from Iowa and what his desire would be on the chart he showed. He said that 100 percent screening is occurring now in three areas. That isn't true. We are not screening. We hope to screen, and we hope to screen 100 percent, but the facts on screening that are available are that it is only used 5 percent by Medicare patients on the screening that was already available with no cost to Medicare patients. So we have to distinguish between what we desire and what is actually going to happen.

Let's take the example of colon screening. I am a colon cancer survivor. I was diagnosed, through colonoscopy, with colon cancer. Let's take that example, and then let's take the example of the other aspect of the affordable care act, called the Independent Payment Advisory Board. What is the purpose of that Independent Payment Advisory Board? Its purpose is to cut the cost of Medicare through the decreasing of reimbursements—first, for the first 8 years, physicians and outside providers, and then, starting in 2019, hospitals. What do you think the first thing to be cut will be? It is the reimbursement rate for a colonoscopy. So when the reimbursement rate for a colonoscopy goes below the cost—and it is very close right now, by the way, the cost to perform a colonoscopy versus what Medicare reimburses—when that is cut, what do you think will happen on screening?

The goal of changing health care is an admirable goal. We know that $1 in $3 doesn't help anybody get well or prevent them from getting sick today. But what the American people need to understand is that what is coming about is a group of 15 unelected bureaucrats, who cannot be challenged in court, who cannot be challenged on the floor of the Senate or the House, mandating price reductions to control the cost of Medicare. What does that ultimately mean? They will do their job. We won't be able to do anything about it. But what it means is that they will reimburse at levels less than the cost to do services, and so, consequently, what will happen is the services won't be there.

They also are going to do what is called comparative effectiveness research. We know about comparative effectiveness research. If you are a practicing physician today, you have to do continuing medical education. Part of that medical education is knowing the latest comparative effectiveness research. It is as if they are reinventing

something that already exists. But the point is that they are going to use that to deny or change payments for procedures that patients need.

What is wrong with all of this? It is that we are inserting a government board and government bureaucrat between the patient and the doctor.

Think about that for a minute. When I go to my doctor, I don't want him concentrating about anything except me. If he is looking over his shoulder about whether he met the IPAB's comparative effectiveness study on what he is doing for me, when, in fact, the art of medicine as well as the science may say they are wrong, and he is going to do what the government says rather than what he thinks is best for me, what am I getting for that?

I will be on Medicare next year, much to my regret, because my choices will now be limited in terms of who I can see. The greatest threat to the quality of care—it wasn't intended to be this way, it was intended to be helpful, and I don't doubt the motives of anybody who set this board up—but the greatest threat to quality of care for seniors in this country is the Independent Payment Advisory Board and their noncaring position. Because they are going to be looking at numbers and words. They are never going to lay their hands on the patient, they are never going to impact a patient directly, they are never going to listen to a patient, but they are going to make the ultimate decisions based on what that patient is going to get.

With that, I yield back to my colleague.

Mr. ENZI. But that board was made essential by decisions that were made in the health care bill. In the health care bill, we took $500 billion—$½ trillion—that should have stayed with Medicare to solve Medicare problems.

The doc fix is one of the big problems we need to solve. It is up to about, I think, $230 billion that we need to do that. That would be a pretty good chunk out of this. And unless that is done, people won't be able to see a doctor.

I keep saying, if you can't see a doctor, you really don't have health insurance, and that is what we are going to be doing to our seniors. We cut $135 billion from hospitals, we cut $120 billion from the 11 million seniors who are on Medicare Advantage, we took $15 billion from nursing homes, and we took $7 billion from hospices to spend on programs that have nothing to do with Medicare or those things. That is fraud, and it shouldn't have happened.

The CBO Actuary and the Chief Medicare Actuary have acknowledged this reality. Incidentally, the Chief Medicare Actuary says the program is going to go broke in 2024, and CBO says it will happen in 2016. Now 2016 is pretty short term to be fixed. I think 2024 is short term. So whichever estimate you want to take, Medicare is in trouble and $500 billion should not have been taken out of it. That $500 billion should have been dedicated to fixing Medicare.

We still have to fix Medicare, and the only solution we have come up with is the one Senator COBURN mentioned, which is to form this new board, with surprising powers, that is going to be able to cut some more in Medicare so it doesn't look as though we stole $500 billion from Medicare.

Senator BURR is on the committee. He has had to sit through a lot of the hearings and a lot of the amendments that were never passed from our side that would have fixed this, and I am sure he has some comments.

Mr. BURR. I thank the Senator from Wyoming and my colleague from Oklahoma. We have worked on this, spent tireless hours trying to save not just Medicare but health care as we know it in America today. I think what my colleague has already mentioned is that we have put in place mechanisms in law that will dismantle a health care system the American people feel comfortable with and that has served them well but that we agree is way too expensive. Look at the examples Dr. COBURN has talked about—IPAB, the independent board that will make coverage decisions and reimbursement decisions. When you cut reimbursements, you are going to chase doctors out of the system. As you cut reimbursements, you are going to defund the hospital's ability to keep the doors open in rural America.

But let's look at the things that are not obvious. What does that effort by IPAB do to innovation in health care? What companies are going to go out and put $1 billion on the line for development of a new drug or a device given they do not think they can recover enough through the reimbursement system to cover their research and development, much less the approval process of the products? It would be a vastly different America if in fact all these drugs that are breakthroughs and the devices that are so effective at keeping us living longer are sold in Europe and South America and Asia but not in the United States because we have now developed a health care system that doesn't allow them the ability to recover that money. Now match that with the lack of choice today.

In this country, we have choice. As a matter of fact, as a Federal employee, I can pick from probably 30 different health care plans—the same ones every Federal employee can choose from. But all of a sudden, in this health care bill, we have said to seniors: You know that Medicare Advantage which allowed you choice, where you could choose a provider other than the Federal Government? Well, we are going to take that away from you. Now, we didn't take it away, we just said we are not going to reimburse them to the degree that allows them to offer the plans.

Let's look at what Medicare Advantage provided for seniors. It provided a wider array of benefits than does traditional Medicare. It is good for some. They have chosen it. It won't be good for them in the future, if this health care bill is not reversed, because through the actions of IPAB and through the explicit language of the bill, Medicare Advantage will not be an advantage anymore, and everybody will have to default to the government plan that probably won't be as expansive with preventive care.

I know the Senator from Wyoming knows that in North Carolina we sort of lead the country as the model of medical homes. We are on the verge there of trying to put seniors into medical homes. We have already done it with a Medicaid population. We have saved money. But my State of North Carolina this year has a gap of about $500 million in Medicaid—the people we are responsible for and the money we have allocated for it, even though the last 3 years we have saved almost $1 billion by being creative at how we designed our Medicaid. This health care initiative, with no input from any State, will double the population of Medicaid beneficiaries in North Carolina. So what have we done? We have shifted the responsibility down to the State at the State taxpayer level.

We didn't magically change anything in health care. We are reallocating where we are collecting the money from, and every State is the same. They underpay for reimbursements under Medicaid, doctors limit the number of patients they see that are Medicaid patients. Imagine what happens when we double the size of the Medicaid population in America. Hospitals don't have the ability to limit. They are under Federal law that says when someone shows up, they have to see them.

What we are going to do is probably attempt to bankrupt the infrastructure that we have for health care for the simple reason that rather than fix health care, we came up with creative ways to pay for it. Or in the case of IPAB—the Independent Payment Advisory Board—we figured out an external way from Congress to cut the reimbursements to doctors and to hospitals and to limit the coverage of all plans where it doesn't have to go through a legislative process in Washington. We are not always the finest example of legislation becoming law, but this is the mechanism our Founding Fathers set up to make sure bad things didn't happen.

I have to say this is one that slipped through, and now we have the responsibility to go back and fix the pieces of it that would be devastating to the future of health care in this country.

I thank the Senator from Wyoming for letting me share some time.

Mr. ENZI. I think the Senator too would be interested in the accounting and some of the sleight of hand involved in the prescription Part D. We put a prescription Part D in so people would have a little better chance of paying for their prescriptions—a very difficult program. It was very expensive.

I know in my State we were looking at only two people who were selling

pharmaceuticals to seniors. I thought, boy, when this program goes in, there probably won't be any. But when it was opened to a wide choice, I found out there were 46 companies that wanted the business in Wyoming, and it turned out to be a very successful program at helping people.

In this affordable care act, of course, they do some things with the doughnut hole which are a little sleight of hand, because some of the companies that sell brandname prescription drugs agreed they would reimburse people for a part or up to all of their medications while they went through that doughnut hole, knowing when they got out of the doughnut hole they would stay with that brandname and it would cost the whole program a lot more.

So in an area where we were saving money and could have fixed it so seniors had a better chance at it but not giving an advantage to the brandname drug users would have actually saved some money in the program, but that didn't happen. I know since my colleague is involved a lot in the pharmaceutical area, and has done a tremendous job at making sure we are safe from terrorist attacks and pandemic flus and worked with vaccinations, and is probably the foremost person at both ends of the building at knowing how to do that, he may have some comments on this prescription Part D.

Mr. BURR. Well, I thank my colleague for that acknowledgment, and that is why the thought that innovation would leave the American health care system terrifies me. Innovation is the answer to the threats, both natural and intentional, that could come to this country and everywhere in the world. We never know what is around the corner. But our ability to innovate in this country has always kept us one step ahead, and I believe we are on the cusp of a new era of innovation that can only be thwarted if in fact this health care bill is fully implemented. Because the incentive will now be gone for entrepreneurs to take risks. There is no longer going to be an incentive that says take a risk and there is an opportunity at a reward.

As the Senator from Wyoming pointed out very well, we created Medicare Part D. What a novel approach, to take a health care benefit that didn't exist in the 1960s, when we created Medicare and matched it up with the coverage of the rest of the delivery system. What was the result of creating market-based coverage? Today, Medicare Part D costs 50 percent less than the estimate we made years ago when we created it in terms of what the annual premium cost was going to be. Why? It is because we created private sector competition. We didn't create government plans. It probably would have been much easier to say, okay, we are going to supply a benefit for every senior in the country. I can assure you, had we done that, we would have been well over what we projected the annual cost to be. But we are 50 percent under because we have private sector entrepreneurial companies out there competing for the business, and they are smart enough to look at the types of coverage needed and they are custom designing that to meet the needs of seniors in this country.

I daresay the current health care plan that is going to be implemented and fully executed by 2014 was not personalized for anybody in this country. It looks at a 17-year-old the same way as it does a 77-year-old. Yet the health challenges and the incomes are different for both ends of the spectrum, and that is because government can't look at us as individuals. They can't group us and design something that addresses not just the coverage needs but the costs long term and the solvency.

So we only have one choice, and that is to fix what is broken. It is amazing how there is great agreement on those things that would be damaged long term and those things that are actually positive and move the ball in the right direction.

Mr. ENZI. So that prescription Part D actually drove down the cost of medication, and now we are ending up in a situation where part of that will be in trouble because of what has happened to Medicare, with $500 billion being stolen.

I see we are joined by Senator LEE of Utah, and I know that Utah has had a health care system that has been a model for other States and now is possibly in jeopardy. I don't know if the Senator would care to comment on Medicare or on that, but we appreciate his coming.

Mr. LEE. I thank my colleague. And he is correct, Utah does indeed have a health care system that functions well, and functions well notwithstanding the fact it is not managed, it is not governed by the Federal Government.

This is one of the great wonders of our Federal system. When we became a country about 200-plus years ago, we did so against a backdrop that is informative for us still today. We became a country, in part, because we discovered through trial and error, through our experience as British colonies, that local self-rule works best. People govern themselves much better than a large distant government can govern them. That is exactly why we became a country, because we learned that local self-rule works.

We learned also that there is great danger to our individual liberty with any government, because whenever any government acts, whenever it does anything to regulate our lives, it does so at the expense of our individual liberty. We become less free by degrees whenever government does just about anything.

But the risk to our liberty is especially great—it is at its highest—when the acting government is a large one, when it is a national government. National governments, as we learned in our experience with our national government before we became a country—our national government that was then based in London—national governments tend to tax us too much, they tend to regulate us too heavily, they tend to be inefficient, they tend to be slow to respond to our needs in part because they are operating so distantly from where many of the people reside.

So when we became a country, we left most of the powers at the State and the local level. We eventually came up with this document, this almost 225-year-old document that has fostered the development of the greatest civilization the world has ever known. And in that document we came up with a list of powers that a national government must have in order to survive, and we kept that list fairly limited. We said the national government needs to have the power to provide for our national defense, to regulate commerce or trade between the States and with foreign nations and with the Indian tribes, to protect trademarks, copyrights, and patents, to establish a uniform system of weights and measures, to come up with a system of bankruptcy laws, laws governing immigration and naturalization, and a few other powers. But that is basically it.

There is no power in this document that gives our national government, that gives us—Congress, as a national legislature—the power to regulate anything and everything. There is nothing in this document that gives Congress what jurists and political scientists refer to as general police powers; that is, the power to come up with any law that Congress might deem just and good and appropriate and advisable at any moment. That, again, was because of the calculated assessment made by the founding generation that we needed a government possessing only limited enumerated powers: to protect individual liberty, and to assure that we in America would continue to live as free individuals.

Over time we have drifted somewhat in our understanding of what those powers mean. Over the last 75 years, the Supreme Court has been applying a deferential standard toward Congress in reviewing laws enacted under the commerce clause, clause 3 of article 1, section 8. The Supreme Court has, since about 1937—at least since 1942—said that Congress may regulate without interference from the courts under the commerce clause activities that, when measured in the aggregate, when replicated across every State, can be said substantially to affect interstate commerce. That is more or less the guideline the Court has given us. They are not necessarily saying that everything and anything that fits within that is necessarily within the letter and the spirit of the Constitution, but that, at least so far as the courts are concerned, so far as the courts have been willing to step in and validate or invalidate, that will be what guides the courts in making that assessment. Beyond that, the debate has to be hammered out within the Halls of Congress.

The affordable care act—also known as Obamacare—contains an individual health insurance mandate that takes Congress's powers to a whole new level. For the first time in American history, our national legislature has required every American in every part of this country to purchase a particular product; not just any product but health insurance; not just any health insurance but that specific kind of health insurance that Congress, in its wisdom, deemed appropriate and necessary for every American to buy. This is absolutely without precedent. It is also, I believe, not defensible even under the broad deferential standard that has been applied by the U.S. Supreme Court since the late 1930s and early 1940s.

Among other things, the limits that have been maintained by the Supreme Court, notwithstanding its deference to Congress under the commerce clause, have been limited by a few principles.

First, the Supreme Court has continued to insist that although some intrastate activities will be regulated by Congress under the commerce clause, some activities occurring entirely within one State—activities that historically would have been regarded as the exclusive domain of States, activities such as labor, manufacturing, agriculture and mining—although some activities might be covered by Congress, those activities at a minimum have to be activities that impose a substantial burden or obstruction on interstate commerce or on Congress's regulation of interstate commerce.

The Supreme Court has also continued to insist that the activity in question that is being regulated needs to be activity, first of all, and not inactivity. But it also needs to involve economic activity in most circumstances, unless, of course, it is the kind of activity that, while ostensibly noneconomic, by its very nature undercuts a larger comprehensive regulation of activity that is itself economic.

Finally, the Supreme Court has continued to insist time and time again that Congress cannot, in the name of regulating interstate commerce, effectively obliterate the distinction between what is national and what is local.

The affordable care act through its individual mandate effectively blows past each and every one of these restrictions, restrictions that even under the broad deferential approach the Supreme Court has taken toward the regulation of commerce by Congress over the last 75 years or so—even the Supreme Court, even under these broad standards, isn't willing to go this far. There are very good reasons for that, and those reasons have to do with our individual liberty. They have to do with the fact that Americans were always intended to live free, and they understood that they are more likely to be free when decisions of great importance need to be hammered out at the State and local level; that is, unless those decisions have been specifically delegated to Congress, specifically designated as national responsibilities. This one is not.

Decisions about where you go to the doctor and how you are going to pay for it are not decisions that are national in nature, according to the text and spirit and letter and history and understanding of the Constitution. They are not, and they cannot be.

If in this instance we say, well, this is important so we need to allow Congress to act—if we do that, we do so at our own peril. We stand to lose a great deal if all of a sudden we allow Congress to regulate something that is not economic activity; in fact, it is not activity at all. It is inaction. It is a decision by an individual person whether to purchase anything, whether to purchase health insurance or, if so, what kind of health insurance to purchase. Our very liberties are at stake, and that is why I find this concerning.

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

Mr. ENZI. I ask unanimous consent for an additional 2 minutes.

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

Mr. ENZI. Mr. President, I thought I had 2 more minutes. I appreciate the comments.

This is the 2-year anniversary of passing what is the so-called affordable patient care act. The Supreme Court has chosen next week to begin the deliberations on it, and they are going to take three times as long as they do on any case so that they can divide this into pieces, and that mandate piece will be the second one.

One that they probably won't be going into is this Medicare problem. We are going to have seniors who are going to be without care because we have taken $500 billion out of Medicare when it needed a doc fix and it needed a whole bunch of other things, and particularly in rural areas where there are critical access hospitals, rural health clinics. Can any reasonable person believe that you can cut $½ trillion from a program and not affect its impact on patient care?

I wish to have more time to show that there is a theft of this $500 billion, there is fraud involved, that there are bureaucrats and accounting sleight of hand.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

JUMPSTART OUR BUSINESS STARTUPS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3606, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3606) to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Pending:

Reid (for Merkley) Amendment No. 1884, to amend the securities laws to provide for registration exemptions for certain crowdfunded securities.

Reid (for Reed) Amendment No. 1931 (to Amendment No. 1884), to improve the bill.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 p.m. will be equally divided between the two leaders or their designees.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be yielded 10 minutes.

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

Mr. LEVIN. Mr. President, in a few hours, after votes on two amendments that I hope we will pass, we are going to vote on final passage of the House of Representatives-passed bill, the so-called JOBS bill. I am going to vote against passage of this bill because it would remain far too deeply flawed even if the two amendments were passed to justify passage by the Senate. I am going to vote no on this bill because it will significantly weaken existing protections for investors against fraud and abuse.

The supporters of this bill claim it will help to create jobs. They have even titled it the JOBS Act, but there is no evidence it will help create new jobs. There is not one study that its proponents have shown us how repealing provisions that protects us from conflicts of interest in the research coverage of companies with up to $1 billion in revenue will create jobs; nor is there evidence that removing transparency and disclosure requirements for very large companies will create jobs; nor is there evidence that allowing unregulated stock sales to those unable to assess or withstand high-risk investments will create jobs; nor is there much else in this bill that will, even arguably, help create jobs. It will, however, take the cop off the beat relative to the activities of some huge banks, and it will threaten damage to the honesty and integrity of our financial markets.

That is a mistake in its own right. We should value honesty and integrity in markets, as in all things. And legislation that creates new opportunities for fraud and abuse should be amended or rejected. But the damage done by this bill to the integrity of our markets will also work against the purported goal of this bill—the encouragement of investment to create jobs.

By making our financial markets less transparent, less honest, and less accountable, this legislation threatens to discourage investors from participating in capital markets. That damage would make it harder—not easier—for companies to attract the capital that they need and to hire new workers.

Our capital markets are the envy of the world, and that is in part because