

1 EXECUTIVE BUSINESS MEETING TO CONSIDER THE NOMINATION OF  
2 KATHLEEN SEBELIUS TO BE SECRETARY OF HEALTH AND HUMAN  
3 SERVICES

4 TUESDAY, APRIL 21, 2009

5 U.S. Senate,  
6 Committee on Finance,  
7 Washington, DC.

8 The meeting was convened, pursuant to notice, at  
9 10:43 a.m., in room 216, Hart Senate Office Building,  
10 Hon. Max Baucus (chairman of the committee) presiding.

11 Present: Senators Conrad, Bingaman, Kerry, Lincoln,  
12 Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez,  
13 Carper, Grassley, Hatch, Snowe, Kyl, Bunning, Crapo,  
14 Ensign, Enzi, and Cornyn.

15 Also present: Democratic Staff: Bill Dauster, Deputy  
16 Staff Director and General Counsel; Elizabeth Fowler,  
17 Senior Counsel to the Chairman and Chief Health Counsel;  
18 Catherine Dratz, Health Policy Advisor; Shawn Bishop,  
19 Professional Staff Member; Chris Dawe, Professional Staff  
20 Member; Kelly Whitener, Fellow; Toni Miles, Fellow; Tony  
21 Clapsis, Associate. Republican Staff: Kolan Davis, Staff  
22 Director and Chief Counsel; Mark Hayes, Republican Health  
23 Policy Director and Chief Health Counsel; Michael Park,  
24 Health Policy Counsel; Nick Wyatt, Tax Staff Assistant;  
25 Susan Walden, Health Policy Advisor; Jill Kozeny,

1           Communication Director; Terri Postman, Detailee.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. We have a quorum present.

5 The business before the committee now, just  
6 temporarily, is to report out Kathleen Sebelius as  
7 Secretary of HHS. I will now entertain a motion.

8 Senator Grassley. I move.

9 Voice. Second.

10 The Chairman. Is there any debate?

11 Senator Kyl. Mr. Chairman?

12 The Chairman. Senator Kyl?

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1 OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM  
2 ARIZONA

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4 Senator Kyl. Mr. Chairman, I appreciate the  
5 Governor's efforts to clarify her relationship with Dr.  
6 George Tiller, as well as my concern about the use of  
7 comparative effectiveness research to deny or delay  
8 health care to Americans under proposed health care  
9 reform.

10 Comparative effectiveness research can be used to  
11 provide patients and doctors with information so that  
12 they can make informed health care decisions, but without  
13 appropriate safeguards the government can misuse  
14 comparative effectiveness research to deny coverage.  
15 Unfortunately, Governor Sebelius' answers to my questions  
16 made it clear that the administration is unwilling to  
17 support pro-patient safeguards. She left me with no  
18 assurance that HHS, Federal health care programs, or any  
19 new entity, such as the Federal Coordinating Council,  
20 will not use comparative effectiveness research as a tool  
21 to deny care. This should be a matter of concern to all  
22 of us.

23 Her justification relied on two points which were  
24 inaccurate and which contradicted each other, raising  
25 more doubt. First, she said, "The law prohibits Medicare

1 from using comparative effectiveness research to withhold  
2 coverage." She is referencing the 2003 prescription drug  
3 bill which obviously found the need for Congress to step  
4 forward and prevent this kind of research from denying  
5 coverage, but obviously it only applies to prescription  
6 drugs, not to all other aspects of treatment.

7 So one would assume that if she thought this was a  
8 good idea, that she would support applying the same kind  
9 of patient protection that we have provided in Medicare  
10 Part D to the rest of the Federal program, but she does  
11 not. In fact, her contradictory statement was, "When  
12 authorizing comparative effectiveness research in both  
13 the Medicare Modernization Act and the American Recovery  
14 and Reinvestment Act, Congress did not impose any limits  
15 on it." That is true, and that is precisely the problem.

16 NIH is already taking steps necessary to make cost-  
17 based research a priority. The Acting Director said this  
18 in a very recent project description: "Cost effectiveness  
19 research will provide accurate and objective information  
20 to guide future policies that support the allocation of  
21 health resources for the treatment of acute and chronic  
22 conditions." Allocation of health resources is, of  
23 course, a euphemism for denying care based on cost, yet  
24 Governor Sebelius would not agree to pull this project.

25 I believe in the right of every American to choose

1 the doctor, the hospital, the health care plan of his or  
2 her choice, and that no Washington bureaucrat should  
3 interfere with that right or substitute the government's  
4 judgment for that of a physician. I will oppose Governor  
5 Sebelius' nomination because of her insufficient  
6 commitment to these principles.

7 The Chairman. If there is no further debate, the  
8 committee will vote on the motion to report the  
9 nomination. A recorded vote has been requested.

10 The Clerk will call the roll.

11 The Clerk. Mr. Rockefeller?

12 The Chairman. Aye by proxy.

13 The Clerk. Mr. Conrad?

14 Senator Conrad. Aye.

15 The Clerk. Mr. Bingaman?

16 Senator Bingaman. Aye.

17 The Clerk. Mr. Kerry?

18 The Chairman. Aye by proxy.

19 The Clerk. Mrs. Lincoln?

20 Senator Lincoln. Aye.

21 The Clerk. Mr. Wyden?

22 Senator Wyden. Aye.

23 The Clerk. Mr. Schumer?

24 Senator Schumer. Aye.

25 The Clerk. Ms. Stabenow?

1 Senator Stabenow. Aye.  
2 The Clerk. Ms. Cantwell?  
3 Senator Cantwell. Aye.  
4 The Clerk. Mr. Nelson?  
5 Senator Nelson. Aye.  
6 The Clerk. Mr. Menendez?  
7 The Chairman. Aye by proxy.  
8 The Clerk. Mr. Carper?  
9 Senator Carper. Aye.  
10 The Clerk. Mr. Grassley?  
11 Senator Grassley. No.  
12 The Clerk. Mr. Hatch?  
13 Senator Hatch. No.  
14 The Clerk. Ms. Snowe?  
15 Senator Snowe. Aye.  
16 The Clerk. Mr. Kyl?  
17 Senator Kyl. No.  
18 The Clerk. Mr. Bunning?  
19 Senator Bunning. No.  
20 The Clerk. Mr. Crapo?  
21 Senator Grassley. No by proxy.  
22 The Clerk. Mr. Roberts?  
23 Senator Grassley. Aye by proxy.  
24 The Clerk. Mr. Ensign?  
25 Senator Grassley. No by proxy.

1           The Clerk.    Mr. Enzi?

2           Senator Grassley.   No by proxy.

3           The Clerk.    Mr. Cornyn?

4           Senator Cornyn.   No.

5           The Clerk.    Mr. Chairman?

6           The Chairman.   Aye.

7           The Clerk will announce the vote.

8           The Clerk.    Mr. Chairman, the tally of the members  
9 present is 11 ayes, 5 nays. The final tally including  
10 proxies is 15 ayes, 8 nays.

11          The Chairman.   The ayes have it. The nomination is  
12 ordered reported.

13          [Whereupon, at 10:48 a.m. the meeting was  
14 concluded.]

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410-729-0401