EXECUTIVE BUSINESS MEETING TO CONSIDER ADOPTION OF THE COMMITTEE'S RULES FOR THE 111th CONGRESS (UNCHANGED FROM THE 110th CONGRESS) AND AN ORIGINAL BILL REAUTHORIZING THE CHILDREN'S HEALTH INSURANCE PROGRAM

THURSDAY, JANUARY 15, 2009

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 11:24 a.m., in room 215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Rockefeller, Conrad, Bingaman, Kerry, Lincoln, Wyden, Schumer, Stabenow, Cantwell, Grassley, Hatch, Snowe, Kyl, Roberts, and Ensign.

Also present: Democratic Staff: Russell Sullivan, Staff Director; Bill Dauster, Deputy Staff Director and General Counsel; Elizabeth Fowler, Senior Counsel to the Chairman and Chief Health Counsel; Laura Hoffmeister, Fellow; Bridget Mallon, Detailee. Republican Staff: Mark Hayes, Health Policy Director and Chief Health Counsel; Jim Lyons, Tax Counsel; Becky Shipp, Health Policy Advisor; and Rodney Whitlock, Health Policy Advisor.

Also present: Edward Kleinbard, Chief of Staff, Joint Committee on Taxation; David Schwartz, Health Counsel; Pat Bousliman, Natural Resource Advisor; Kelly

Whitener, Fellow; Carla Martin, Chief Clerk; and Josh Levasseur, Deputy Clerk.

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

The Chairman. The committee meets today to consider two items: first, adoption of the committee's rules for the 111th Congress, and second, an original bill reauthorizing the Children's Health Insurance Program.

Sir Winston Churchill famously told the House of Commons: "What is our aim? Is it victory, however long and hard the road may be?" Long and hard has been the road for children. It has been longer and harder than we thought it would be. It has been too long and too hard to extend health care to children in American families who are struggling to get by.

But at last, God willing, victory is in sight. We have been down this road before. Two long years ago, we began our journey with a budget resolution reserve fund for children's health insurance coverage. Today we hope to take some of the last steps down that road. Today we are here to strengthen children's health. Today we are here to complete this unfinished business.

The Children's Health Insurance Program works. In its first 10 years, the Children's Health Insurance Program cut the number of children without health

insurance by more than a third. In my home State of Montana, CHIP covers more than 17,000 children today. Thanks to a ballot initiative that the people of Montana passed last November, the Children's Health Insurance Program will soon cover many more children.

Health insurance matters. Children with health coverage are more likely to get the health care that they need, and they are more likely to get health care when they need it. Because of the Children's Health Insurance Program, more than 7 million children get check-ups, they see doctors when they are sick, they get the prescription medicines that they need. Uninsured children suffer.

Today, 1 in every 10 children goes without coverage. Uninsured kids are less likely to get the care for sore throats, earaches, and asthma, and most uninsured children have not had a check-up in the past year. When care is delayed, small problems can become big problems. Those big problems lead to missed school days and hospitalizations.

The Children's Health Insurance Program is an investment. A child who is healthy can go to school. A child who is healthy in school is more likely to do well in school. A child who does well in school is more likely to get a job, and people with jobs are less likely to end up in jail or on public assistance.

Ensuring that kids have health coverage is an investment in America's future. It is time to strengthen the Children's Health Insurance Program. Nine million children have no health insurance. Americans overwhelmingly support covering kids. It has been a long and hard road to get where we are today.

In July 2007, the Finance Committee marked up a bill that would have covered 3.2 million more children in the Children's Health Insurance Program. The bill passed the Senate on August 2nd. The House passed its version that same week, and a month later we reached a bipartisan, bicameral compromise and both chambers passed the bill. Unfortunately, on October 3, 2007, President Bush vetoed the bill and the House was unable to override that veto.

Congress passed a second reauthorization bill, but President Bush vetoed the bill a second time on December 12, 2007. But then the American people spoke. Now, with the strong support from President-elect Obama, we will finally be able to respond. Today we consider legislation to keep coverage for all children currently in the program, and we will start to reach nearly 4 million additional uninsured low-income kids.

We keep the Children's Health Insurance Program focused on kids. Childless adults who are covered today will transition off the program. This bill will allow no

new waivers for Children's Health Insurance coverage of childless adults. Coverage of low-income parents will transition to separate block grants at a lower match rate. This bill will allow no new waivers for Children's Health Insurance coverage of parents. States will be able to designate funds to help families afford private coverage offered by employers or other sources.

We pay for what we do. Like the vetoed bills, this legislation will increase the Federal tax on cigarettes by 61 cents. We also make apportional increases for other tobacco products. Increasing the cigarette tax will discourage smoking, particularly among teens, and that will be good for kids, too.

The Children's Health Insurance Program is a legacy of work by Senators of goodwill from across the political spectrum. Much of the work was done by our colleagues Jay Rockefeller and Orrin Hatch, and in the last Congress Chuck Grassley and I worked with Senators Rockefeller and Hatch to craft both consensus packages.

I can tell you, it was long, long, long, hard work. We met for an innumerable number of hours in my office, my conference room, the four of us, and our staffs spent even more hours together. But we worked together. We did not leave the table, because we wanted to get a solid result. We wanted to get Children's Health Insurance

passed. Again, I commend Senator Grassley, Senator Hatch, and Senator Rockefeller for that effort. They worked very hard.

The Children's Health Insurance Program has worked successfully for 12 years. Nine out of ten Americans want Congress to add new funds to CHIP. So let us complete our journey down this long, hard road. Let us at last achieve this victory, and let us extend health care coverage to nearly 4 million American children.

I recognize Senator Grassley for his statement.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM IOWA

Senator Grassley. Thank you, Mr. Chairman.

Before I go to my statement, I would like to put this mark-up in context because it is somewhat different than most mark-ups in this committee. During Senator Baucus' chairmanship over the last two years, many markups were joint markups. In the eight years that I was chairman, every bill but two were joint markups. This is very minor compared to all the stuff that has come out of this committee in the last eight years, very bipartisan. This is quite a departure.

The second thing that I would say -- in fact, I think Senator Baucus stated it more effectively than I did about the hard work that went in to the bipartisan agreement of the last two years, and the hours that we put in not only among ourselves here to get a bipartisan mark, but working in the same way, in a bipartisan way, to get some more votes in the House of Representatives to override a veto.

Obviously, I did that, to the chagrin of about two-thirds of my own caucus, but I was very happy to do that because I think the President, in his second budget, or his last budget, when he came out with $20 million

instead of $5 million two years ago to spend more on it, justified what I had said over the last 12 months of 2007, that the President was just not putting enough money into SCHIP reauthorization.

So we had all sorts of cooperation, particularly from the other side of the aisle, by almost everybody. I had everybody complimenting me because I was willing to stand up as an individual for what was right and where I thought the President was wrong. So now it is kind of feeling like you are thrown overboard, and people that do that probably do not realize that I cannot swim. So, there is a future here that we have to consider as we are working together.

Now to what I have to say about this bill. The State Children's Health Insurance Program, SCHIP, as it is most often referred to, is a product of a Republican-led Congress in 1997, signed into law by a Democratic President, but it has always been very much a bipartisan product. It is a targeted program designed to provide affordable health coverage for low-income children of working families. These families make too much to qualify for Medicaid, but struggle to afford private insurance.

In 2007, the Senate Finance Committee reported that bipartisan bill out of this committee by a 17:4 vote.

The full Senate passed the SCHIP legislation three times with broad bipartisan majorities, the House of Representatives also passed SCHIP legislation with broad bipartisan majorities, and the current President vetoed the bill twice.

Next week, we will have a President who will sign the SCHIP legislation. Let me be clear, the route that we are taking today is not my choice. In a year when we were going to focus on comprehensive health reform, in a lot of ways it makes more sense to do a simple extension of SCHIP for two years so we can work through how SCHIP folds into a program that covers everyone, which is a bipartisan goal. A full reauthorization will make health care reform more complicated, but it will not make it impossible.

For those of us still interested in moving forward on a bipartisan basis on health care reform, our problem is that today the Democratic leadership and the incoming Obama administration appear to be abandoning the spirit of bipartisanship that we had for SCHIP in 2007.

Mr. Chairman, I think that you really wanted to do a bipartisan mark, and I am sorry that it appears that the Democratic leadership and the Obama administration have stymied that effort.

The challenge that we face in moving forward on

SCHIP this year is that, after we failed to get enough votes to override the President's veto on the first SCHIP bill, we negotiated a second bill that I personally think was a better bill. The current turn of events with the SCHIP reauthorization is disappointing and unfortunate, and, quite frankly, makes me damned disgusted. A great deal of hard work and bipartisan cooperation went into the SCHIP bill, and it has been adequately described by the Chairman, and I thank him for describing that.

It produced legislation that Rahm Emmanuel, when he was a congressman, said "should have strong support from both Democrats and Republicans". When the second SCHIP bill emerged, Speaker Pelosi called the language "a definite improvement on the bill". Other Democrat leaders said the second SCHIP bill was even better than the first because, as our Chairman said, it "focuses more on kids", and "focuses more on low-income families". Those are goals that we all agree need to be accomplished. The lower your income, the less chance you'll have health insurance.

But now that by some reports change is coming to Washington, the spirit of bipartisan partnership for low-income children appears to be disappearing before our very eyes. It is being replaced by partisan exploitation. It is as unbelievable as it is saddening

for me to see this happen, particularly in this committee.

The Democratic leadership initially proposed returning to the first SCHIP bill. That meant that we would have been backtracking on agreements made on proposals they themselves offered in response to principles and vigorous criticism of the first bill. Even though that was very troubling, and despite my misgivings about going backwards on agreements that had already been made, I still offered to help find a deal that blended the policies in the first and second bills so as to keep the bipartisan coalition on SCHIP together.

Coverage of low-income children has to be a priority. The issues are challenging ones that were debated vigorously in the 110th Congress. They involved whether SCHIP reauthorization should allow coverage of children in families with incomes up to $83,000, which would have been 400 percent of Federal poverty, and whether States should be required to cover a substantial portion of their lowest income children before expanding the program to higher income children.

We worked together. We worked together to respond to these issues and we had a very good proposal that involved compromises on both sides. Now, unbelievably, the other side does not even want to support the first

SCHIP bill. The bills under consideration today drop policies on crowd-out of private coverage that were in both bills, and the bills under consideration now put the issue of coverage of legal immigrants back on the table, even though a key element of the CHIP 1 agreement included an agreement that the issue of providing taxpayer-subsidized coverage to legal immigrants was explicitly dropped in favor of getting as many low-income U.S. children the coverage that they need.

Today, all of the Republicans who supported the second bill are being asked to retreat to a first bill. I could probably stomach going back to the first bill, though with serious reservations. I, for instance, do not believe that it is good public policy for a family with an income of $83,000, well more than the median household income in the United States of $50,000, to be able to get onto SCHIP. The bill that we are marking up today allows that.

In 2007, we listened to CBO and others who talked to us about the problem of crowd-out, and that is when government coverage replaces private sector coverage, as you know. So in response to what CBO taught us, that probably we should have understood and did not, we developed a very good policy on crowd-out.

I am disappointed that the bill that we are marking

up today eliminates the crowd-out policy that we so carefully drafted together and agreed to in 2007, but even then I could probably find a way to support the bill on passage. However, it appears that the committee Majority, supported by the Democratic leadership, is bound and determined to scuttle that bipartisan support.

On another important issue, since the Welfare Reform bill of 1996, immigrants coming to this country legally and their sponsors have been required to sign a contract that they will not seek public assistance for the first five years that they are in the country. Today, the Majority is determined to weaken that policy by lifting the five-year ban on the Medicaid and SCHIP coverage of legal immigrants.

One of the privileges of being in the Majority and being in charge is the ability and the responsibility to set an agenda. The agenda they have set for the immediate future includes an immigration fight, a contentious partisan mark-up over what had been a bipartisan bill. So is that change that we need?

The agenda that they have set puts a short-term political gain ahead of the greater agenda of health care reform. In 2007, the Majority Leader said this about SCHIP: "A very difficult, but rewarding process for me. It indicates to me that there is the ability of this

Congress to work on a bipartisan, bicameral basis."

I am deeply disappointed that going in to this new Congress, the 111th, when we have so many important issues for working families, that the Majority and the Obama administration have signaled that they place a higher priority on winning the votes that they have rather than actually changing the tone and Washington rolling up their sleeves and working together on behalf of the American people.

Mr. Chairman, this should have been an easy and quick mark-up to pick up and pass this year, similar to what we have done together for eight years. Our bipartisan coalition fought side-by-side to get SCHIP done in 2007. Picking up that baton and carrying it across the finish line should have been a straightforward, very easy process.

Instead, we are headed towards a process that will likely end up with a bill that many Republicans like myself, who have been strong supporters of SCHIP, will no longer be able to support. I do not think undoing agreements that have been made and veering towards partisanship instead of cooperation is a change that people believe in. It does not bode well for how other major issues will be dealt with.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator.

First, I think it is important to note that the mark will be quite similar to the CHIP 1 and CHIP 2 bills. There are some differences, but not a lot. The legal alien provision that you mentioned is not in the mark. I do pledge to you that, as we work forward on health insurance reform, we are going to work together. We are going to find ways to make things really work here.

Senator Grassley. Well, I know that is where your heart is.

The Chairman. Thank you.

All right. Other Senators who wish to speak? On the list here, in order of appearance: Senator Rockefeller.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER, IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator Rockefeller. Thank you, Mr. Chairman. I back up what you said in your statement just a moment ago, that actually 90 percent of this bill that we are going to be voting on today is exactly the same as what I would call the more conservative of the two bills last year. There is almost no change in language.

I want to thank Chairman Baucus for moving so quickly in this new Congress to do something which I think has nothing to do with politics and has everything to do with people called children, who are not getting the health care that they need. I will not take you back to my Vista days in West Virginia, but I will if the argument gets long and heated.

Because of the Chairman's decisive action and the election of President-elect Obama, we can finally finish the business of providing 4 million uninsured children with the comprehensive and affordable health care coverage that they need. And they need it, they need it, they need it.

So the question becomes, is this political, is this moral? We passed it twice last year. We must have felt that it was moral, because it certainly was not political

because we spent 300 hours negotiating it out. It is my hope that we will have the same bipartisan commitment to passing this legislation as we did in 2007.

Mr. Chairman, your proposal not only captures the spirit of our bipartisan negotiations, but the letter of those negotiations as well, the specifics. Anyone comparing this mark to the 2007 bills will see that more, as I said, 90 percent of the actual literal language is exactly the same as the second vetoed CHIP bill, H.R. 3963. Ninety percent. In fact, Titles 2, 3, 4, 5 and 6 are exactly the same, except for provisions that have already been signed into law in other bills.

In the very few places where this mark differs from the second CHIP bill, the much more conservative of the two bills, the Chairman has made the very wise choice to do something which is very hard to do, and that is to update the language in response to the time that has elapsed since we first debated authorization a while ago, and in response at the same time to our country's current economic situation. It is the right thing to do. It is a hard thing to do.

The Chairman has appropriately increased allotments to States, recognizing that it will cost billions more in 2009 to cover the same number of children that we would have covered in the 2007 law which we passed twice on an

overwhelming bipartisan vote. The President did not sign, at that time, either bill.

The Chairman has allowed Federal funding for the coverage of children above 300 percent of poverty. I am sure that we will hear something about that, like we did in the first CHIP bill. Well, I think this additional Federal funding should remain at the higher CHIP matching rate instead of the lower Medicaid matching rate. The Chairman's mark appropriately responds to the fact that our country is very different than it was two years ago.

Thousands of men and women are losing their jobs every day and their private health insurance goes right along with it. Because of this recession, more and more working families have to rely on Medicaid--that is a fact, a moral fact, a human fact--and CHIP coverage, a moral, a human fact, for their children. It would be irresponsible for the Federal Government to cap Federal funding to the States at a time when working families need more public assistance, not less, and in this case, pretty much just to stay up where we put them in 2007.

The Chairman's mark strikes an appropriate balance between those of us who want no limit--and I am on that side--on Federal funding for CHIP, none, and those who want to eliminate Federal funding altogether, so he has acted wisely, responsibly, and in a bipartisan fashion.

The remaining changes to the bill are technical in nature. I am not sure why anyone would oppose them. So it is my sincere hope that everyone who supported the bills in 2007 will also support this mark. It just is not a matter -- I am sorry to go back to the Ranking Member and sort of the infusion of politics into this. We have been trying to do this so hard for so long. I remember working on this with John Chafee in the mid-1990s.

In fact, we wanted to put the whole thing under Medicaid and the governors said we could not do it, so I guess we could not do it. But, again, this is 90 percent exactly the same as the second CHIP bill, and it covers 4 million uninsured children, each of those being human beings, each of them having a right not to grow up with even more difficulties than they already face.

I thank the Chair.

The Chairman. Thank you very much, Senator.

Senator Roberts?

OPENING STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR FROM KANSAS

Senator Roberts. Thank you, Mr. Chairman. I want to express my sincere disappointment with this bill, not the intent of the bill. I think you quoted Winston Churchill, saying this was a long road to victory and we had hoped we would achieve victory. I think Churchill said something like this: "We will fight them in the cities, in the villages and the farms, regardless of the outcome. Let it be said, this was our finest hour." Well, this was not our finest hour.

The Chairman. That was a different speech. [Laughter.]

Senator Roberts. This is not our finest hour in regard to SCHIP.

As one of the few Republicans--very few Republicans--who worked with you and your caucus in the last session of Congress to hammer out a bill that, in my opinion, really improved SCHIP, I am personally frustrated, I am upset, I am angry by the almost total exclusion of myself and others around this room that have been there in the writing of the new SCHIP policy. From a procedural standpoint, I was not aware of the changes made in SCHIP, as opposed to SCHIP 2, which I think the Ranking Member

has pointed out we could have passed like that. But I did not know about it until 12:30 yesterday. At that time, I was told, well, you missed the deadline in regards to amendments, although I understand there are several that I plan to support.

Senator Grassley said that he cannot swim. Well, the bridge is washed out, we cannot swim, and the mark is on the other side. That is too bad. I am even more upset at the elimination of so many of the compromises, the good-faith compromises and commitments, that made the previous SCHIP bill truly bipartisan. My good friend and colleague Senator Rockefeller said it is 90 percent of the same bill. Well, I would inform my colleague and my good friend, it is the 10 percent that represents barbed wire and a heck of a burr underneath our saddles.

For example, Section 114 of SCHIP 2 targeted SCHIP funds to low-income children by eliminating the Federal match for kids from families over 300 percent of the Federal poverty line. Three hundred percent of poverty. That is over $63,000 per year for a family of four. This new SCHIP bill reverses that position.

Now, in Kansas our SCHIP program, which is called Health Wave, covers 35,000 low-income youngsters. However, some 55,000 youngsters in Kansas remain uninsured. I cannot tell those kids and those parents

that other States are getting Federal tax dollars to support families making $63,000 a year, and with waivers for New York and New Jersey, that goes up to $83,000.

I remember asking Senator Schumer--and I am not picking on Senator Schumer--how on earth can you justify that to a taxpayer from another State, that you are now giving SCHIP money to low-income kids, but with families making $83,000? He informed me that when you are in New York, you are poorer than you are when you are poor in Kansas, which I thought was a very novel statement. I suggested that the people in New York who were poor just simply should move.

Section 116 of SCHIP 1 and 2 included anti-crowd out positions, again to ensure that SCHIP funds went to youngsters who otherwise could not afford health insurance. Now CBO tells us, under this new SCHIP bill, an estimated 2.3 million youngsters who were previously covered by private insurance will now move over to SCHIP or Medicaid in that program.

Out of the 6.2 million new youngsters covered by SCHIP and Medicaid under this new bill, 2.3 million of them currently have coverage. That is not targeting aid to the neediest youngsters. That is the very definition of crowd-out and some of the most compelling evidence to support restoring 116 in this bill. Why would you

endanger a private insurance company that is covering 2.3 million already, and these are the people that are covering the low-income families? I just simply do not understand that.

Finally, I am very troubled by the possibility we are likely going to consider an amendment that will turn a debate about children's health insurance into a discussion over immigration policy. Now, I understand the desire of many in this room, and every member in the Senate, to try to get to meaningful immigration reform, but here we have a real chance to be bipartisan and show America that we can legislate for the greater good. Why would anyone want to bring one of the most divisive, and contentious, and passionate issues of the last decade into this debate? That is a poison pill.

We could have easily taken up the SCHIP bill from last year, as the Ranking Member has indicated. It would have passed. It would have been bipartisan. It would have been a big win right off the bat for this committee, for the 111th Congress and for the cause of health care reform. I told that to Tom Daschle when he came in for a courtesy visit, in which we had a very good visit. I said, Tom, let us go with SCHIP. We can get it done, it will be a win, it will be bipartisan. It will signal to everybody that we are together. That is not the case.

That is not the case right now. We have been thrown underneath the bus. By "we", I mean Senator Hatch, myself, Senator Snowe, and Senator Grassley. That is not right.

Senator Hatch has an amendment, which I will be very happy to co-sponsor, to strike the Chairman's mark and replace it with H.R. 3963 from the 110th Congress, also known as SCHIP 2. This is a bill that every single Democrat and 30 Republicans--at no small risk, I might add--voted for. What a great opportunity we have here to reverse the partisan tone of this mark-up. I know that is not the fault of the Chairman. We all know where this is coming from and where the marching orders are coming from.

I urge all of my colleagues to support the Hatch amendment when it is offered. If that fails, it will be clear to me that the partisan route has been chosen and all of our good work will be thrown away. This really disappoints me. I am still a new member of this committee. I have been tremendously impressed how Republicans and Democrats work together. This tears at that comity. This tears at the threads of what we are all about in terms of how to get things done. I have certainly gone over my time, and I apologize to the Chairman. I have more to say, and I will do that for Mr.

Hatch when he comes to the committee, and when we get to voting. But I will save that until that time when I really get upset.

The Chairman. Thank you, Senator Roberts.

Senator Stabenow?

OPENING STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR FROM MICHIGAN

Senator Stabenow. Well, thank you, Mr. Chairman. First, a thank-you to you and to Senator Grassley, Senator Rockefeller, Senator Hatch, everyone who has been involved in Children's Health Insurance.

I guess I come from a little different perspective as to whether or not this is a bipartisan effort, because personally I would rather we had gone back to the original bill of $50 billion and look at the fact that we have an incoming President who, my guess is, would support that, and the strong, new Majority that we have. I think we could have very easily chosen to go back to the original bill, and that is not what has happened here.

So I am surprised that there is not more of a feeling that this is bipartisan, because I do believe that the bipartisan efforts have been respected. While there may be a few changes that come from this new piece of legislation, in my mind it could have been dramatically changed. But in the effort to have a bipartisan bill, we have in front of us basically the bill that was in front of us last session. So with all due respect to my friends and colleagues, I have a very

different view on that.

I think this is a very important step forward for uninsured children, the vast majority of whom, 78 percent, live in working families. I know in my home State of Michigan, Children's Health Insurance and Medicaid have made a huge difference in families' lives. Through our State's Healthy Kids and My Child programs, we have covered about 950,000 children of working families, low-income working families.

Almost 1 out of 3 children in Michigan rely on Medicaid or My Child for health care coverage. For those who do have coverage, about three-quarters of these children have at least one working parent, as I said before. Given the economic situation hurting my State and the entire Nation now, I know that these numbers have only increased. In fact, hearing from our governor, they are increasing every day.

Mr. Chairman, I want to commend you on the mark that is in front of us and the positive elements of it. First, the mark will increase the amount of funding available to States. For my State, we expect to see almost a 40 percent increase in Children's Health Insurance funds, and I can assure you that they will go to good use for children of Michigan.

Second, I am pleased that the mark also recognizes

the need to have more quality measures and improved health information technology as they relate to children. The Chairman's mark retains language that Senator Snowe and I worked on to test the use of electronic medical records for children. I think this is a positive step forward that will give us better data on what methods work best to find, enroll, and treat children. I think it is an important part of the reauthorization.

Third, the bill strengthens the number of benefits. For example, it makes it easier for States to cover pregnant women. This option is critically important to me because Michigan has the third worst infant mortality rate in the Nation.

I am also glad that the Chairman was able to include improvements for dental and mental health benefits. Adding these benefits will have a long-lasting impact on children as they grow into adulthood, reducing future health care costs.

Finally, Mr. Chairman, it is great that there are incentives to States to do outreach and to enroll more children that are eligible. We all know that there is a hesitancy to enroll children if the resources are not there. The mark also includes language similar to my Healthy Schools Act on the importance of school-based health centers. I want to thank Senator Lincoln and

Senator Bingaman for co-sponsoring this amendment.

I believe what is in front of us an extremely positive success story, and congratulations, Mr. Chairman.

The Chairman. Thank you, Senator.

I note that a quorum is present. I will continue to recognize Senators who may speak up to four minutes, but I also might remind Senators that maybe they do not have to speak a full four minutes. We have business to conduct.

Senator Kyl is next on my list.

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

Senator Kyl. Thank you, Mr. Chairman. I appreciate your saying something, because there is the Holder hearing, which both Senator Hatch, Senator Grassley and I, and I think Senator Schumer, and perhaps some others on your side are going to have to be running back and forth on. So let me express some views here and then indicate a couple of amendments I intend to offer, and then hopefully I will be here at the right time.

I share Senator Grassley's sentiments that there was an opportunity here to potentially do something in a bipartisan way, and I regret that that is not the way it is happening.

I also want to say to Senator Rockefeller, I do not know how you attach a percentage of the bill, that it is 90 percent exactly the same, or what, but here are three ways in which it is different, and they are big. First of all, we raised the issue of crowd-out last year. Perhaps as a result of that, language that even the Chairman helped to draft was included on crowd-out. That has been dropped. That is important, and I will have an amendment to put it back in, the same language that you all voted to approve, to put it back in the bill.

Second, the coverage of non-citizen children, both in the mark and potentially as a result of Senator Rockefeller's amendment, at a cost that we simply do not know and cannot understand, represents very bad policy. Third change is the inclusion of a special earmark for New Jersey and New York that could cover families up to 400 percent of poverty. Those are three ways, anyway, in which the mark is different from the bill that we voted on before, and I think those are important.

My concern about the bill, as before, was that it fails to put low-income children first. It expands SCHIP to higher income families--as I said before, $84,000--in at least two States. The bill continues to allow the enrollment of adults in waiver States and it is supposed to be for kids. It removes 2.3 million individuals from private coverage and puts them on government-run health care, which is unnecessary, as I said, even dropping the language on crowd-out that was adopted last year.

It does expand SCHIP to both legal and illegal immigrants. The citizenship requirements are weakened dramatically. In fact, the documentation is optional. That is not wise. The cost is at least a minimum of close to $2 billion. The bill is not paid for. The budget gimmick, I would note, has now been scored by CBO: $115 billion over 10 years. Did you all know that? One

hundred and fifteen billion. That is $41.6 billion above the offsets, $41.6 billion in deficit spending.

And whatever you think about the tobacco tax increase, you have to ask whether, at this point in time with the economic situation we are in and with that tax falling significantly on lower income families, whether that is a good idea to increase that tax. Those are just some of the reasons I continue to oppose this, and wish that at least we could have dealt with this in a more bipartisan way.

Thank you, Mr. Chairman.

The Chairman. Next on the list is Senator Wyden.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator Wyden. Thank you, Mr. Chairman. Mr. Chairman, were you and Senator Grassley interested in moving ahead immediately? Because if you are, I will certainly hold off.

The Chairman. I will go ahead until everybody is through. Thank you.

Senator Wyden. All right. Thank you, Mr. Chairman. I will be very brief.

I think every Senator understands that it is a moral abomination that, in a country as good, and strong, and rich as ours, that so many kids go to bed at night without decent health care. I think every member of this committee is committed to turning this around. I just want to pick up on the importance of bipartisanship, because this is an important morning for the cause of coming up with help for America's kids, but it is also important for the cause of health reform, the major comprehensive overhaul that we are going to have to tackle in a bipartisan way.

I think we are fortunate, in Chairman Baucus and Senator Grassley, to have two individuals whose every chromosome, as far as I can tell, is committed to dealing

with these issues in a bipartisan way. So I would only say, as colleagues make their opening statements, that I am committed to getting this issue done in a bipartisan fashion because it will help kids immediately, and then moving on to the broader agenda.

I think under Chairman Baucus and Senator Grassley, we can get to that quickly and show the country, after literally 60 years of yakking about this cause of health reform, that it is possible to tackle it in a bipartisan way.

Mr. Chairman, I thank you for the chance to make this happen.

The Chairman. Thank you, Senator Wyden.

Senator Ensign?

OPENING STATEMENT OF HON. JOHN ENSIGN, A U.S. SENATOR FROM NEVADA

Senator Ensign. Thank you, Mr. Chairman.

I want to raise a couple of issues that have not been talked about yet. As a Nation, we are dealing with a current and severe economic crisis. This crisis has a lot of causes, but the one thing that hopefully we have learned is that personal debt, company debt, and too much of it, is a bad thing.

Our country is too much in debt. Several Senators have raised the issue of morality. In my opinion, it is morally wrong to be passing on the kind of debt that we are passing on to our children and our grandchildren. At this time and as we proceed, we should be thinking about that debt. We should be asking the question: is this debt getting too big? Because we all know that we have the baby boomers coming to retirement and what that will do to Medicaid, Medicare, and other entitlement programs. It is a huge debt tsunami coming to this country.

So at a time when we know that an entitlement crisis is out there, and at a time when we are facing a $1.2 trillion deficit, maybe more than $1 trillion deficits in the years to come, we decide to add to this huge debt burden. Not to mention the fact that we have to pay

interest on the debt. Not to mention the fact that we are expanding entitlements at a time like this. This is not a question of whether we are going to cover kids and people during a tough economic time, but making sure we don't expand these programs irresponsibly.

We are not going to roll these things back. This is not just a temporary program. We are expanding entitlements into the future, so we are expanding debt that our children and grandchildren are going to have to pay into the future. We need to go into this debate with our eyes open. We should be really thinking about that debt as policymakers while we examine federal programs.

A few other problems that I have with the bill include that low-income children are not being covered first. I have an amendment that would require States to cover 95 percent of low-income children before they can provide SCHIP to higher-income individuals. If SCHIP is intended for low-income children, which is what it was supposed to be, then it should be targeted at low-income children. We are not doing a very good job of covering low-income children first, and that is one of the problems that I have with this bill.

The other problem that I have, and the reason that I believe that this bill will add more to the debt than we are even talking about, is that tobacco taxes are an

unstable source of funding. We understand that we want to get more and more people off of tobacco, and yet we are building a program that depends on tobacco revenue. This is at a time when fewer and fewer people are going to be smoking. We think that that is going to happen, so we have a more unstable source of funding.

Plus, it is important to recognize that the more the Federal Government increases tobacco taxes, the more State governments increase tobacco taxes, and the more black market happens with tobacco, the more people will go to Indian reservations for tobacco products. We have incredibly profitable tobacco shops in our State with the Indian reservations. They make huge amounts of money because of the differences in some of the taxes. So the more that we do, the less stable this funding source will be. Overall, I think that there are some serious problems with what we are doing at this committee, not to mention the concerns that others have raised. Taking a bipartisan process and making it a very partisan process, I think, is the wrong way to start the beginning of this new Congress.

So, thank you, Mr. Chairman.

The Chairman. Thank you, Senator.

I might just remind us all, and Senator Rockefeller alluded to it in his opening comments, that there was a

question not too many years ago of whether the Children's Health Insurance Program should be an entitlement or should be a block grant. The conclusion was made then that it is not an entitlement program, it is a block grant program that has to be reauthorized every certain number of years, and that is why we are here now reauthorizing it.

Second, it is paid for, unlike Medicaid, which is not reauthorized every year, every five years, or whatnot, which is an entitlement. This is not an entitlement, it is block grant program, and we are paying for it. I very much respect the Senator's concerns about how the pay-for is going to work with the tobacco taxes. That is always a question here. We have asked Joint Tax to do the best they can, but it is certainly an issue and I certainly understand that.

Senator Crapo is not here. Senator Snowe is next in order.

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S. SENATOR FROM MAINE

Senator Snowe. Thank you, Mr. Chairman. I want to voice my strong support for this legislation and your tireless perseverance, as well as Ranking Member Grassley, Senator Rockefeller, and Senator Hatch in trying to achieve a bipartisan agreement. I regret that we were unable to do so, because I think this is such a critical issue in these tough economic times. I think this legislation, frankly, that is before the committee is a reflection of the magnitude of the problem that we are experiencing in this country, and therefore we have seen significant numbers of uninsured children and uninsured families across this country.

So I think that the cost and the size of the package, and I know that that concern has been expressed here today, is a reflection of what this country is experiencing with respect to the economic downturn and the hardships that it is imposing on individuals and families. The stakes are monumentally higher from when we initially considered this legislation, on two different occasions, we well know, a year and a half ago.

Approximately 2.4 million jobs have been lost in the past 12 months, the most job loss since 1945. So we

cannot turn a blind eye to the fact that a one percent increase in the unemployment rate ultimately increases Medicaid and SCHIP enrollments by a one million, 600,000 of whom are children.

With more than 7 percent unemployment, it is estimated that 2.6 million people will be uninsured, and that also means an increase in Medicaid and SCHIP enrollment of more than 2.4 million. That is why I think it is essential, if not an imperative, to expand the dimensions of this program. Certainly the States have taken on inordinate responsibility and obligations to do so.

I think that we have a responsibility at the Federal level to assist and to be strong partners in that endeavor because the SCHIP program has been a saving grace to millions of parents who have had to make some very difficult and wrenching choices when it comes to balancing adequate health insurance with mortgage payments, heating bills, and myriad other financial pressures that have been magnified by the downturn in this economy.

Let me address one other issue. I know the issue of crowding out, and people saying that this becomes an incentive to drop private coverage in order to join the program. The fact of the matter is, it is the costs that

families are incurring in the private markets that basically excludes them from having access to that type of coverage.

In the State of Maine, for a family of four, in the individual market the cost of health insurance is $24,000. That represents about 50 percent of someone who is at the 200 percent income level. So that is what we are talking about here. We are basically finding that more and more people are losing their insurance policies because they cannot afford it, or small businesses, small employers can no longer afford to provide it.

So it clearly is a crisis that is reflected in the dimensions and the demands upon this critical program. I think it is important to provide access to low-income pregnant women. I think that is the least that we can do. I think, second, there have been concerns about legal immigrant children and not applying the five-year standard and requirement before they have access and eligibility to Medicaid, SCHIP, and other services.

In the final analysis, when you are talking about excluding children for five years and they have diseases that they develop, then the bottom line is that they are going to have even more serious problems with their health care that is going to impose even greater costs to the Federal programs. These are taxpaying individuals

who are providing their taxes and should be eligible for these services. The States are providing it at their own discretion; clearly we should at least allow them to provide this as an option.

So, again, Mr. Chairman, I just want to thank you for bringing forward this legislation. Hopefully we can reconcile some of these issues, because I truly wish that we could have it done on a broader bipartisan basis.

Thank you.

The Chairman. Thank you, Senator, very much.

Senator Conrad is next.

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator Conrad. Thank you, Mr. Chairman.

First of all, Mr. Chairman, I think you have done an excellent job of putting this bill together under very difficult and contentious circumstances. But I think basically you have found the reasonable area of compromise and conciliation to advance an important priority.

I mean, what are we talking about here today? I listened to some of these speeches and it is like they have paid no attention to what the subject at hand is about. It is about providing health insurance to children--health insurance to children. That is an investment we should make. That is the least-costly segment of the population to cover and it provides the biggest payoff to society, because a healthy child is a savings to society for their entire lifetime.

Now, boy, we can get into quibbles on this little detail and that little detail. You talk about missing the forest for the trees, that is it. This proposal takes a significant step forward, covering nearly 4 million children with health care. Now, any one of us might have written this a little differently. I looked

just, say, on the fiscal front. This is paid for: $31 billion, offset, by the official estimates--not of the Chairman of this committee, but the estimates of the Congressional Budget Office. They are the ones who are the scorekeepers and they have come back and told us, this is paid for.

I just want to emphasize, this is not a 10-year bill or an 8-year bill. This is four and a half years. In 2014, we know we will have to revisit this question. We will have to revisit the financing. We will have to revisit whether it goes forward or whether other health care reform that occurs in the interim makes this issue moot.

So this legislation deals with the next four and a half years. Over that period, it is paid for and it is covering nearly 4 million children with health care. That is, to me, a profound moral responsibility. This is the vehicle, this is the opportunity and this is the time. I hope colleagues will support the Chairman's efforts.

The Chairman. Thank you, Senator.

The final Senator on the list is Senator Hatch.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator Hatch. Well, thank you, Mr. Chairman.

As you know, I am very disappointed in this mark because I believe we could have had a bill that would bring the vast majority of members of Congress together once and for all to help children of the working poor. When we originally did this bill it was to help children of the working poor, the only kids left out of the whole process.

All of a sudden, we find in this administration, the current administration, has some fault in this regard. We find that they have brought in a bunch of people who were not children. They have run the costs up dramatically. We are not doing an awful lot about that.

More importantly, we even agreed at one time that we would keep this 300 percent of poverty or less. Three hundred percent of poverty is around $63,000 for a family of four. That is pretty high. But then we see a number of States who have been bringing, because of the FMAP, Medicaid kids into CHIP and now moving towards 300 percent of poverty for Medicaid kids. There is only one reason they are doing it, in my opinion. Well, there are two reasons. One, is that they get a higher match under

CHIP than they do under Medicaid.

Two States, they are at 400 percent, over $83,000 for a family of four. So one reason was so they could get a higher match. The second reason was so they could, some, push more and more towards a single-payer program by using a block grant program that was meant for children of the working poor, the only ones left out of the system.

Second, there is an insistence on putting in here, when we have limited funds and we cannot take care of all the kids that have to be taken care of who are citizens of this country, taking care of children of legal immigrants. Now, I would like to do that, personally, but where do you get the money? How many citizen children are going to be without health care because we want to do that? But more importantly, even if we could agree to do that and forget about some of the children of citizens who deserve this type of care, we know that there is a considerable number of people in both bodies who will vote against this for that reason. Why do we not take care of our citizens' children and then work this matter out later in a way that would be satisfactory to the vast majority of people in this country?

Well, there is an awful lot of stuff here and it brings me a great deal of hurt to see that this is

becoming a partisan exercise rather than a bipartisan one. I do not blame you, Mr. Chairman, at all. I know how it came about, and I think you tried very, very well.

As you know, I wrote the CHIP program with Senators Kennedy, Rockefeller, and Chafee. We were all very pleased with these legislative accomplishments. When this bill was being drafted by the Senate Finance Committee in 1997, I worked closely with the Senate Finance colleagues to achieve a fine balance between providing health care coverage for the children of the working poor and balancing the Federal budget.

Two years ago, I worked very closely with members of this committee and my good friends, Senators Chuck Grassley, Jay Rockefeller, and of course, you, Mr. Chairman, to work out a bipartisan bill that would reauthorize the CHIP program for five years. As you all know, we passed two CHIP bills with overwhelming support, but unfortunately both were vetoed and the Congress was unable to override those vetoes.

Now, I think my colleagues will agree that we put our hearts and souls into negotiating that legislation. We stuck together through some very tough times and decisions: whether or not to allow the coverage of pregnant women through CHIP; whether or not to continue coverage of childless adults and parents; whether or not

to allow States to expand CHIP income eligibility levels; how to eliminate crowd-out, and most importantly, how to get more low-income uninsured children covered through CHIP. We had some tough discussions, but in the end we ended up with a bill that covered almost 4 million kids--3.7 million, to be precise--low-income uninsured children. Unfortunately, neither version of the bill was signed into law and in the end we simply extended the CHIP program through the end of March 2009.

When President Obama was elected in November, he emphasized that things were going to be different. His words gave me hope that he would work with us and the Congress to pass a bipartisan reauthorization of the CHIP program that would be enacted. Unfortunately, I do not believe that the mark before us today embodies that spirit and does not honor some of the commitments that we all made back in 2007.

Now, it is my understanding that an amendment would be offered to allow legal immigrant children and pregnant women to be covered by CHIP at the State option. I believe it is our first responsibility to cover those low-income uninsured children who are not only eligible for CHIP coverage, but are also U.S. citizens. There are 6 million uninsured low-income children, maybe more, who are eligible for either CHIP or Medicaid.

In addition, the CBO score for a similar provision in the House CHIP bill is $1.7 billion over 5 years, and $3.9 billion over 10 years. All of us know that there is a limited pot of money to pay for the CHIP reauthorization bill. In fact, two years ago, which I will note was before the current economic crisis --

That is a great sound, is it not? That is called the sci-fi sound on the I-Phone. I just love it. It scares everybody to death every time that goes off.

But we have always struggled to find money for the CHIP reauthorization bill. There are other issues as well. The crowd-out policy that we worked out to address the valid crowd-out concerns raised by members was not included in this mark.

CHIPRA 2, the second CHIP bill vetoed by President Bush, included a provision to cap the CHIP program, as I said, at 300 percent of poverty. If States went over 300 percent they would not receive a Federal match for those children.

As someone who does not believe that CHIP should be available to higher income families until low-income uninsured children are covered, I was very pleased with this policy. I think we worked hard on it. However, the mark reverts back to the CHIPRA 1 policy that permits States to receive the Medicare matching rate, known as

FMAP, for children in their CHIP programs whose family income is over 300 percent of poverty.

But without a doubt, the issue that broke down negotiations at the end of 2007 between the Senate and the House Republicans was Medicaid eligibility. House Republicans wanted to put a cap of 300 percent of poverty on State Medicaid plans. I agreed with them, but others did not. That would have taken care of families up to $63,000 for a family of four. I am quite disturbed that the mark before us today still permits that policy. During this mark-up, I intend to offer amendments to address this very serious concern of mine.

So, Mr. Chairman, to say I am disappointed--not with you, but I am disappointed--is, quite frankly, an understatement. I want to encourage you and your colleagues to seriously consider what you are doing. We were so close to working out a bipartisan, heavily supported CHIP agreement, and in my opinion I believe that the Majority is missing an incredible bipartisan health care victory by making this a partisan product.

So I urge you, Mr. Chairman, to weigh in and talk to the people on your side and let us see if we can resolve some of these problems in a way that gets all of us voting for it the way we should be. It is a great program. It has worked amazingly well. I am proud to

have been one of the founders of it.

The Chairman. Thank you, Senator, very much.

Senator Hatch. And I appreciate you very much and the efforts you have made.

Senator Roberts. Would the Senator yield?

The Chairman. Just briefly. I have got some --

Senator Roberts. Would the Senator yield for just a very quick question, sir?

Senator Hatch. Sure.

Senator Roberts. Was that I-Phone sound a cry for help for bipartisanship on this bill? [Laughter.]

Senator Hatch. It was a true melancholy cry for help, is all I can say.

Senator Roberts. I thought so. Thank you.

The Chairman. Thank you, Senator.

All Senators have now spoken. There are votes in progress--actually, two votes.

I would like, now, to walk through the mark as quickly as possible. It is the Chairman's mark on the Children's Health bill. The Chairman's mark is now before us. The mark is modified, as indicated. The modification is before us and is deemed incorporated into the Chairman's mark.

Senators have had the Chairman's mark since Tuesday, so I would ask Ed Kleinbard, very briefly, to explain the

tax components of the modification, and then I am going to ask David Schwartz to briefly explain the spending components of the modification. At the conclusion of those remarks, I am going to ask if Senators have any questions. We will see how this goes and come back for amendments.

But Ed Kleinbard, would you proceed?

Mr. Kleinbard. Mr. Chairman, thank you. Ranking Member Grassley, members of the committee, you have before you the following documents describing the revenue provisions of the bill, you have the Joint Committee staff's explanation of the Chairman's mark, and you have a revenue table, JCX-209.

Very simply, the bill would significantly raise Federal excise taxes imposed on tobacco products, and by doing so raise Federal revenues by just under $65 billion over 10 years. The revenue provisions of the bill are nearly identical to those of the CHIP bill considered in 2007, with the exception of the tax rates for large cigars and roll-your-own tobacco.

In the case of cigarettes, Federal taxes will increase from 39 cents a pack to $1 a pack. In addition, the tax burdens across different tobacco products have been adjusted to better conform to their market price and their substitutability with one another. The tax rate

for large cigars is increased, and in addition the ceiling on the Federal excise tax on large cigars is raised from 5 cents to 40 cents. Small cigars are now taxed at the same rate as cigarettes, and roll-your-own tobacco would be taxed at a per-cigarette equivalent rate of $24.62 a pound. Finally, the bill strengthens the regulatory and enforcement authorities of the Trade and Tax Bureau.

Mr. Chairman, that completes my summary.

The Chairman. Thank you, Mr. Kleinbard.

Mr. Schwartz, can you briefly explain the spending components of the modification to the mark?

Mr. Schwartz. Thank you, Mr. Chairman. There are a few modifications to the Chairman's mark, as was released on Tuesday: a drafting error on page 19 of the mark, line 10 of the fourth paragraph, the word "demonstration" should be deleted; a second drafting error on page 27 of the Chairman's mark, line 6 of the first paragraph. It reads: "A total of $45 million." It should read "$45 million in each of five years."

An additional modification to the Chairman's mark in order to accept Senator Rockefeller's amendment number five, so the mark would be amended by striking the GAO study regarding Federal funding under Medicaid and CHIP to the territories required in Section 109 of the

Chairman's mark.

An additional modification to accept Senator Grassley's amendment number 12: add to Section 104 of the Chairman's mark a prohibition on bonus payments for children who are only presumptively eligible under Section 1920(a) of the Social Security Administration until those children are formally approved for Medicaid coverage.

An additional modification to accept Senator Grassley's amendment number 26, adding a new section to the Chairman's mark, Section 617 in Title 6, subtitle B, that requires a GAO study analyzing the extent to which State payment rates for Medicaid managed care organizations are actuarily sound.

An additional modification to accept a Stabenow-Lincoln-Bingaman amendment: adding to Section 505 of the Chairman's mark a definition for a school-based health center.

An additional modification to the Chairman's mark to accept, with modifications, Senator Rockefeller's amendment number 4 and Senator Grassley's amendment number 28. These would result in adding a new section to the Chairman's mark, Section 506, in Title 5, which would establish the Medicaid and CHIP Payment and Access Commission, known as MACPAC.

Finally, a modification to the Chairman's mark to correct a drafting error in Sections 103 and 104 of the Chairman's mark. On page 8, the third paragraph should be stricken and it should be moved to page 9 and replace the third paragraph on that page.

Thank you.

The Chairman. Thank you.

Do any Senators have any questions? If not, we will recess until the conclusion of two votes. When we come back, I know Senator Grassley has a couple of questions that he wants to ask. So, we will recess now until we come back.

Senator Hatch. I have some questions.

The Chairman. All right. We will recess now. Do you want to ask now, Senator?

Senator Hatch. I do not think we have time.

The Chairman. Well, it depends on the length of your question.

Senator Hatch. They are not overbearing, but they are --

The Chairman. All right. We will recess now until 1:00.

[Whereupon, at 12:33 p.m. the meeting was recessed.]

AFTER RECESS

[1:10 p.m.]

Senator Grassley. Senator Baucus asked that I go ahead and start.

Section 115 of this bill is perplexing to me. I know what we thought it did and meant to do in 2007, but the description in the Chairman's mark is puzzling. What does the provision actually do?

Mr. Schwartz. Section 115 is a little bit confusing, I agree with you, sir, and it is a little bit tricky to explain. But the basic concept is that States had flexibility in determining their Medicaid eligibility levels prior to CHIP, the creation of CHIP. Since CHIP was created, there have been some -- I think the provision in the mark aims to clarify some of the confusion that may have occurred since the creation of CHIP and the interaction between CHIP and Medicaid. So Section 115 of the mark would make it clear that States have the flexibility to have their Medicaid and CHIP programs be compatible in terms of consistent income eligibility levels.

Senator Grassley. So basically allowing States to create higher income Medicaid eligibility levels, then.

Mr. Schwartz. That is correct. That is one fair way.

Senator Grassley. Yes. So then, as you said, if I hear you right, a State can cover kids up to one eligibility level in Medicaid, then a State cover kids at a higher income eligibility level in SCHIP, and finally a State can then cover more kids at an even higher income level in Medicaid. Would it work out that way?

Mr. Schwartz. That is theoretically possible.

Senator Grassley. All right.

So a State could create an income eligibility level for kids above the SCHIP income eligibility level?

Mr. Schwartz. I believe that is possible under the language in the mark.

Senator Grassley. Are there any limits to how high an income eligibility level could be covered through Medicaid? 300 percent of the Federal poverty level, or 350, 400? We all know that 400 percent of federal poverty is over $83,000 a year for a family of four.

Mr. Schwartz. There are currently no eligibility level limits that high in the Medicaid program.

Senator Grassley. And could a State get bonus payments for coverage of those children in Medicaid?

Mr. Schwartz. I think you mean if they --

Senator Grassley. Oh. Wait a minute. Could a State get bonus payments for coverage of those children in Medicaid?

Mr. Schwartz. The language in the mark --

Senator Grassley. It kind of reads to me like you could do it after three years, but I --

Mr. Schwartz. Right. It has two provisions that have to be read together. Basically, the bonus structure says that eligibility levels as of July 1st of 2008, if a State increased its eligibility, using the language in Section 115, additional children added to Medicaid would not be eligible for a bonus during the first three fiscal years.

At the beginning of the fourth fiscal year, all of the children added during the first three fiscal years would be put into the State's baseline, which is used to determine, beyond the baseline, for who gets a bonus. So the answer to your question, the short answer, was yes, it's possible. And you are right, that after three years, subsequent children in that category could be eligible.

Senator Grassley. Then being somewhat repetitive, but to emphasize: those bonus payments are then on top of the Federal share the State already gets. Is that right?

Mr. Schwartz. That is correct.

Senator Grassley. All right.

And what is the amount of those bonus payments for any new Medicaid enrollment in such a State?

Mr. Schwartz. The bonuses are in two tiers. For the first kids that fall into the first 10 percent above your target, the bonus is 15 percent. Above the 10 percent threshold, it is a 62.5 percent bonus.

Senator Grassley. How does that effective match rate of the regular match, plus three bonuses, compare to the enhanced match that States get under SCHIP?

Mr. Schwartz. Because Medicaid match rates vary, it is hard to say how it would work in an individual State. But the 62.5 percent, I believe, would bring the State above the CHIP rate.

Senator Grassley. That was kind of the way I read it, but I think you have made that very clear to me now.

So a State could get bonus payments covering so-called low-income children in Medicaid, with families' incomes of $83,000 or higher?

Mr. Schwartz. Again, I think that is theoretically possible under the language of the mark.

Senator Grassley. And then that would be more accurately -- probably would work out after three years.

Mr. Schwartz. Right. Assuming, again, that in that fourth year or in subsequent years States actually continue to enroll enough additional kids above their target.

Senator Grassley. Now, I thought I knew an answer

to all those other questions, but this one, I honestly do not: why does the Chairman's mark contemplate this change in law? What is the rationale for giving States such an option and then giving them bonus payments on top of that? Why would that be necessary?

Mr. Schwartz. I think that the provision in the Chairman's mark is more of a clarification than a change in current law, again, trying to go back to the original flexibility States had to determine Medicaid eligibility levels. There have been some States that have attempted to vary their eligibility levels in Medicaid or CHIP, and so this is a reaction to decisions that have come out of the Centers for Medicare and Medicaid Services. I believe that is why this provision is in the mark.

Senator Grassley. I guess, further, what bothers me is why bonuses above SCHIP, particularly in States that could be up to $83,000? It just does not sound like it would be needed and is kind of counterproductive.

Mr. Schwartz. The bonuses that could potentially be available are made potentially available so that States that engage in this kind of increase in eligibility level are not penalized for having raised their eligibility level. The money that States would get under the bonus structure is for the cost of covering the child, which is really essentially unrelated to the

income level of that child's family. The cost of health care is the cost of health care, so the bonuses are to help incentivize States to go out and enroll eligible but unenrolled kids.

Senator Grassley. Of course, on your latter statement I obviously agree. That is a very good motive behind the bills. But it seems to me we are in a position, particularly of higher income people, not only seeing that a State does not get penalized, but we are in a position of encouraging people at that high income level to leave private health insurance and go into the public program.

Let me move on to some questions I have on citizenship documentation. It is my understanding under current law and regulation, an applicant for Medicaid benefits has to establish their citizenship using a very limited set of source documents such as a passport or original birth certificate. Is that your understanding?

Mr. Schwartz. It is.

Senator Grassley. It is also my understanding that under current law and regulation, an applicant for Medicaid benefits has to also establish their identity using a photo ID as proof of identity in all but rare circumstances. Is that right?

Mr. Schwartz. I believe it is.

Senator Grassley. If this bill becomes law, will the State be able to confirm citizenship through the use of the new Social Security data matching provision in this bill instead of the current law documentation requirement?

Mr. Schwartz. The language in the Chairman's mark would create a State option to use the Commissioner of Social Security's records for a determination that the information is not "inconsistent with citizenship", I believe is actually how the Social Security folks have asked us to phrase it. So if a State exercised the option that the Chairman's mark would make available, then yes, the answer to your question would be, yes, they can use Social Security.

Senator Grassley. Does the Chairman's mark contemplate that any person declaring to be a citizen will be allowed to receive Medicaid benefits while they are given a reasonable time to produce documentary evidence in this new system?

Mr. Schwartz. The Chairman's mark provides a reasonable opportunity, assuming that folks are otherwise eligible for Medicaid.

Senator Grassley. And that period is three months?

Mr. Schwartz. I believe that is right, 90 days.

Senator Grassley. Yes. So that means that if a

person applying in a State using the new system does not have their Social Security number, the Chairman's mark contemplates that a person will be allowed to receive Medicaid benefits while they are given reasonable opportunity to find their Social Security number. Is that right?

Mr. Schwartz. I believe that that is correct.

Senator Grassley. All right.

Mr. Schwartz. I would have to go back and look, but I believe that it is.

Senator Grassley. All right. Well, if it is not, you can change your answer for the record, or tell me personally.

Mr. Schwartz. Thank you.

Senator Grassley. What if you have a person who is here illegally claiming to be a citizen and who does not have a Social Security number. Would that immigrant, here illegally, be given a reasonable opportunity to go find their Social Security number, even though they do not have one?

Mr. Schwartz. I believe the 90 days would apply as well.

Senator Grassley. All right.

And during this period, three months, as we have said, that person who is illegally in America would

receive full Medicaid coverage. Is that right?

Mr. Schwartz. It is full coverage during the 90 days.

Senator Grassley. All right. Then based on the answers you have provided, is it not possible that the people getting benefits who cannot find their Social Security numbers and are also illegally in the United States will be able to get benefits through what I would refer to as a loophole that maybe people have not thought of and I found for you?

Mr. Schwartz. And I appreciate that. I believe the answer to the question is yes, that it is full benefits during that 90-day period.

Senator Grassley. Yes. So then it gets me around to another question of why. Why are we giving Medicaid applicants, applicants who could be citizens or illegally here, three months to remember nine digits that you use nearly every day in your life if you are regularly a part of our society?

Mr. Schwartz. The Social Security option contained in the Chairman's mark is meant as a response to what has happened since the list of documentation was added to Title 19 of the Social Security Act for the Medicaid program, which has caused, literally, tens of thousands of U.S. citizen children to be kicked off of Medicaid as

a result of not being able to comply with that list of documentation. So, the mark would create a State option to insert a new way of trying to facilitate the confirmation, or lack of inconsistency, of citizenship.

Senator Grassley. Turning my attention to the identity question, under the new system in the Chairman's mark, what does an applicant have to do to establish or verify their identity when applying for Medicaid benefits in a State using Social Security numbers under this new system of citizenship verification?

Mr. Schwartz. I do not believe the mark makes any changes in the identity requirements that are in current law.

Senator Grassley. All right. I cannot say that I agree with you. I will let my staff think about what you just said.

So the bill does potentially improve the ability of people with valid Social Security numbers to get Medicaid benefits. But just to confirm what you said, and given all the problems that we hear about identity theft, the Chairman's mark does not actually do anything to ensure that a person applying is who they say they are?

Mr. Schwartz. I believe that the Chairman's mark leaves existing law intact as it relates to proving identity.

Senator Grassley. All right. Is that because it is setting aside what identity requirements that are in the DRA? Is that how you get to the point of what you just said?

Mr. Schwartz. I think that is right. Because if you cannot verify the Social Security number, then you would return to the list of what is in 1903-X from the Deficit Reduction Act.

Senator Grassley. This is not a question, but I would like to know if it is fair for me to conclude from what you have said two major problems--or maybe you would not consider them major, but I will use that adjective. The first, is that they provide a loophole to allow people illegally here to get Medicaid benefits while they use this reasonable opportunity to look for the Social Security number that they probably do not have.

The second major problem is that, with all the problems with identity theft, the bill does not require a Medicaid or SCHIP applicant to verify their identity under the new proposed system for citizenship documentation. You only need to comment if my conclusions -- you may not agree with my conclusions, but unless my conclusions are wrong, you do not have to comment.

Mr. Schwartz. No, I believe they are fair.

Senator Grassley. All right.

Then my last set of questions would deal with the issue of crowd-out. The incidence of crowd-out in public programs has been a longstanding concern of members when debating SCHIP. So I think, in a very effective way, in both CHIPRA I and CHIPRA II, we really worked hard on the issue of crowd-out. As you know, crowd-out occurs when families give up or do not take private health insurance in lieu of enrolling in public coverage. A high incidence of crowd-out is problematic for many reasons. It makes it more difficult for employers to offer health insurance coverage and it inappropriately uses taxpayer dollars to fund coverage that could have been provided by an employer.

As we learned from the Congressional Budget Office, crowd-out is a particularly acute problem with SCHIP because crowd-out occurs more frequently, believe it or not, at higher income levels. The report that CBO issued in 2007 on SCHIP also concludes that "in general, expanding the program to children in higher income families is likely to generate more of an offsetting reduction in private coverage than expanding the program to more children in low-income families." So that is why we put so much emphasis upon bonuses and outreach to get low-income people, under 200 percent, into the program.

CBO estimates that "the reduction in private coverage among children is between one-quarter and a half of the increase in the public coverage resulting from SCHIP." In other words, for every 100 children who enroll as a result of SCHIP, there is a corresponding reduction in private coverage of between 20 and 50 children.

Mr. Schwartz, could you share with the committee the enrollment numbers provided by CBO for expanding the SCHIP and Medicaid eligibility to new populations in terms of the reduction of the uninsured?

Mr. Schwartz. The total is 3.9 million children added to these programs who were previously uninsured.

Senator Grassley. All right. So that would be a reduction of 400,000. All right. Your statement stands.

Can you share with the committee the enrollment numbers provided by CBO for expansion of SCHIP and Medicaid eligibility in terms of the reduction in private coverage? That would be 400,000, right? Let me go on. Let me confer with my staff. [Pause.]

Could you share with the committee the CBO estimate for the number of new SCHIP enrollment?

Mr. Schwartz. Total new SCHIP enrollment?

Senator Grassley. Yes.

Mr. Schwartz. It looks like 5.7 million, on their

table.

Senator Grassley. All right. You are reading different figures than we are. We have got a chart here from CBO that says 3 million. We are reading from -- well, it says up at the top "CBO's preliminary estimate of changes in SCHIP and Medicaid enrollment in fiscal year 2013 under the Children's Health Insurance Program Reauthorization Act of 2009", and we are reading from the "Total" column, the second figure down, 3 million.

Mr. Schwartz. Well, we would actually appear to have different numbers. I am reading from -- oh. Are you on the far right of that chart there?

Senator Grassley. Yes.

Mr. Schwartz. I apologize. I was in the CHIP column on the left.

Senator Grassley. All right. All right.

Mr. Schwartz. Sorry. I misunderstood your question. Yes, I see the 3 million.

Senator Grassley. All right. Then considering that 3 million, how many of these new enrollees would be a result of reduction in private coverage?

Mr. Schwartz. 1.2.

Senator Grassley. All right. And what is the total number of individuals who CBO estimates are enrolled in the public program due to the reduction in

private coverage?

Mr. Schwartz. The total for both CHIP and Medicaid, sir?

Senator Grassley. Yes.

Mr. Schwartz. Down at the bottom, it is 2.3.

Senator Grassley. All right. Can you describe the policies included in CHIP 1? You know what we refer to as CHIP 1?

Mr. Schwartz. I do, very well.

Senator Grassley. How that would have addressed the issue of crowd-out.

Mr. Schwartz. CHIP 1 contained, in what was Section 116, I believe it was a pair of studies to be done, one by IOM, and the other, I believe, by GAO, relative to crowd-out and what efforts States engage in to attempt to minimize it. After those studies were done, I believe the Secretary of Health and Human Services would have been required to establish what we referred to as best practices for States to follow in their continued efforts to minimize crowd-out and would have imposed requirements on States to adopt best practices.

Senator Grassley. Are these policies that you just described included in this mark?

Mr. Schwartz. They are not in the Chairman's mark.

Senator Grassley. All right.

Could you describe the major policy difference between crowd-out provisions of CHIP 1 and CHIP 2?

Mr. Schwartz. If you give me a second. I think the differences between CHIP 1 and CHIP 2 were actually very few. The basic structure was unchanged in terms of having the studies --

Senator Grassley. Well, if there is not much difference, then do not go into more detail. Go ahead.

Mr. Schwartz. I am sorry. Just to say, I think we applied things to States sooner. The requirements imposed on States took effect sooner in terms of adopting best practices.

Senator Grassley. And as I recall, expanding to all States as well.

Is there new data indicating that CBO is not correct in their analysis of the incidence of crowd-out in public programs?

Mr. Schwartz. I am unaware of any.

Senator Grassley. All right.

Did CBO issue new data or analysis indicating that crowd-out is occurring at a lesser degree? I guess that is the same as your answer to the first question. If there is no information, there is nothing out there, so we would have to assume that where we are today as far as

CBO's opinion is about where we were in 2007. Is that fair to say?

Mr. Schwartz. I believe so.

Senator Grassley. All right.

Could you describe the policies in the Chairman's mark that address the incidence of crowd-out in public programs?

Mr. Schwartz. There are no such provisions.

Senator Grassley. All right.

Given that we know crowd-out is an issue and similar policies were included in both the bipartisan bills of 2007, the CHIP 1 and CHIP 2, can you elaborate on the rationale behind the lack of crowd-out policy in the Chairman's mark?

Mr. Schwartz. The Chairman's mark continues to focus CHIP on low-income children, first. You pointed out, the bonus structure follows the second vetoed bill, where the focus for bonuses is exclusively on Medicaid children, which tend to be the lower income children. We maintain relatively high bonus percentages in the Chairman's mark in an effort to incentivize States to cover those kids.

I think also that the Chairman's mark attempts to keep the focus generally on children by continuing to eliminate, ultimately, transition coverage for adults out

of CHIP. That is consistent with, again, policies from the first and second vetoed bills.

Senator Grassley. All right.

Mr. Chairman, I am done with my questions. I do not want to do anything to hold up your proceeding on this. I did have at least two people who said they had a couple of questions that they wanted to ask, but if they are not here, I do not expect you to wait for that.

The Chairman. Due to the somewhat low attendance, it would be a good time if you have other questions you might want to ask.

Well, let us proceed then if there are no other questions. Here is how I would like to proceed.

Senator Grassley. Here comes Senator Hatch.

The Chairman. All right.

Senator Grassley. Did you have questions? Because you would have to ask them right now.

The Chairman. You do? All right.

We are now starting to get some questions. This is the first time I have looked for questions. Okay.

While Senator Hatch is getting ready, Senator Rockefeller, do you have a question, too, you might want to ask?

Senator Rockefeller. I do, Mr. Chairman. I would ask, Mr. Schwartz, is it not true that the CHIP statute

already requires States to address crowd-out?

Mr. Schwartz. Yes, it is, sir.

Senator Rockefeller. It was said earlier by the Assistant Majority Leader that the amendment which will be coming up covers legal and illegal immigrants. I was surprised to hear that, because in Section 605, page 36 of the bill, it expressly says no funding for illegal aliens, disallowance unauthorized expenditure. It is cut and dried. I regret when that kind of misinformation comes into the committee, and therefore out over the airways.

Is it true that States that cover children at higher income levels are subject to additional scrutiny?

Mr. Schwartz. I am not sure I understand your question, sir.

Senator Rockefeller. Well, I cannot make it any different.

Mr. Schwartz. Oh, in terms of crowd-out, you mean?

Senator Rockefeller. Yes.

Mr. Schwartz. Yes, it is true.

Senator Rockefeller. All right.

Mr. Schwartz. Sorry.

Senator Rockefeller. This is a little bit in response to the Ranking Member. Is it true that crowd-out, under the second CHIP bill, whatever its number was,

is exactly the same as the crowd-out under the Chairman's mark, number one? What are the figures for both bills?

Mr. Schwartz. The figures for the Chairman's mark are 3.9 million currently uninsured children that would be added, and 2.3 million children who currently have coverage would be added. The numbers -- I think I have to admit that I am embarrassed to say I do not have the CBO estimates from the 2007 bill with me.

Senator Rockefeller. All right.

Mr. Schwartz. I apologize.

Senator Rockefeller. Is it true--and I will just finish, Mr. Chairman--that Section 116 in the 2007 CHIP bills was included in response to the August 17th directive?

Mr. Schwartz. It is absolutely true.

Senator Rockefeller. Is it true that the Chairman's mark also remains absolutely silent on the August 17th directive?

Mr. Schwartz. It is absolutely true.

Senator Rockefeller. Thank you.

The Chairman. Thank you, Senator.

Any other questions? Senator Hatch?

Senator Hatch. Just so everybody will know, I would like you to explain the differences between CHIPRA 1 and CHIPRA 2.

Mr. Schwartz. Generally, or --

Senator Hatch. In the mark itself. I want the mark explained, how it relates to CHIPRA 1 and CHIPRA 2.

Mr. Schwartz. How the mark compares to CHIPRA 1 and CHIPRA 2?

Senator Hatch. Right.

Mr. Schwartz. Sorry. Too many notebooks --

Senator Hatch. That is all right. That is all right.

Mr. Schwartz. Starting with Section 101, CHIPRA 1 and CHIPRA 2 were both five-year reauthorizations. The mark is four and a half years.

Senator Hatch. Is there any particular reason for that?

The Chairman. Oh, yes. Oh, yes. To meet the March 31 deadline. That is where we start. That is why it is a little shorter period of time.

Senator Hatch. All right. Go ahead.

Mr. Schwartz. Section 102, CHIPRA 1 and CHIPRA 2 were the same. The mark has been updated to reflect changes from CBO in those numbers.

Section 103. The mark is unchanged from CHIPRA 1 and CHIPRA 2.

Section 104. CHIPRA 1 included a bonus structure that applied to new kids enrolled in Medicaid and CHIP

and had different bonus levels available, 15 and 60 percent. In CHIPRA 2, the bonuses were made available only for new kids enrolled in Medicaid and the bonus level was raised to 62.5 percent on the high side.

The mark would follow the structure of CHIPRA 2 in terms of applying only to Medicaid kids, and keeping the same bonus levels of 15 and 62.5 percent. The target percentage for States to meet to move from the tier one to tier two bonus was changed from 3 percent above the target to 10 percent above the target.

And the population growth estimates are still based on the Census numbers, but in CHIPRA 1 and CHIPRA 2 we used Census plus one percentage point. The mark contemplates higher numbers, starting at Census plus four for two years, then going to Census plus 3.5, I believe, for two or three years, and then down to Census plus 3 for the remainder of the time.

Section 105. The mark is unchanged from CHIPRA 1 and CHIPRA 2.

Section 106. We are using CHIPRA 2, although the differences between CHIPRA 1 and CHIPRA 2 were, I think, technical.

The same is true for Section 107.

Sections 108 and 109. The mark is unchanged from CHIPRA 1 and CHIPRA 2.

Section 111. We are using CHIPRA 1. The difference between CHIPRA 1 and CHIPRA 2 in that instance was whether the phrase was "pregnant women" or "individuals". CHIPRA 1 said "pregnant women", and that is what the mark contemplates.

Section 112 is the childless adults and parents section. I am sorry. CHIPRA 1 gave longer phase-outs for childless adults and gave States what we essentially referred to as a mini block grant so that the difference between a Medicaid match and a CHIP match would continue for an additional year. We changed that policy in CHIPRA 2. The mark adopts the CHIPRA 2 policy, which is to transition childless adults out sooner and not make that mini block grant available.

We obviously have changed the dates between the mark and the two previous bills to be current so that childless adults would phase out at the end of this calendar year. The parent policy remains essentially the same, although, again, adjusted for dates. That model was a fiscal year transition period, and so the two-year transition period would begin October 1st of this year.

Section 113. The mark is unchanged from CHIPRA 1 and CHIPRA 2.

Section 114 is the 300 percent limit. What is available beyond that in CHIPRA 1, we made the reduced

Medicaid match rate available to States that covered kids above 300 percent of poverty; in CHIPRA 2, there was no Federal match available. The mark adopts the CHIPRA 1 approach of making the Medicaid match available.

Then the exemption to which States would be subject to a cap as part of Section 114, in CHIPRA 1, a State would be "grandfathered" if it had already enacted a State law or had an approved State plan amendment or waiver. In CHIPRA 2, we eliminated the States that had only enacted a State law. The mark, again, adopts the CHIPRA 1 policy of having passed a State law or having an approved plan.

Senator Hatch. What about New York and New Jersey?

Mr. Schwartz. That is exactly the point. CHIPRA 1 would have allowed States like New York, who had only passed a State law, and States like New Jersey who had already had approved CHIP plans, to cover above 300. Both kinds of States were protected, and I believe they were the only two. The mark would adopt, again, the CHIPRA 1 approach, which would protect States like New York and New Jersey.

Senator Hatch. Can I ask one more?

The Chairman. Yes, Senator. Go ahead. We need to get to amendments pretty quickly now.

Senator Hatch. You can go over.

The Chairman. Yes. Go ahead. If you have more questions, absolutely.

Senator Hatch. Yes. Well, there is a provision in the bill in Section 115 that allows States to increase their eligibility level for both Medicaid and CHIP. Now, I understand this provision does help Montana, or was supposed to help Montana, which wants to raise its Medicaid and CHIP eligibility levels, but CMS told them that the Agency cannot make the changes that Montana needs.

Now, my understanding is that the way the provision is currently written, a State could have one income category for Medicaid, a higher income category for CHIP, and even a higher income category for more Medicaid children. Is that true?

Mr. Schwartz. That is correct.

Senator Hatch. Could you walk through that for me?

Mr. Schwartz. I think you have laid it out very well, sir.

Senator Hatch. Yes.

Mr. Schwartz. CHIP obviously is intended to get kids at higher income levels than Medicaid, so you would expect Medicaid to be the lowest and CHIP would be on top of that.

Senator Hatch. Right.

Mr. Schwartz. And it is theoretically possible that a State could add back, even on top of that, an additional eligibility level for Medicaid.

Senator Hatch. One last question. Could you please walk through the provisions in the mark that address premium assistance?

Mr. Schwartz. Sure. That is Section 30--

Senator Hatch. By the way, you are doing a pretty good job of going through this.

Mr. Schwartz. Thank you.

Senator Hatch. I do not agree with it, but I want to compliment you.

Mr. Schwartz. Well, thank you. I appreciate that.

Section 301 is the most substantive premium assistance section. CHIPRA 1 and CHIPRA 2 were virtually identical in their versions of Section 301, with one exception. In CHIPRA 2, a subparagraph was added to what is a pretty long section that required coordination with Medicaid for CHIP kids who were receiving premium assistance. The Chairman's mark takes CHIPRA 2 exactly word for word and does not make any changes.

Section 302 is a section related to outreach and education efforts in which States can engage if they offer premium assistance, and CHIPRA 1 and CHIPRA 2 were identical and the mark adopts them as written.

Senator Hatch. Thank you, Mr. Chairman.

The Chairman. Senator Roberts?

Senator Roberts. Mr. Chairman, on behalf of Senator Kyl, who could not be here, I have a quick series of yes or no questions. I will try not to take up too much time, albeit I am not very chipper about this whole thing.

Does the Chairman's mark permit the continued enrollment of parents and States with existing waivers? Yes/no?

Mr. Schwartz. Yes.

Senator Roberts. Yes.

Mr. Schwartz. With existing waivers.

Senator Roberts. All right.

Does the Chairman's mark include an earmark for New Jersey and New York so they may continue to receive the enhanced SCHIP match rate for covering children whose family income exceeds 300 percent of the Federal poverty level?

Mr. Schwartz. Yes.

Senator Roberts. Can you please explain the practical effect of Section 108?

The Chairman. Yes or no. [Laughter.]

Senator Roberts. Or both.

Mr. Schwartz. I can certainly try. I am not a

budget person. But Section 108 makes a one-time appropriation for fiscal year 2013, which is the last year of the reauthorization period, I believe.

Senator Roberts. All right.

Now, if this Section did not exist and SCHIP spending did continue throughout the 10-year budget window, can you please tell me how much spending is un-offset? What are we talking about?

Mr. Schwartz. I heard Senator Kyl use a number during his opening remarks, and that is the first time I heard that number. That is not a number that we ever had CBO score. We had them score--

Senator Roberts. And that number was?

Mr. Schwartz. I believe he said $115 billion.

Senator Roberts. One hundred and fifteen?

Mr. Schwartz. Right. Right. I think that was just spending, and there would, of course, be continued revenue.

Senator Roberts. Well, here is a letter that I have from the CBO to Paul Ryan of the other body, indicating that CBO estimates that in enacting the alternative version of the bill would increase deficits by $41.6 billion over the 2009-2019 period. I do not know. Then based on the assumptions that had been specified, CBO estimates total changes in direct spending

of $115.2 billion--and this is where it is coming from--as compared with the $73.3 billion increase we estimate for the introduced version of H.R. 2. Thus, the net budget impact of the modified version of H.R. 2, as specified, would be an increase in deficits totalling $41.6 billion over the 2009-2019 period. But the total changes were $115.2 billion, so that is where he got that number.

Do you agree with that?

Mr. Schwartz. I have no reason to doubt what that letter says.

Senator Roberts. So it is a yes.

Does the mark --

The Chairman. Senator, can I ask how many more you have? We have enough Senators here to start offering amendments.

Senator Roberts. I understand. I just promised Senator Kyl I would try to get through with this as quickly as I can.

Does the mark prohibit the application of income disregards? To be clear, when a State determines a child's eligibility it could exclude from income $500 a year for child care expenses, exclude $20,000 a year for housing expenses, exclude $10,000 a year for clothing expenses, exclude $10,000 a year for transportation

expenses, so a State could exclude $40,000 worth of income when determining eligibility.

If so, then a family earning $100,000 would be eligible for SCHIP in the 10 States that are covering children at or above the 300 percent of the Federal poverty level. My math is not good enough to add in New Jersey and New York, which would be, what, Senator Ensign? I think you said maybe $123,000. Is that correct?

Mr. Schwartz. Yes.

Senator Roberts. Wow.

Mr. Schwartz. And I do not know about your math, but the first part.

Senator Roberts. Right. Well, it is Ensign's math, not mine. [Laughter.] He is from Vegas. I cannot handle that. [Laughter.]

Well, Mr. Chairman, I think these are very troubling, troubling, troubling points to make. I will simply yield, and I thank you for the time.

The Chairman. I want to start amendments very quickly. Let us call it five more minutes on questions, and then we will go on to amendments.

Senator Ensign. Mr. Chairman, I'd like to ask a question, because it may save me from offering an amendment.

The Chairman. Sure.

Senator Ensign. Question. In the bill, if a person who is here illegally who stole a Social Security number presents a Social Security number, under the Chairman's mark, could they enroll in SCHIP?

Mr. Schwartz. Yes, they could.

Senator Ensign. Pretty easily.

Could and would someone who got a legal Social Security number in the first place but overstayed their visa, and who is now in the country illegally, could they enroll in SCHIP, under the Chairman's mark?

Mr. Schwartz. I believe they could, sir.

Senator Ensign. Thank you. That is all I have, Mr. Chairman.

The Chairman. Thank you. All right.

Senator Grassley? Then we are going to amendments.

Senator Grassley. I would like to engage Senator Rockefeller. Maybe you do not have to say anything, Senator Rockefeller, but at least listen. You wanted to clarify some things on crowd-out that I said. I would like to ask Mr. Schwartz to clarify a clarification, if I could. If I am wrong, Senator Rockefeller, please tell me. But you answered to Senator Rockefeller that there were existing provisions to make sure that extra efforts are made to not have crowd-out in States with a high

income eligibility for SCHIP.

We are aware of a regulation within CMS that says that there ought to be that effort. CBO told us that it was ineffective. Then, consequently, we put crowd-out legislation in the 2007 legislation because the regulation was not working. Nothing was being done.

So what I was trying to make in my series of questions was that there is nothing in this legislation to affect the crowd-out problem. So would it be fair for me to say, for Senator Rockefeller's benefit, that I was making the point that there was nothing in this legislation -- and the reason I did not refer to the regulation is because CBO said it was not effective. So is it not fair to say there is nothing in this legislation that is going to enhance the efforts to stop crowd-out?

Mr. Schwartz. The mark does not contain the previous bills' crowd-out provision. That is correct.

Senator Grassley. Yes. And it is needed, from my point of view, because the regulation is not being enforced and it is not effective and it is not my saying it. It is what CBO pointed out to us two years ago.

All right. I am done, Mr. Chairman.

The Chairman. All right.

Amendments. Here is what I would like to do. Staff

has discussed orders of amendments, and I think it is pretty much agreed on. This is the upshot of it all. The first amendment -- I would like to have them in this order: the Grassley amendment on the 300 percent of poverty subject; next after that is disposed of, the Rockefeller-Bingaman amendment on immigrants; then once that is disposed of, then a series of Republican amendments on immigrants. I understand, for example, Senators Kyl, Ensign and Grassley--perhaps others--have amendments on that subject.

Subsequently, a Bingaman amendment on citizen documentation. After that is disposed of, then a Senator Kyl amendment on citizen documentation. We will continue then after that with further amendments. But that is the order in which I would like to proceed.

Senator Grassley. Was that worked out with us?

The Chairman. Yes. That has been worked out on both sides.

Senator Grassley. All right.

The Chairman. All right.

So the first amendment, in order, is yours, Senator. You have an amendment, I think, on --

Senator Grassley. It is Grassley amendment number 10.

The Chairman. All right.

Senator Grassley. Do we have to pass that out or does each person have it?

The Chairman. That has been distributed.

Senator Grassley. All right.

Before I offer this amendment, just to be, very shortly, repetitive of something I said in my opening statement, my preference would have been to do an extension of SCHIP so that Congress can work on a bipartisan basis on the great big issue of health reform. It makes little sense to enact a big SCHIP bill this winter and then turn around and completely re-do it when we get to a health reform bill. But as I stated, it is the prerogative of the Majority to set the agenda, so this is where we are.

Therefore, I would like to turn to this amendment number 10. It reinstates the policy, which is supported on a bipartisan basis, in H.R. 3963, otherwise known as CHIPRA 2. This policy would eliminate the Federal match on coverage of children and families with incomes over 300 percent of poverty. That is $63,600 a year for a family of four. The expansion of coverage at these higher levels leads to what we have just talked about: crowd-out, a situation where families will leave private coverage for public coverage.

Two things about that. One, why spend taxpayers'

dollars if the private payors are willing to do it? Number two, it limits the amount of money you can get through rigorous outreach of getting people who do not have insurance into the program and using the money for what it was intended for, because we should be focusing our efforts on covering low-income kids first. Policies that encourage coverage expansion at such high income levels are counterproductive.

So, as simply as I can state it, I urge members of this committee to support this amendment.

The Chairman. Is there further discussion?

Senator Grassley. And I would ask for a roll call vote.

The Chairman. All right. A roll call has been asked for.

Is there any discussion on this amendment? [No response.] Since this is the first amendment, it maybe takes a minute or two for Senators to get organized. I see Senator Kyl turning some papers down there.

I am just asking if there is any further discussion on this amendment before I speak on the amendment.

Senator Grassley. I am done speaking on the amendment.

The Chairman. I would like other Senators to speak on the amendment, first.

Senator Kyl. Naturally, I support Senator Grassley.

The Chairman. Naturally. All right.

Frankly, many of us have already voted for the provision that is in the Chairman's mark. Let us kind of review the bidding here a little bit. CHIP 1 was agreed upon by Senator Rockefeller, myself, Senator Grassley, Senator Hatch, and many Senators. That bill was reported out of this committee and also passed the Senate by a large margin, and then as we all know, vetoed by the President.

So we then went to try again under CHIP 2 because the first bill was vetoed. The thought was, well, let us make some changes, perhaps get more Republican votes, especially in the House, so the House could override a subsequent presidential veto. We negotiated extensively to try to change CHIP 2 in a way that would get Republican House votes to override a presidential veto.

As we all recall, that fell apart. I mean, it was just very difficult to get significant commitment from enough House Republicans. We put the bill up anyway and it got voted, and it, sure enough, got vetoed and the veto could not be overridden.

So point number one, is the provisions with respect to the 300 percent issue were already voted on favorably

by many here--I daresay most members of this committee. Point number two, is health care costs are rising. A lot more kids will not get coverage.

In addition, since the passage of time between the last CHIP effort and today, with the recession and with health care costs rising, some States feel that they should increase coverage for kids. Some States are just high-income States. Some States are just a bit different from some other States. Health care costs are rising in those States and recession is hitting those States, just as it is in other States.

So, I respectfully suggest that we do not adopt this amendment because we have already approved the underlying policy once before. Second, subsequent conditions, in my judgment, make this policy that is in the Chairman's mark even more appropriate.

Senator Roberts?

Senator Roberts. Mr. Chairman, may I ask Senator Grassley whether or not his amendment deals with the application of income disregards? As I pointed out in asking a question on behalf of Senator Kyl, we are looking at $40,000 worth of income when determining eligibility.

Senator Grassley. We do not. Mr. Chairman, we do not deal with that issue.

Senator Roberts. Do we plan to offer an amendment in that regard?

Senator Grassley. I did file an amendment on that.

The Chairman. Well, let us vote on this amendment. We also offer subsequent amendments.

Senator Roberts. All right. Thank you.

The Chairman. You are welcome.

All those in favor of the amendment offered by Senator Grassley, say aye.

Senator Grassley. I want a roll call.

The Chairman. Chairman Grassley has--sometimes Chairman Grassley--has asked for a recorded vote.

The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. No.

The Clerk. Mr. Conrad?

The Chairman. No by proxy.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

The Chairman. No by proxy.

The Clerk. Mrs. Lincoln?

Senator Lincoln. No.

The Clerk. Mr. Wyden?

The Chairman. No by proxy.

The Clerk. Mr. Schumer?
The Chairman. No by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Salazar?
The Chairman. I have no instruction from Senator Salazar.
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Hatch?
Senator Hatch. Aye.
The Clerk. Ms. Snowe?
Senator Snowe. No.
The Clerk. Mr. Kyl?
Senator Kyl. Aye.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Roberts?
Senator Roberts. Aye.
The Clerk. Mr. Ensign?
Senator Ensign. Aye.

The Clerk. Mr. Chairman?

The Chairman. No. The Clerk will announce the results.

The Clerk. Mr. Chairman, the tally is 7 ayes and 11 nays.

The Chairman. The nays have it. The amendment is not agreed to. All right.

We have got an order here, first, of amendments.

Senator Rockefeller, you are next.

Senator Rockefeller. Thank you, Mr. Chairman.

The first amendment that I would like to offer today is co-sponsored by Senator Bingaman, Senator Kerry, Senator Wyden, Senator Snowe, and it would remove the five-year waiting period for legal immigrant children and pregnant women to obtain Medicaid and CHIP coverage. This amendment would give States the option to lift the waiting period for children and pregnant women. It would not require them to do so. It gives them the option.

The five-year waiting period means that children go years without preventive care and a family doctor. The barrier to coverage means that we have missed the opportunity not just on things like EPSDT, but all kinds of autism, just a whole future of problems.

One of the things I have learned, I used to work with kids that were losing their teeth when they were 14

or 15 years old. I would take them down to a dental clinic, and it was already much too late. If you do not do the baby teeth, if the baby teeth are not healthful, the grown-up teeth are not going to be healthful, or the mid-grown-up teeth are not going to be healthful. So you have got to get people early. You have got to get them when they are kids. This is autism, hearing impairments, all kinds of matters.

The five-year bar also means denying children, who are in this country legally, treatment for cancer or rehabilitative services for a disability. Twenty-three States use their own funds to pay for some health coverage for lawfully residing immigrant children or pregnant women during the five years while they are ineligible for Medicaid or for CHIP.

In this five-year waiting period, if it were removed, those States could secure Federal matching funds, which would free up State funds to cover additional low-income uninsured children, just as some have been pointing out.

I believe that no lawfully present child in this country should be required to wait five years before they can get health care. I believe powerfully in the law. That is why illegal immigrants are not included in here. They are working their way towards the front. I do not

think, if I can put it this bluntly, that God is sitting in judgment of children, of parents who have come here because of the parents' choice.

The children had nothing to do with that, but they are here, they have been here. Their parents are working, they are paying taxes, they are doing everything they should be doing. What I am trying to do is not penalize those children, who are legally here, through this amendment. We will come to health reform and we will be able to reach, perhaps, many others that have earned a place where they really can receive these things.

Frankly, this five-year waiting period, the lifting of it, has passed several times, with bipartisan support. It previously passed in 2003 as part of the Senate version of the Medicare prescription drug bill. Some may have forgotten that. It was also reported out of the Senate Finance Committee as part of welfare reauthorization in 2002, the precise amendment that I am offering.

Undocumented immigrants have never been eligible for full-scope Medicaid or CHIP, and this proposal would continue to prohibit States from enrolling undocumented immigrants in Federally funded Medicaid or CHIP.

Kent Conrad, I think, spoke very strongly earlier

about our obligation--moral obligation. This is not just a question of little things here. This is question of children's health care, which is the very root of health care reform. It is the very root of our responsibility. We have been trying to do this for years. We can now do it. It will not last forever. It will be reviewed, and we can do that. I think now is the time to remove the arbitrary barrier to coverage once and for all. I urge my colleagues to support this amendment.

The Chairman. Is there debate?

Senator Ensign. Mr. Chairman?

The Chairman. Senator Ensign?

Senator Ensign. Mr. Chairman, a couple of things. Could I ask staff if this amendment is offset, and what the cost would be? Is there a cost?

Mr. Schwartz. I believe that the cost associated with this is $1.3 billion over five years.

Senator Ensign. Is it offset?

Mr. Schwartz. It is offset with the funds that are already in the underlying mark.

Senator Ensign. If you are adding cost to the bill, how is it offset in the underlying mark?

Mr. Schwartz. There is --

Senator Ensign. Additional funds?

Mr. Schwartz [continuing]. Additional money in the

mark.

Senator Ensign. If we do immigration reform, which all of us believe is necessary to do, and we legalize, maybe, an additional 5 million children in the United States, they would then be eligible for this, correct? Because they are here legally, then.

Mr. Schwartz. I believe so. I am not an immigration expert, but I would believe so.

Senator Ensign. I mean, it would make common sense. Would you agree, Senator Rockefeller, that those additional children would then be eligible? If we did immigration reform and now we legalize these undocumented folks who are here today, it could be an additional 5 million children who then would be eligible for SCHIP. The cost would then skyrocket.

Senator Rockefeller. What you have given me is a good reason not to get entangled with you. Washington's last speech was "beware of entanglements" and I do not want to get into a tangle with you.

Senator Ensign. All right. Well --

Senator Rockefeller. I know it was foreign entanglements, and that would have been inappropriate here. I just stay with this amendment because it is defined and it is limited.

Senator Ensign. Well, we have to also look at what

the future is going to hold and we all know that --

Senator Rockefeller. Yes, we do. And we will have our chance to, will we not?

Senator Ensign. We all know that we are going to do immigration reform in this country.

Senator Rockefeller. No, we do not. We do not. We do not know for sure.

Senator Ensign. Most of us think that we are going to do immigration reform. I believe that we should, by the way.

The problem that I have with the amendment, and what we saw during the welfare reform debate, is that we want to attract people to the United States with the right incentives. We want them to come to the United States to be productive citizens. We want to attract people to come here and work hard and try to participate in the American dream. What we do not want is an unintended consequence, in which we attract people to this country who come here to get on the government dole. That is one of the reasons for the welfare reform debate, and the welfare reform legislation that we passed said we will not allow someone to come here without a sponsor.

The American sponsor of a new immigrant is supposed to make sure that the new immigrant does not go on the government dole while they are here. They are not to go

on welfare, they are not to go on these government programs. The welfare reform law required legal immigrants to wait five years after coming to the United States before receiving welfare benefits. Federal law requires that the American sponsor of new immigrants sign an affidavit of support stating that they will be responsible for any public costs incurred by the immigrant. It seems to me that we are giving more incentives for folks to come to the United States, not just to participate in the American dream, but to come to the United States to get on the government dole. I think this is exactly the wrong direction that we should be going with this piece of legislation.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. Could I simply respond to that by saying I think that is a pretty gloomy way of looking at human nature and life and families who work, that they came here for the express purpose of getting on some kind of a Federal dole. America is a destiny in itself. It is a whole new vision, a whole new opportunity. That has been our entire history; you have already spoken about it today.

So, somehow if somebody comes here and they are constrained -- removing the five-year waiting period is

totally unrelated to the immigration debate about undocumented immigrants. But to say that people are doing something so they can get on the government dole, in fact, it is not they that are getting on the government dole. They are working and they are paying taxes. It is the children, who had nothing to do with their coming in the first place, that we have an obligation to.

Senator Ensign. Mr. Chairman, that is so opposite. Do you know how many illegal pregnant women bear children in this country? They come to this country because there is an incentive to do so. They know that they can get citizenship for the children they give birth to in this country, so they come across the border. Unfortunately, we have incentives that people take advantage of when they come into this country, and we need to create the right incentives. That is the point that I was trying to make. We need to have the proper incentives in place. This is not a proper incentive.

The Chairman. Are there other Senators?

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes. Go ahead.

Senator Rockefeller. I would say to the Senator from Nevada that in West Virginia--and I have said this before in this committee--50 percent of all babies that

are born are born solely because of the help of Medicaid. That is the only way that the parents could afford to give birth. We do not have a very varied population in West Virginia, but I am incredibly troubled to think that somehow people who do not have resources and who take advantage of something which is legal and for which they are legally qualified, is somehow deceitful, greedy, and against the national interest. I mean, I think it is a preposterous argument.

The Chairman. Senator Grassley?

Senator Grassley. What I say is not denigrating Senator Rockefeller's use of the word "moral," because I agree with him that we have people in need, we have government programs to help people in need, and we ought to help people in need. But I would like to say that there is another side to that moral issue as well. It gets back to a contract or an arrangement that a sponsor has with the government for which, if that did not exist, the individuals that Senator Rockefeller is trying to help would not even be in the country.

So you sign, as a sponsor, a contractual agreement with the Federal Government that I will take care of so and so. It seems to me that we ought to have a government policy that makes everybody live up to their contractual relations. I mean, that is part of our

society, it is part of our Constitution. What we are doing here is making it easy for people to ignore that contractual relation.

You get back to the situation we had 100 years before we passed this last in 1996, because we have had this contractual relationship going back to the 1880s or 1890s, never enforced. We decided to enforce it in the 1996 law. It has been a more firm law, or let us say it has been an enforced law, for at least 12 years. Why it was not enforced before then, I do not know the history of it, but we decided to enforce it.

So why would you want to do away with the contractual relationship and obligation that people have to do what they said they were going to do, take care of people's needs that they sponsor so they do not become a public charge, and that money then that in turn is being spent by the private person can be spent out of the Federal Treasury for those people who have need and where there is not a contractual obligation to keep the moral relationship or the moral obligation that Senator Rockefeller talks about, taking care of people in need, because these people obviously do not have need or they would not have been in the country in the first place, unless there is a scheme to just get them into the country. So, I oppose the Rockefeller amendment.

The Chairman. I think it is appropriate at this point to make a distinction between welfare and non-welfare. The contracts which we have been talking about here basically provide that it is the person who signs the five-year agrees that the person that he or she is sponsoring will not become a public charge. The word is "public charge."

Kids in our country who are here legally can go to school, public school. Kids who are here legally can apply for, and receive, food stamps. That is a public program. What we are talking about here is TANF, or welfare. I think that children's health insurance is more in the nature of food stamps, or more in the nature of education than it is welfare.

Again, the person who signs these contracts says that the person will not become a public charge, and that public charge, I think, is more in the nature of TANF and welfare than it is in the nature of public education or food stamps. I just believe that, given that distinction, that the proper thing to do is, because these kids are here legally in this country, if they legally can go to school, they can legally receive food stamps, that they should also legally be able to be eligible for the Children's Health Insurance Program.

Senator Kyl? Sorry. I guess Senator Bingaman was

speaking earlier.

Senator Bingaman. Let me just comment on Senator Ensign's point about putting in law some perverse incentives. The way things are now, if I am living in Mexico and my wife and I want to have a family, we have an incentive for them to come into this country illegally and go ahead and have their kids, because those kids will be citizens and they will be eligible for the very programs we are here talking about, as citizens in this country. That was provided for by the folks who wrote our Constitution, that if you are born in this country you are a citizen of this country. So, that incentive is there.

What we are saying here is, if a family in northern Mexico decides they want to come into this country legally, do everything that is required, establish themselves, get a green card, legal status, have children, we are going to deny them the same benefits that they would have had for their kids had they come in illegally. That just does not make any sense. Talk about perverse incentives. To me, that is a perverse incentive. I think if they are here legally we ought to treat them as legal residents.

I agree with Senator Baucus. We do have provision to be sure they do not become wards of the State, but you

are not a ward of the State by virtue of participating in the CHIP program or by virtue of participating in Medicaid. Those are public programs available to people who meet those requirements, and I think we ought to extend those to people who are here legally.

The Chairman. Further discussion? Senator Kyl?

Senator Kyl. Yes. Mr. Chairman, two primary points. First of all, Senator Ensign is right that sooner or later we are going to adopt some kind of immigration reform which could well have the effect of adding millions of children to our citizenship rolls. First, they would go through exactly what we are talking about here, a green card status. The vast majority of the people that are covered by Senator Rockefeller's amendment would have a green card, and that status usually is a five-year status. So, that is the first one.

I think that Senator Bingaman is right about the incentive. It is true that some people do come across the border illegally to have their children here, but those people are covered by virtue of a different program, not the amendment that Senator Rockefeller is proposing.

I think it goes back to Senator Grassley's point. For decades, in any event, and I guess over a century,

there has been a basic bargain in the State. Everybody in the world--not everybody, but most people in the world--would like to come to the United States if they could because of all the opportunities and things that we have here.

So we have a basic bargain. There is a contract that you enter into before you can come here, and you have to wait about five years. In the case of Mexican citizens, for example, you have to wait probably about a decade to even get in line for that. So there is something very valuable to getting U.S. citizenship, and just before that, to getting U.S. legal status. In exchange for that benefit, we ask that you not burden our society with expenses that we do not have now.

However, whatever the new politically correct term is for "public charge," I grant that that was a phrase used many years ago and we always thought of it as meaning welfare, the bottom line is, it is any additional expense that the United States would have that we do not have today to take care of people just because, out of the goodness of our hearts or because we have needs that we perceive in this society for immigrants from other countries, that we are going to enable a certain number of people to come in each year. It is a bargain. For a benefit, there is a promise. That is that you are not

going to cost the American citizens who have granted you that benefit more costs. That is the bargain that Senator Grassley is talking about.

If we cross the line here, we do not even know how much this is going to cost. There is a $1.3 billion price tag that represents the score here. But we will be taking on a huge number of additional kids in the future, there is little doubt of that.

So we are, once again, adding huge costs to one of the entitlement programs at the same time that we acknowledge that we cannot even pay for things like, for example, the physician update every year, whereby American doctors take care of American citizens in the Medicare program. It seems to me, before we make yet another promise to one of our entitlement programs, for people who have denied that in the past for very good reason, we ought to make sure we can pay the expenses of the commitments we have already made and then decide whether we can add to it.

The Chairman. Further debate? [No response.]

If there is no further debate, we will vote on the amendment. A roll call has been requested.

The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. Aye.

The Clerk. Mr. Conrad?
Senator Conrad. Aye.
The Clerk. Mr. Bingaman?
Senator Bingaman. Aye.
The Clerk. Mr. Kerry?
The Chairman. Aye by proxy.
The Clerk. Mrs. Lincoln?
The Chairman. Aye by proxy.
The Clerk. Mr. Wyden?
The Chairman. Aye by proxy.
The Clerk. Mr. Schumer?
The Chairman. Aye by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. Aye.
The Clerk. Ms. Cantwell?
Senator Cantwell. Aye.
The Clerk. Mr. Salazar?
The Chairman. Aye by proxy.
The Clerk. Mr. Grassley?
Senator Grassley. My answer is no.
The Clerk. Mr. Hatch?
Senator Hatch. No.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.
The Clerk. Mr. Kyl?

Senator Kyl. No.

The Clerk. Mr. Bunning?

Senator Grassley. No by proxy.

The Clerk. Mr. Crapo?

Senator Grassley. No by proxy.

The Clerk. Mr. Roberts?

Senator Roberts. No.

The Clerk. Mr. Ensign?

Senator Ensign. No.

The Clerk. Mr. Chairman?

The Chairman. Aye. Ms. Lincoln is present. She may wish to vote.

Senator Lincoln. I vote aye.

The Chairman. The Clerk will announce the results of the vote.

The Clerk. Mr. Chairman, the tally is 12 ayes, 7 nays.

The Chairman. The ayes have it. The amendment passes.

The thought is that we would entertain other amendments that might be related to the last amendment. Senator Ensign?

Senator Ensign. Mr. Chairman, my amendment is being passed out. First of all, I think I need to ask for unanimous consent that my amendment be allowed to be

modified.

The Chairman. Sorry, I was distracted. The Senator has that right.

Senator Ensign. Thank you, Mr. Chairman.

My amendment does a few things. We all know how the vote would turn out if my amendment was just a straight strike of the Rockefeller amendment, but the amendment also adds a new section. We heard--and we heard Senator Rockefeller say--that we should not be giving benefits to people who are here illegally—and that we should not be allowing them to participate in the SCHIP program.

But in the Chairman's mark there is language, and it was clearly established by the staff, that with the language, if someone had a Social Security number, even if it was fraudulently obtained, that person would then be able to enroll in the SCHIP program. In addition, someone who was here illegally because they overstayed a visa would still be able to enroll in the SCHIP program.

So, Mr. Chairman, my amendment clarifies the language to make sure that someone who is applying for the SCHIP program is here, not only legally here in the United States, but is a legal citizen in the United States and provides for documentation.

The Chairman. Is this your amendment number one? Is this number two?

Senator Ensign. This is my modified amendment, which we just passed out.

The Chairman. All right.

Senator Ensign. I coupled two of my amendments together.

The Chairman. All right.

Senator Ensign. Instead of going through a couple of different amendments, I put two of them together: basically to strike the Rockefeller language which we just voted on, and to add additional language to ensure that someone who is in the United States and who is an undocumented worker would not be eligible for the SCHIP program. That seems to be what other folks were saying is the intent of the underlying bill, so if that is the intent that you want, then my language would clarify it to make sure that these are U.S. citizens or people who are here legally. They would have to document that they are here legally to get on SCHIP. I would encourage the adoption of my amendment.

The Chairman. Is there further discussion?

Senator Grassley. Can I address it for a minute, Mr. Chairman?

The Chairman. Senator Grassley?

Senator Grassley. The last amendment made a fundamental change in the way this country looks at

immigration and public benefits. As we have said two or three times in the last few minutes, since 1996 most legal immigrants in this country have been forbidden from accessing Medicaid or SCHIP during the first five years that they are in this country. Sponsors of them sign a contract or an affidavit declaring they will provide support for immigrants during those five years. So as I tried to point out, commitments are made and commitments should be kept.

With that amendment that Senator Rockefeller sponsored, the very first action of this committee in 2009 is to tell sponsors, the people that sign that affidavit, and it also tells the immigrants, and then it tells the American people who expect the laws to be followed, that commitments now can be broken. That amendment will allow Federal taxpayer dollars to provide coverage for people who came to this country with a commitment not to access those programs.

So, the Majority is going to allow immigrants to break that commitment, and what is worse, they are doing so at the expense of coverage for children who are American citizens, because this bill could have spent $1.3 billion for coverage of low-income American children. After all, that is what this SCHIP bill has been about since 1996: for people in America who cannot

have health care coverage because they cannot afford it, getting it to them. So when we give States a financial incentive to cover more kids, they cover more kids. Instead, where are we now? This bill now devotes $1.3 billion to cover non-citizens.

We should not fool ourselves. This is not just about legal immigrants, it is about people who have come here illegally. Let me explain that: nearly 1 in 2 people here illegally came here first as legal, but they overstayed their visas, for the most part. So no one should be surprised when 1 of every 2 people who gain coverage through this amendment end up being on Medicaid or SCHIP, being here illegally.

Voting for the previous amendments was really a vote to allow people who are here illegally to enter the system and get taxpayer subsidies, when American children are being left out. So I think by voting for the Ensign amendment we are putting low-income American kids first, so I ask your support of the Ensign amendment.

The Chairman. Further discussion? Senator Bingaman?

Senator Bingaman. Mr. Chairman, could we ask staff, my impression is that this is not a major problem, this idea that we have got people legally coming here as immigrants with full legal status who are fraudulently

obtaining these benefits. Now we are saying that I guess this amendment is intended now to say that we want to prevent illegal immigrants from coming here and fraudulently obtaining these benefits.

Is there any evidence we have as to the extent of this problem? I mean, I am not familiar with a lot of illegal immigrants who are fraudulently trying to sign up for programs that they know they are not eligible for. They are generally living their lives in the shadows in my State, trying to stay out of contact with Federal employees and Federal officials.

Mr. Schwartz. Senator Bingaman, I do not have any evidence of that. Again, I apologize that I am not as versed in immigration issues. But I would point out that if they are pursuing Medicaid or CHIP benefits fraudulently, that would be subject to the False Claims Act.

Senator Bingaman. So they would be subject to criminal penalties as well as deportation by virtue of their illegal immigrant status?

Mr. Schwartz. That is my understanding, sir.

Senator Grassley. Mr. Chairman, would the Senator from New Mexico engage with me just a moment?

Senator Bingaman. I am glad to.

Senator Grassley. Because I think you missed my

point. My point was that people come here legally, overstay their visa, then become illegal and nobody knows it, see, because they overstay their visa. That is true of about half of the people that are in this country illegally. They came here legally. So what I am saying in my remarks is it is possible for them to get on this program, or they could have been on the program legally and stayed on it when they were illegal after they overstayed their visa.

Senator Bingaman. Well, from my perspective, let me just say, I think that the word "fraudulently" contemplates some kind of willful violation of the law, willful obtaining of benefits you are not entitled to. The people I have encountered who are here illegally are anxious not to be deported, and therefore anxious not to be in violation of our Federal laws. There may be instances--I would not doubt that in a country the size of ours there are instances--where people are taking advantage of these programs, illegal immigrants are taking advantage of these programs. I would just say it is a fairly small set of individuals who fall into that category.

The Chairman. Further debate?

Senator Conrad. Mr. Chairman?

The Chairman. Senator Conrad?

Senator Conrad. Mr. Chairman, could I ask the staff, it strikes me that the concern that Senator Grassley has raised, that somebody comes here legally and then stays, overstays their visa -- he is exactly right. That is the way most people wind up here illegally. They came here legally, then they overstay their visa. But under the Rockefeller amendment that we passed, would it not be the case that if somebody overstayed their visa and were then here illegally, they would then not qualify for the benefits under the Rockefeller amendment?

Mr. Schwartz. That is my understanding, sir.

Senator Conrad. And, in fact, they would be subjected to criminal penalties.

Senator Ensign. Mr. Chairman, let me clarify this with staff.

Senator Conrad. Wait, wait, wait, wait.

Senator Ensign. All right.

Senator Conrad. I am asking the question here. Is that not correct?

Mr. Schwartz. That is correct.

Senator Conrad. So if somebody came here legally and stayed and then was here illegally, they would not legally qualify for the benefits we have just passed, and in fact would be subject to criminal prosecution and deportation?

Mr. Schwartz. That is correct. I am also advised that they would be permanently barred from the country.

Senator Conrad. And they would be permanently barred. Well, so I think the Ensign amendment then becomes superfluous.

Senator Ensign. Mr. Chairman?

The Chairman. Senator Ensign?

Senator Ensign. Just to clarify with the staff, in my earlier questioning to you, I asked if someone came here legally they would have obtained a legal Social Security number. Under the Chairman's mark, could they enroll in the SCHIP program if they overstayed their visa?

Mr. Schwartz. I believe that your question was, could they use that Social Security number--

Senator Ensign. To enroll.

Mr. Schwartz. And then qualify for the reasonable opportunity period that was available.

Senator Ensign. That person could become enrolled in the SCHIP program, that is the bottom line.

Now, they are here illegally. They can obtain SCHIP illegally. What we are trying to do is to prevent those who are here illegally from getting SCHIP. We are trying to prevent them from getting this benefit. That is why we are trying to require enrollees to show their

identification up front so that we do not have to go after people who fraudulently received this benefit, so we are actually preventing fraud at the outset. That is the purpose. It is not superfluous.

My amendment has a very good purpose. I am trying to stop people who are here illegally from enrolling in SCHIP in the first place instead of trying to worry about enforcement, which we all know we do not have enough of in this country. That is the reason why there are so many illegal people in our country. If you talk to your local sheriffs, you will learn that there is not enough enforcement in this country to handle the problems that we already have, let alone encouraging more problems on top of this.

Senator Conrad. Mr. Chairman, might I ask the gentleman, would he be willing to separate his amendment? Because his amendment, first of all, as I understand it, undoes the Rockefeller amendment in the first --

Senator Ensign. I wanted to offer a second-degree amendment to that, a reasonable second-degree amendment to the Rockefeller amendment so I could have had a clean vote on that issue. But once his amendment was adopted, I decided to combine two of my amendments because it was kind of superfluous to just do my other first-degree amendment to his amendment. And since everyone agreed

that they did not want any second degree amendments, that is the reason I am proposing it this way.

Senator Conrad. I see. I see.

I would just want to say for the record, if the gentleman had done it that way I would support it.

Senator Kyl. Mr. Chairman?

The Chairman. Senator Kyl?

Senator Kyl. I might have a solution. Actually, I have an amendment which does exactly what Senator Conrad said. It does not have the repeal of Rockefeller. With my colleagues' concurrence, I would offer it as a second-degree amendment.

The Chairman. No, no. Whoa, whoa, whoa, whoa, whoa. I am trying to do second-degree amendments.

Senator Kyl. Well, all right.

The Chairman. Let us vote first.

Senator Ensign. Mr. Chairman, I will tell you what I will do to help save the committee time. We still strike the first part of my amendment, if allowed unanimous consent, which deals with the Rockefeller amendment. We will just have a clean vote on the undocumented part of my amendment.

The Chairman. All those in favor of the Ensign amendment?

Senator Ensign. I would like a roll call on that,

though.

The Chairman. A roll call vote has been asked on Ensign. All those in favor vote aye, those opposed, no.

Senator Bingaman. Mr. Chairman, let me just be clear. If the Ensign amendment now as modified is adopted, then it overrides the mark?

The Chairman. No. It is unmodified.

Senator Bingaman. Oh. It is unmodified. All right. So this is overriding Rockefeller, which we just adopted.

The Chairman. Yes. Right. Right.

Senator Bingaman. Plus the rest of the stuff.

Senator Ensign. No, no, no, no. I just agreed to strike the Rockefeller portion, so it is not overriding the Rockefeller amendment.

The Chairman. All right.

Senator Ensign. It does not have to do with the Rockefeller amendment.

Senator Bingaman. It is not overriding Rockefeller.

Senator Ensign. My amendment requires individuals to have the proper identification, as defined in the Deficit Reduction Act, in order to enroll in the SCHIP program.

Senator Bingaman. And that is a contradiction of

the Chairman's mark.

Senator Ensign. Of the Chairman's mark. That is correct.

Senator Bingaman. Because the Chairman's mark says you can either have that documentation or you can show Social Security.

Senator Ensign. Yes.

Senator Kyl. Mr. Chairman, if we are going to vote, then I was going to offer my amendment. I would like to say one thing. That is inadequate. Either my amendment or Senator Ensign's amendment, now as modified, works. But I was going to explain one critical point about both of these.

The Chairman. Well, the amendment before us is the one offered by Senator Ensign. That is the amendment before us. Do you want a vote on your amendment?

Senator Kyl. Yes. But Mr. Chairman, my point is this. There is no reason for me to offer mine if this passes. I would like to make a point that I was going to make with regard to mine that would apply equally to this one that I think commends the amendment to all of us.

If I could, the flaw in the mark is simply that it provides an alternative way to qualify. One way does not work, and everybody could use that way. It is simply to ping Social Security and say, is this a valid Social

Security number? I think we all understand that is not good enough.

There are two problems with it. It may be a valid Social Security number, but the person may no longer be in valid status so the person would have to demonstrate that he is still in valid status. Then the second thing is -- well, that is the key difference right there. You would have to demonstrate that you are in valid status, so it would add the requirement of checking that as opposed to just verifying the validity of the Social Security number. That is all.

Senator Bingaman. Mr. Chairman?

The Chairman. Senator Bingaman?

Senator Bingaman. I wanted to just clarify. The amendment as now presented by Senator Ensign calls for anybody who is an illegal immigrant to demonstrate -- if they want to sign up for Medicaid or CHIP, they have to demonstrate and they have to meet the identification requirements contained in the Deficit Reduction Act. The identification requirements contained in the Deficit Reduction Act are those that apply to proving your citizenship, not to proving your legal status. So by definition, people who are here legally but are not citizens cannot meet those requirements.

Senator Kyl. It is the difference between a green

card and citizen. I mean, if he is right --

The Chairman. Let us move along here.

Senator Ensign. No, that is not true. I do not think that is true, because a passport is identification.

The Chairman. To clarify the confusion here, and there is a lot of confusion here, let us go back to square one again. Square one is the Ensign amendment. You explained your amendment, and then you wanted to modify it. Is that correct?

Senator Ensign. Yes.

The Chairman. Could you explain your amendment, as modified? What is it?

Senator Ensign. The amendment that we are going to vote on is simply to change the Chairman's mark. When you go to sign up for SCHIP, you will be required to show the same identification that is required under the Deficit Reduction Act.

The Chairman. Right.

Senator Ensign. That is for either SCHIP or Medicaid.

The Chairman. As in the Deficit Reduction Act, period.

Senator Ensign. That is correct. Period.

The Chairman. Let me ask staff. Explain the implications of that.

Senator Ensign. I have those right here if you want me to read them to you.

The Chairman. Well, I would like to ask staff to explain the implication of that.

Mr. Schwartz. I think the implications of the amendment are that it would remove from the Chairman's mark the part of Section 211 where the option is created for States to use the Commissioner of Social Security's records for a match of Social Security number and name of an applicant, but it would still leave intact the part of Section 211 in which the citizenship documentation requirements in Medicaid are extended to the CHIP program.

The Chairman. So that it removes the State option.

Mr. Schwartz. Correct.

Senator Bingaman. Mr. Chairman, could I ask a further question, though?

The Chairman. Yes.

Senator Bingaman. I thought that the Chairman's mark, where he inserts the opportunity to prove your citizenship by reference to a Social Security number, is all about proving your citizenship. Now we have an amendment that says someone who has come here illegally is going to prove that, in fact, they are legal by showing these documents that --

Senator Ensign. Mr. Chairman, to clarify this, I am going to withdraw my amendment so Senator Kyl can offer his.

The Chairman. All right. The amendment is withdrawn.

Any further amendments?

Senator Kyl. Mr. Chairman, since we are talking about this, could I then offer my amendment?

The Chairman. Senator Kyl? Absolutely.

Senator Kyl. It is amendment number two.

The Chairman. Amendment number two, Senator Kyl.

Senator Kyl. Right. Here is the problem with the mark. Let me walk through it.

The Chairman. Well, what you think the problem is.

Senator Kyl. No. I just was about to say walk through, because I think you will agree. Somebody just pointed out the very problem here.

The Chairman. All right.

Senator Kyl. The Chairman's mark allows a State to do one of two things, either ask for documentation to prove status or citizenship. Well, most of these people are not going to be citizens, by definition. They are going to be green card holders. They are not yet citizens. Their legality needs to be determined, but it is not citizenship. That was the flaw. I should not say

flaw, but that was the deficiency in the definition that was used in the Ensign amendment. Whoever pointed that out was correct.

Senator Ensign. It would have been all right if Rockefeller had not been adopted.

Senator Kyl. Understood. But Rockefeller is now adopted, and there are people with green card status who are here legally, but they are not citizens. So that part does not work. Or to send a Social Security number to Social Security and verify it is a valid number. That does not work either. There are a lot of valid numbers, but you cannot connect it up to the individual and determine that that individual is here legally.

This amendment number two simply does this. It requires two things. One, that either a driver's license or a Federal identification document--for green card holders, it is going to be the green card. That is what they are going to use--be presented to the State and require the State to affirm its validity, such as a green card; and two, requires that if a Social Security number is used or if the Department of Homeland Security is the appropriate agency to verify a green card, that they verify the green card. So this closes the gap. Frankly, for a green card holder, which is 90 percent of what you have, it is very simple. They carry their green card

with them at all times. They present that, homeland Security says that is valid, they are qualified.

Senator Conrad. Would the Senator just yield for a question?

Senator Kyl. Yes. Yes.

Senator Conrad. Because, I will tell you, I personally believe something like this is necessary. Could you tell me, is one and two required, or is it one or two?

Senator Kyl. You have to do two things. You have to demonstrate that -- you do this, number one, with either a driver's license or a Federal identification document. That would be a green card, ordinarily. And two, you require either Department of Homeland Security to verify that or, if it is a Social Security number that was used as the identification, then Social Security would verify it. So it is a two-step process, but Social Security is only involved if the Social Security number was used.

Senator Conrad. As I understand it, what Senator Grassley was earlier talking about is true. We do have people coming here initially legally, overstay their visa, become illegal. We also have people who have obtained Social Security numbers inappropriately and we ought to check. We ought to insist that there be

documentation for somebody to get access to this benefit. It strikes me -- and I am not sure whether the details here work in an administrative way as well as we might like, but I think this amendment is trying to get at a legitimate issue.

Senator Bingaman. Mr. Chairman?

The Chairman. Who seeks recognition?

Senator Bingaman. I do.

The Chairman. Senator Bingaman.

Senator Bingaman. Mr. Chairman, to me this amendment is loading on another requirement. If you want to sign a child up for SCHIP or for Medicaid, you are now going to have to go to Homeland Security and get them to verify whatever it is they are being asked to verify, or you are going to go to Social Security and get them to verify.

I mean, my strong concern with this whole citizenship documentation requirement that we have got in current law is that you have got literally hundreds of thousands of kids who are being denied coverage today and are being dropped from the rolls because their parents cannot meet these requirements. We have got kids all over our State. I mean, you represent two-thirds of the Navajo reservation in your State, I represent one-third in my State, and there are an awful lot of kids on the

Navajo reservation who do not have a driver's license and who do not have citizenship papers that they can present.

For us to say, all right, we cannot sign any of these kids up until we check with Homeland Security, I think this is just adding bureaucracy to bureaucracy. I think we are, in our zeal to prevent somebody from cheating, denying an awful lot of people who ought to be covered the benefits of this coverage.

Senator Kyl. Mr. Chairman, if I could.

The Chairman. Is there any further debate?

Senator Kyl. Yes, please.

The Chairman. Senator Kyl?

Senator Kyl. The Rockefeller amendment adds non-citizens. We are not talking about Navajo Indians here who are citizens of the United States, we are talking about non-citizens--that is to say who are here legally--legal immigrants, by far and away the vast majority of those who are green card holders.

Senator Bingaman. Well, I am misunderstanding the amendment then, because it says the amendment would amend Section 211 of the Chairman's mark to require that, regardless of citizenship status, so it covers citizens as well as non-citizens, and they have to go through this procedure here and either get signed off by Homeland Security or get signed off by Social Security or the kid

cannot participate in the program. I am telling you, there are a lot of Navajo kids who cannot participate in the program if we are going to lay this kind of requirement on them.

Senator Kyl. Mr. Chairman?

The Chairman. Senator Kyl?

Senator Kyl. Native Americans are exempt from the requirement already in here. We are not adding a requirement that U.S. citizens, who are currently eligible for the program, have to go through all of this. There are whole groups of individuals who are already exempt from documentary requirements. This is intended to deal with the additional folks who are legally resident here, but not citizens.

They would have to demonstrate -- it is the parents who are doing this, obviously, with either the green card, ordinarily, or if they are going to use the Social Security number, to verify not just that it is a legitimate number, but that it belongs to them. That is what it does.

I neglected to mention one other thing, and I would want Senator Conrad to know this. This has to be renewed annually so that you know that they have not fallen out of status. That is the whole point of the people who came here legally and then overstayed their status, so it

is an annual requirement.

The Chairman. Let me say, the goal here is to get as many kids under the program as we possibly can under the criteria we set in the legislation, that is, income levels, and I also think we should include kids who are here legally. That is the goal. Now, we also want to make sure that the people who participate are entitled to, that they are actually legal citizens of the United States.

The amendment that has been offered by Senator Kyl, I think, will be much more burdensome in practice than is intended and it is consequence that has been implied by the Senator from New Mexico and others, namely, it will unwittingly deprive a lot of kids from being covered under the CHIP program.

Now, what do I mean? The amendment, as I read it--and I can only read what the amendment says--and the Senator from New Mexico is right, would require that regardless of citizen status, an individual applying for Medicaid or CHIP is required to present a driver's license or Federal documentation, et cetera, et cetera.

Then it goes on to say, "the processing agency will be required to receive an affirmative answer from the Department of Homeland Security or the Social Security Administration that such documentation is valid." Then

it goes on. Paragraph number two basically says the amendment requires SSA to contact DHS to get an affirmative response to the immigration status of the applicant.

I can just tell you, this is going to be extremely complicated. These computers do not talk to each other, in the first place. Second, it is basically talking about e-verification. That is utilized now in seeking in employment, and there is at least a 4 percent error rate with respect to an applicant getting an affirmative response. I am not sure whether it is SSA or DHS. It is a problem.

When we discussed this in conference, this issue, we basically threw up our hands, it is so complicated. That is because these agencies have a hard time talking to each other, the bureaucracy is just so large. The practical consequence, I think, is going to be very dire. It is going to knock an awful lot of kids who should be on the program off the program. I just think, before we go down this road of requiring verification by DHS and verification by SSA and so forth -- let us say a kid is sick and he presents his driver's license, or a parent presents the driver's license. How long is it going to take to find out whether this kid is covered or not?

Senator Kyl. They are on the rolls until they are

taken off. Under the mark, they are automatically covered.

The Chairman. That is not what the amendment says.

Senator Kyl. That is the underlying mark.

The Chairman. Well, I am just telling you what the amendment says. It does not say "notwithstanding many provisions in the mark". You have got a conflict here between what the amendment provides and what you say is in the mark. I just think this is not a good idea at this time. It is going to cause a lot of kids who should be getting Children's Health Insurance --

Senator Kyl. All right. Mr. Chairman, this is my amendment. Let me make a last point. By the specific language, to Senator Bingaman's point, because he is absolutely right, we would not want to have to have Navajo Indian citizens present any documents other than ones they already present. They are provided for in here, their Federally recognized Indian enrollment documents and so on. The mark provides that the coverage exists until it is denied. These are all legitimate questions, but I think my amendment deals with them properly.

If the argument is that it is too complicated to verify eligibility for this benefit, then I just want everybody here to know, if it is defeated because it is

too complicated for us to verify eligibility, we are committing the American taxpayer to pay billions of dollars without adequate verification of eligibility, and the next thing you know, on "60 Minutes" or one of these programs, fleecing of America, or whatever, it is going to be, Congress did not take the time to make sure that, in granting a new benefit that is costing taxpayers billions of dollars, that people were not receiving the benefits illegally. We hear that. Every week there is some new program about how people are receiving benefits and they should not, and people get angry at that.

There is one phrase that sticks out in every survey I have ever taken; it is "wasteful Washington spending." People do not mind paying taxes, they do not mind taking care of their fellow citizens, but they do not like to see money wasted. We need to address this if we are expanding, dramatically, to billions of dollars and millions of people, a new Federal benefit. And it is too complicated for us to be able to verify eligibility? I do not think that is right. We need to get it right. I think my amendment does that exactly. If there is a problem, I am happy to work to make corrections to that before the bill comes to the floor, to make sure that it does not do beyond what it is supposed to do.

Thank you.

Senator Snowe. Mr. Chairman, can I just ask for clarification from Senator Kyl on his amendment?

The Chairman. Senator Snowe? Yes.

Senator Snowe. Is it either/or? Is it receiving an answer from the Department of Homeland Security or the Social Security Agency, or both?

Senator Kyl. Mr. Chairman, Senator Snowe, it depends what the identification offered is. If it is a green card, DHS verifies that. If it is a Social Security number, the Social Security Administration would verify that.

Senator Snowe. All right. So it does not require both documentations. It is depending on which documentation you offer.

Senator Kyl. It is what you use.

Senator Snowe. Thank you.

The Chairman. Is there any further debate? [No response.]

Those in favor of the amendment, say aye.

[A chorus of Ayes.]

The Chairman. Those opposed?

[A louder chorus of Nays.]

The Chairman. The nays seem to have it. A roll call is requested. The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.
The Clerk. Mr. Conrad?
The Chairman. Aye by proxy.
The Clerk. Mr. Bingaman?
Senator Bingaman. No.
The Clerk. Mr. Kerry?
The Chairman. No by proxy.
The Clerk. Mrs. Lincoln?
Senator Lincoln. No.
The Clerk. Mr. Wyden?
The Chairman. No by proxy.
The Clerk. Mr. Schumer?
The Chairman. No by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Salazar?
The Chairman. No by proxy.
The Clerk. Mr. Grassley?
Senator Grassley. I vote aye.
The Clerk. Mr. Hatch?
Senator Hatch. Aye.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Bunning?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Roberts?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Ensign?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Chairman?

The Chairman. I vote no.

Senator Kerry. Mr. Chairman, may I be registered "no" in person, please?

The Chairman. The Clerk will announce the results of the vote.

The Clerk. Mr. Chairman, the tally is 9 ayes, 10 nays.

The Chairman. The nays have it. The amendment is defeated, does not pass.

I do not want to disrupt the order here. There was understanding that we would stick with amendments on immigration.

Does the Senator have an immigration amendment?

Senator Hatch. Yes.

The Chairman. All right. Senator Hatch?

Senator Hatch. My amendment is number three. It simply states that before a State may exercise an option to provide CHIP and Medicaid coverage to legal immigrant children and pregnant women, the Secretary of HHS must certify that 95 percent of its children have either private or public health coverage.

Now, when legal immigrants enter the country their sponsors agree to be responsible for their expenses for the first five years when they live in the United States. That is why we have the five-year rule in there. The amendment that was approved earlier negates that agreement by allowing immediate health coverage of legal children and pregnant women. That is the first reason why I am offering this amendment.

The second reason is that there are U.S. children who are citizens in this country who are low-income and uninsured. They do not have health insurance coverage, and I believe these children ought to be our first priority as far as CHIP coverage is concerned. Once those children have health coverage, then we can talk about expansions to other populations. I will not be much longer. My amendment ensures that the majority of these children have health coverage before we expand CHIP and Medicaid eligibility to legal immigrants.

So I urge my colleagues to support this amendment. I think it is a good one. I think it makes sense. I think that it is something that you can explain at home fairly easily, and yet it is not without some compassionate instincts.

The Chairman. Is there further discussion?

Senator Grassley. Can I debate?

The Chairman. All right. Senator Grassley?

Senator Grassley. Oh, that is all right.

The Chairman. Senator Bingaman?

Senator Bingaman. Well, I would just point out that my understanding is that this amendment would have the effect of essentially eliminating the ability of most States--maybe all States--to provide the coverage that we just voted to provide under the Rockefeller amendment.

I know my State, the idea that we are going to be able to demonstrate that 95 percent of the State's residents under 19 years of age have either private or public health coverage, that is a dream in my State. I mean, we have got 23 percent of our population that do not have any coverage of any kind in New Mexico right now. I know Texas is the one State that has got a higher percentage than we do. So the effect of this amendment would be to negate the action we took in adopting the Rockefeller amendment, so I would strongly oppose it.

Senator Hatch. Well, Mr. Chairman, it is not a 100 percent amendment. But the purpose of the amendment is to make sure that the kids who should be covered are covered and to not have them left on the sidelines in our zeal to cover people who are immigrant children. Now, I just think it makes sense to be very, very careful here because the whole purpose is to make sure we cover our kids. If we are not willing to do that -- this is an incentive amendment that says you should do that first. I just hope our colleagues will listen to me on this, because I think there will be a lot of discontent if you do not.

The Chairman. Is there further discussion on the amendment? Senator Grassley?

Senator Grassley. Yes. This amendment is another amendment where we are trying to mitigate the decisions to allow legal immigrants and their sponsors to break this commitment that we call an affidavit--I call it a contract--that has been made for those people that come into this country in the first place, who would not be here without sponsors.

The sponsors make a commitment so that they can get in. In other words, if you violate that, then they are eligible for Medicaid and SCHIP benefits during their first five years in the country. After five years, right

now they can get these benefits. But we think people ought to keep their contractual obligations to the Federal Government.

If a State wants to cover legal immigrants, the Majority is obviously bound and determined to let them. It seems to me we ask the question, should we not at least be certain, as this amendment does, to make sure that a State is covering the poorest of the poor first, and American kids first, before somebody that comes into this country where somebody says we are going to assume your responsibilities not to become a public charge, and keep that obligation?

This amendment says that a State cannot cover legal immigrants unless it covers 95 percent of the eligible children, and that is 95 percent of those under 200 percent of the Federal poverty limits. So why on earth would we allow a State to use State and Federal dollars to cover immigrants who are committed not to need those benefits for at least five years before we cover low-income kids who are citizens in this country? We should not, and cannot, so that is why this amendment is a good amendment.

Senator Hatch. Mr. Chairman?

The Chairman. Senator Hatch?

Senator Hatch. Let me just say one last sentence.

That is, this is one of the reasons we wanted the crowd-out language in this bill, because it does protect American kids first. I am not against helping kids, whatsoever. But the fact of the matter is, let us take care of the kids that we really have a first obligation to help. We ought to have those crowd-out provisions back in. I will not call up any more amendments, but I have got a lot of them that would make this bill much, much better. But this is one I think you have got to have if you are really concerned about American kids that will not be covered.

The Chairman. Senator Bingaman?

Senator Bingaman. Let me just make one other point on Senator Grassley's reference to the contractual commitment that sponsors have made when they sponsor a family or an individual to come in here. I have never understood that to mean that they were contractually obligating themselves to provide health care or cover the cost of health care for that individual. That is a new concept to me. I would think you would have a lot of trouble getting sponsors for immigrants coming into this country if you said part of what you are going to have to do is pay the health care for this individual.

The Chairman. Does the Senator require a recorded vote?

Senator Hatch. Yes.

The Chairman. Yes, he does. The Clerk will call the roll on Hatch number three.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?

The Chairman. Pass.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

The Chairman. No by proxy.

The Clerk. Mr. Wyden?

The Chairman. No by proxy.

The Clerk. Mr. Schumer?

The Chairman. No by proxy.

The Clerk. Ms. Stabenow?

Senator Stabenow. No.

The Clerk. Ms. Cantwell?

Senator Cantwell. No.

The Clerk. Mr. Salazar?

The Chairman. Pass.

The Clerk. Mr. Grassley?

Senator Grassley. Aye.

The Clerk. Mr. Hatch?
Senator Hatch. Aye.
The Clerk. Ms. Snowe?
Senator Snowe. No.
The Clerk. Mr. Kyl?
Senator Kyl. Aye.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Roberts?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Ensign?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Chairman?
The Chairman. No. The Clerk will announce the results of the vote.
The Clerk. Mr. Chairman, the tally is 7 ayes, 10 nays.
The Chairman. The nays have it. The amendment fails.
Any further amendments? Is this an immigration amendment?
Senator Hatch. No.
The Chairman. I would like to stick with this

subject, if we could, for a while.

Senator Kyl?

Senator Grassley. I have an immigration amendment.

Senator Kyl. You go ahead. Then I do.

Senator Grassley. All right. Amendment number 36, Mr. Chairman. I hope it is on your list there.

The Chairman. Thirty-six? We will find it.

Senator Grassley. This is a pretty common-sense amendment and I hope it passes, and it ought to pass. Getting back to the fact that I have said that half of the people that are here illegally came to this country legally and overstayed their visas, think of that as I explain what we are up to here.

This is also in response to the Majority's being bound and determined that legal immigrants' coverage is going to stay in this bill. The least we can do is to make certain that those legal immigrants remain legally eligible for coverage. As the mark is currently written, once a legal immigrant is enrolled in Medicaid or SCHIP, there is no requirement--emphasize, no requirement--that the status of the legal immigrant be rechecked. In other words, no one is asking if they are still legally in the country.

So, very simply, when a State does it regular redetermination for income eligibility of a legal

immigrant, the State also has to confirm the legal immigrant's immigration status, if it is in good standing. If we are going to give legal immigrants access to Medicaid and SCHIP, let us at least confirm that they are still legal. I urge support for the amendment.

The Chairman. Is there further discussion on the amendment?

Senator Kyl. Mr. Chairman, this is part and parcel of what we discussed before. If we are not serious about ensuring continued eligibility for this multi-billion dollar expansion of Medicaid, we are not doing our job on behalf of our taxpayer constituents. This is a very reasonable requirement to just ensure continuing eligibility, otherwise someone who becomes eligible one day, presumably for the rest of their childhood, becomes eligible for the program regardless of their status. It is a good amendment.

The Chairman. On the surface, as an appeal, I just do not know if I fully understand it.

Senator Kerry. Can I ask, Mr. Chairman, when is the reexamination done? You said, when they are doing this scheduled --

Senator Grassley. If I can answer that, from my point of view--I hope I am right--regularly, and usually

once a year.

Senator Kerry. And that entails what? Can you tell us?

Senator Grassley. It entails, after redetermination, financial eligibility. It does not redetermine --

Senator Kerry. My question is, is that automatic and applies to -- what is the breadth of scope of the universe of that?

Senator Grassley. Everybody.

Senator Kerry. Everybody?

Senator Grassley. Yes.

Senator Kerry. And that is automatic?

Senator Grassley. Yes.

Senator Bingaman. Mr. Chairman, could I just ask, perhaps Mr. Schwartz, to describe his understanding of how this now works? Does each State make its own determination of how often it is going to do this redetermination of eligibility? I understand the amendment of Senator Grassley would be that whenever they decide they are going to do that, then they would also check the legal status of the person.

Mr. Schwartz. I think that is right, Senator Bingaman. Some States do a redetermination every 12 months, some are more frequent than that. Six months is

not at all unpopular. My understanding is that this would be really a new requirement for CHIP, in particular; that CHIP right now is not verifying the status, but Medicaid already is.

So the way I understand this, it would fold into the regular eligibility redetermination which, as Senator Grassley correctly said is usually mostly financial, checking continued income and asset levels, this would go along with that.

The Chairman. Might I ask the sponsor of the amendment, or anyone, how this determination would be made, on the one hand going back and asking for the documents that were originally produced or, as was suggested in another amendment, requiring DHS or SSA to confirm? I am just wondering what is contemplated here. What is required? What redetermination is required and what proof of the status is required, and by whom, in order to qualify?

Senator Grassley. My common-sense answer to your question is that the same way that the Rockefeller amendment suggested that it be determined in the first place would be the way it would be determined in redetermination.

The Chairman. Any further discussion? I am prepared to accept the amendment.

Senator Grassley. Thank you.

The Chairman. The amendment is adopted. With no further objection, it is adopted. [No response.]

Other business? Senator Kyl?

Senator Kyl. Mr. Chairman, my amendment number five.

The Chairman. Kyl five.

Senator Kyl. This would strike coverage of legal immigrants, as provided in Senator Rockefeller's amendment, and devote the funds saved by applying them to the physician payment cut, which will be 21 percent starting in January of 2010.

The object, obviously, is to ensure that we are taking care of our current obligations before we add new ones. We are adding Medicaid and SCHIP coverage to legal immigrants, not even U.S. citizens, and yet we have professionals in this country who are asked to work very hard to take care of our senior citizens under Medicare and not even paying them what they deserve to be paid, holding hostage each year this community to a great deal of concern about whether they are going to receive their so-called "update," which at best is usually a one or so percent increase over the previous year, not even enough to cover inflation.

When we have made so many promises under our

entitlement programs, as I said earlier--Medicaid being one of them--that we know we cannot keep, we should not be expanding the program. So what this does is to redirect funding that otherwise would go to the expansion of the program to folks who we have made a commitment to today and, by definition, a program that we know that we cannot afford to comply with unless we find some kind of new source of revenue.

The Chairman. Any further discussion? [No response.] If not, the vote is on the amendment. All those in favor of the Kyl amendment, say aye.

Senator Kyl. Mr. Chairman, could we have a roll call vote?

The Chairman. A roll call vote is requested. The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?

Senator Conrad. No.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

The Chairman. No by proxy.

The Clerk. Mr. Wyden?
The Chairman. No by proxy.
The Clerk. Mr. Schumer?
The Chairman. No by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Salazar?
The Chairman. Pass.
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Hatch?
Senator Hatch. Aye.
The Clerk. Ms. Snowe?
Senator Snowe. No.
The Clerk. Mr. Kyl?
Senator Kyl. Aye.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Roberts?
Senator Grassley. Mr. Roberts, aye by proxy.
The Clerk. Mr. Ensign?

Senator Grassley. Mr. Ensign, aye by proxy.

The Clerk. Mr. Chairman?

The Chairman. No.

The Clerk. Mr. Chairman, the final tally is 7 ayes, 11 nays.

The Chairman. The nays have it and the amendment is not agreed to.

Are there further immigration amendments? We are still with immigration.

Senator Grassley. I have one.

The Chairman. All right. Senator Grassley?

Senator Grassley. This is amendment number 32, for all the members of the committee. As I said early on, with the amendment that added legal immigrants now included in the mark, it is very difficult for me to support the underlying bill. In the 1996 welfare reform bill, we required the sponsors, the people that signed that affidavit or contract, that they would provide for those immigrants for the first five years that they were in this country.

With this provision we are allowing sponsors to go back on that commitment. The truth is, the money could be far better spent. It adds $1.3 billion in new spending to the bill. So my amendment spends this money to enroll more eligible American children. My amendment

increases the bonuses paid to States by that $1.3 billion so that States will go out and cover more low-income Medicaid children.

The Congressional Budget Office has stated that when you provide States more money to cover low-income children, you know what they actually do? The States do what you want them to do: they go out and cover low-income kids, the very purposes for which SCHIP was passed in the first place 12 years ago.

This amendment corrects the error that the committee just made in putting immigrant children ahead of poor American children. And I do not want to put immigrant children differently than American children from the standpoint of need, but I want to emphasize, you are talking about sponsors who said that they were going to pay for the care of the people that they were sponsoring to come into this country.

So this vote is very simple. We can spend $1.3 billion for legal immigrants who committed not to need the benefits you just made available to them, meaning their sponsors made that commitment, but I think it is an obligation also on those that are coming here with that understanding.

That is, in turn, $1.3 billion. When you know that a chunk of that is going to end up going to people

illegally in this country because nearly 1 out of every 2 people illegally in this country came here in a legal fashion and overstayed visas, or we can spend the $1.3 billion on kids that we intended to cover in 1996 and have not done a good enough job of it, even with the improvement of 4 million in this bill we can still do more, and we ought to do more. So, I would like to have a roll call vote on this amendment.

The Chairman. Any further discussion or debate? [No response.] If not, the vote is on the amendment. All those in favor of the amendment say aye.

Senator Grassley. A roll call.

The Chairman. All right. Here we go. Roll call. The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?

Senator Conrad. No.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

The Chairman. No by proxy.

The Clerk. Mr. Wyden?

The Chairman. No by proxy.
The Clerk. Mr. Schumer?
The Chairman. No by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Salazar?
The Chairman. Pass.
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Hatch?
Senator Hatch. Aye.
The Clerk. Ms. Snowe?
Senator Snowe. No.
The Clerk. Mr. Kyl?
Senator Kyl. Aye.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Mr. Crapo, aye by proxy.
The Clerk. Mr. Roberts?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Ensign?
Senator Grassley. Aye by proxy.

The Clerk. Mr. Chairman?

The Chairman. No. The Clerk will announce the results of the vote.

The Clerk. Mr. Chairman, the tally is 7 ayes, 11 nays, and 1 pass.

The Chairman. The nays have it. The amendment is not agreed to.

Are there any more immigration amendments? [No response.] If not, Senator Hatch?

Actually, we can do this any way we want. The earlier understanding was that we would next go to citizen documentation. Senator Bingaman had an amendment on that subject. I do not know if he wants to address that now or not.

Senator Hatch. I will ignore all of the rest of these.

The Chairman. You will ignore them all?

Senator Hatch. I will not call them up.

Senator Grassley. If you let him go now.

The Chairman. All right. If you let him go now.

Senator Hatch. If you do not let me go --

The Chairman. Well, let us consult with Senator Bingaman on that subject.

Senator Bingaman. Well, I am certainly anxious to have Senator Hatch forego the rest of his amendments, so

why do you not go right ahead? [Laughter.]

Senator Hatch. You are a gentleman and a scholar.

The Baucus mark provides an additional option for States to cover pregnant women. It would do this by recognizing the status of the pregnant mother rather than the status of the unborn child. Now, this amendment will ensure that States have the option to protect both the health --

The Chairman. May I ask the Senator, is this Hatch one?

Senator Hatch. No. This would be Hatch 13. I am sorry.

The Chairman. Hatch 13.

Senator Hatch. I should have said that.

The Chairman. Hatch 13?

Senator Hatch. Yes.

The Chairman. Thank you.

Senator Hatch. My amendment would ensure that States have the option to protect both the health and the rights of the mother and the unborn child.

Now, let me just quickly go over what I am doing here. This amendment simply codifies regulations that have been in effect since 2002. This will protect States that have implemented rules addressing this issue and ensuring that the law remains consistent. While the mark

before us provides an additional option for States to cover pregnant women, it would do this by recognizing the status of the pregnant mother rather than the status of the unborn child. I think both ought to be recognized.

One of the biggest criticisms that I have heard regarding the unborn child policy is that if a pregnant woman breaks her arm it would not be covered because the injury had nothing to do with her pregnancy. I do not think that is fair. Let me assure my colleagues that this amendment will ensure that the States have the option to protect both the health and rights of the mother and the unborn children. Therefore, what this amendment does, it would also clarify that the coverage for the unborn child may include provision of "services to benefit either the mother or unborn child consistent with the health of both."

Now, this is intended to address reports that some States may have denied coverage to mothers for injuries or disorders that did not directly affect the unborn child. In addition, this amendment clarifies that States may provide mothers with post-partum services for 60 days after they give birth. So, I would hope that this is an amendment that could be accepted. I would appreciate it if you would.

The Chairman. Is there any further debate on the

amendment? [No response.] Does the Senator ask for a roll call vote on his amendment?

Senator Hatch. We can do it by voice vote, I hope.

The Chairman. All right. All those in favor of the amendment say aye.

[A chorus of Ayes.]

The Chairman. Those opposed, no.

[A louder chorus of Nays.]

The Chairman. The nays have it. The amendment is not agreed to.

Any further amendments?

Senator Kyl. Mr. Chairman?

The Chairman. Senator Kyl?

Senator Kyl. I hope we can accept this one because it simply reinserts language that you all wrote and included in the bill that passed the House and Senate that, inexplicably, was taken out. This deals with the so-called crowd-out.

The Chairman. This is Kyl number what?

Senator Kyl. Number one.

The Chairman. Thank you.

Senator Kyl. And Baucus number one, I hope.

Last year we raised a lot of problems with the so-called crowd-out effect, acknowledged by the staff; everybody agrees it is a problem.

The solution that I offered was not adopted by the committee, but the House and Senate people who wrote the bill negotiated language, and I understand you helped to draft it, and that language was included in the bill which passed both the House and Senate.

Somehow or other, that language was not included in the mark. I am simply adding that language in the mark. That language calls for two different kinds of reports. It defines crowd-out. There is a requirement, published in the *Federal Register*, and on the HHS web site there are a number of related items. The Secretary is to submit to the States a requirement that they describe how they will address the crowd-out plan. That is essentially it.

There are more provisions that relate to the State plans. It is not nearly as strong, of course, as the language that I offered and I wish had been adopted, but at least it has been passed by the House and Senate, drafted by the Majority party. It seems to me that at least we could all agree that, at a minimum, that crowd-out could be added. There is a lot more I can say about it, but I am assuming that we can at least agree on this.

The Chairman. Any further discussion? [No response.] This is an interesting subject. Frankly, it is my hope that when we have passed significant health

reform legislation in this Congress this will be less of an issue because the quality of private insurance will be such, and there will be subsidies for low-income people, where it is not as much of an issue whether someone is in Medicaid, CHIP, or Medicare, on the one hand, as a public program, or in a private insurance program. We want to try to get sort of seamless coverage here so everyone in the country has health insurance and so this issue, the tension between CHIP on the one hand and private health insurance on the other, is much less.

The House has no provision on this subject. It is true we had language in the CHIP 1 and CHIP 2 legislation. It is an issue I am willing to entertain with the Senator, some way to maybe address this, some kind of a study, because the August 17 directive, I think, expires on a certain date. I do not know how long that lasts. But it is an issue. I think it makes sense to have some kind of an analysis, some kind of study of crowd-out here. That, theoretically, might help us a little bit in health care reform as well.

Senator Kyl. Well, thank you, Mr. Chairman. I was simply trying to take language that you all had developed.

The Chairman. Yes.

Senator Kyl. It is not something I wrote. Again,

I think it is fairly weak. Maybe--maybe--the problem will be ameliorated by what we do, but we have not done it yet.

The Chairman. Right.

Senator Kyl. Who knows when we are going to do it.

The Chairman. Well, if the Senator would agree, let us get our staffs together and get some language. It may be the statutory language you are offering. I am uncertain at this point. But it would be a meaningful study, if that is the route to go. I want to address it in a meaningful way. The House does not, and I think we should.

Senator Kyl. Can we simply adopt the language? Staff says no. Why, staff? Excuse me, Mr. Chairman.

The Chairman. I just think it is best that we go the study route, and I suggest that --

Senator Kyl. Now I understand what you are saying. No, we are not going to take the language that we wrote in both the House and Senate. Instead, there will be some kind of a study that is substituted for it. What is wrong with the language that you all drafted?

The Chairman. I would maybe ask Mr. Schwartz. Do you have any comments on this subject?

Mr. Schwartz. I think that the imposition of requirements on States, as both CHIPRA 1 and CHIPRA 2

would have required, could potentially be premature without knowing the magnitude of the problem of crowd-out on a State-by-State basis and how the various steps that States can currently take to minimize crowd-out, how they really work, if they really work. So I guess that the idea of doing the study first would be to get a sense of that before you move forward.

Senator Kyl. Well, Mr. Chairman and Mr. Schwartz, I assume that is why the language that was drafted and passed the House says that within six months after the Secretary has published best practice recommendations for addressing crowd-out following the items number one through four, then each State submitting a plan would be required to show, in a State plan, how the State would address crowd-out and would incorporate the recommended best practices. So they are not being required to do something until after the Secretary has studied it and published his best practices.

Mr. Schwartz. That is entirely correct. I think what I meant by premature is not that it would come before somebody would tell them and then have some time, but the structure in Section 116 of both vetoed bills did not envision a role for Congress. These were studies submitted and then the Secretary acted. And you are absolutely correct about the six-month delay, but there

was no intervening congressional action to impose these new requirements on the States.

Senator Kyl. Excuse me, Mr. Chairman. I thought that was the intention, that the Secretary -- you publish it in the *Federal Register*, you have two reports regarding the nature of the problem. The first report, the best practices report, is due within 18 months of the enactment of the Act. That is not exactly light-speed, or too speedy.

The Secretary also does the report, along with the Institute of Medicine that is called for, State by State. It defines what we mean by crowd-out. The various items are published in the *Federal Register* within six months after the receipt of the report, so that could be theoretically two years, and then six months after the best practice recommendations.

So I am not sure what the total length of time here is, but it seems like there is a lot of time, potentially two and a half years, before the States would have to actually address the issue. Then it is only to describe how they will address the problem of crowd-out in incorporating best practices. Maybe, if the Chairman is correct, there is not even going to be that much of a problem at that time.

But at least until then, I find it hard to believe

how the solution you all came up with does not at least begin to address the problem. If we are not willing to do this, then I think it is an indication that we are not willing to address what the staff itself acknowledged was a potential problem, and that is the crowd-out effect.

The Chairman. Well, I understand. And it is not just staff, but this Senator, too, understands the potential problem there. But I think, frankly, we are getting a little ahead of ourselves because I think health care reform will substantially address this issue, and that is an incentive for us to do health care reform. There are a lot of incentives, but that is another one. We can design language for a study that gets at this more quickly, too--that is, a recommendation more quickly. It depends on how we write the report here. But I would suggest that we do the report language and not adopt this amendment, and you have my good-faith intention to proceed and address the issue in that respect.

Senator Kyl. Well, Mr. Chairman, I hope we will also address in good faith the earlier amendment on verification of eligibility for benefits. We took a crack at it. Folks said it is a little too complicated. We do not quite understand it right now. We agree with the intent. I hope we would address that as well.

The Chairman. That is going to have to be addressed.

Senator Kyl. I think we should. I am willing to just have a vote on this now then. Let us have a roll call vote.

The Chairman. All right. The Clerk will call the roll, please.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?

Senator Conrad. No.

The Clerk. Mr. Bingaman?

Senator Bingaman. No.

The Clerk. Mr. Kerry?

The Chairman. No by proxy.

The Clerk. Mrs. Lincoln?

The Chairman. No by proxy.

The Clerk. Mr. Wyden?

The Chairman. No by proxy.

The Clerk. Mr. Schumer?

The Chairman. No by proxy.

The Clerk. Ms. Stabenow?

Senator Stabenow. No.

The Clerk. Ms. Cantwell?

The Chairman. Ms. Cantwell, no by proxy or pass?

Any instructions? Pass for now.

The Clerk. Mr. Salazar?

The Chairman. Pass.

The Clerk. Mr. Grassley?

Senator Grassley. Aye.

The Clerk. Mr. Hatch?

Senator Grassley. Aye by proxy.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Bunning?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Crapo?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Roberts?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Ensign?

Senator Grassley. Aye by proxy.

The Clerk. Mr. Chairman?

The Chairman. Senator Cantwell is here.

Senator Cantwell. No.

The Clerk. Mr. Chairman?

The Chairman. And I vote no.

The Clerk will announce the results.

The Clerk. Mr. Chairman, the final tally is 8 ayes, 10 nays, and 1 pass.

The Chairman. The nays have it. The amendment fails.

Any further amendments? Senator Bingaman, do you have an amendment on citizen documentation?

Senator Bingaman. Mr. Chairman, I will withhold at this point and hope to visit with you and Senator Grassley about a possible amendment before we get to the floor.

The Chairman. All right.

Senator Snowe?

Senator Snowe. I have an amendment.

The Chairman. Senator Snowe?

Senator Snowe. Yes. Thank you, Mr. Chairman.

My amendment would provide the States with the option to provide a dental benefit through SCHIP for the more than 4 million low-income targeted children who have medical, but no dental, coverage. I want to thank Senator Bingaman and Senator Lincoln for co-sponsoring this and being vigorous advocates in the past for access to dental care. This policy, in fact, is supported by a myriad of organizations across the country.

I want to thank you, Mr. Chairman, as well, for including improved dental coverage in the underlying bill

because, as you know, under the current law dental coverage is provided as an optional benefit by the State, but it is not a guaranteed benefit under the SCHIP program. So as a result, and given what is going on in the economy, it is clear that without a Federal guarantee for dental care in the SCHIP program, it is in all likelihood a benefit that would be dropped or suspended by States. So, therefore, we really are damaging children's oral health and the ability to have access to this very critical service for children.

So we have made clear progress in this reauthorization, but in terms of providing access to guaranteed benefit, we took it a step further because many families do have employer-sponsored coverage and we want to preserve and maintain that. Their coverage does not provide, in many instances, dental coverage for their children so we want to give the States the option to support a wrap-around dental benefit so they have access to dental coverage under SCHIP without dropping their employer-sponsored coverage.

So this would ultimately be an incentive for maintaining their private sector coverage, but at the same time putting them on par or giving them the equivalent of the benefits for dental care for children under the SCHIP program.

The fact is, for every child who is uninsured, 2.6 children lack dental insurance. Proper dental care, indisputably, is crucial to a child's health and well-being. More than half of all children have cavities by the age of nine, and the number increases to more than 80 percent by the time they graduate from high school. So, clearly, it is a serious matter.

I think that it was unquestionably tragically portrayed in an article where Diamante Driver from Maryland, two years ago when he was treated for a brain infection that resulted from an abscessed tooth at the Children's National Medical Center, over $250,000, and despite their best efforts they failed to save his life. An extraction in a dentist's office would have cost under $100.

CBO has estimated that this amendment would cost approximately $300 million over five years. The underlying bill increases the cigarette tax in order to offset the cost, but also making the corresponding adjustments to other tobacco products. We offered this amendment through a proportionate increase on the tobacco tax, depending on how much ultimately this legislation costs, but the estimate is for $300 million.

I think it is essential and I think it is also a way of providing and preserving a critical benefit for young

people and creating, frankly, a disincentive for people to suspend their private sector coverage, but allowing them the opportunity to have access to this critical benefit with oral health services. So, Mr. Chairman, I would urge adoption of this amendment.

The Chairman. Thank you, Senator. Any further debate? [No response.]

We are approaching final passage here. They are sending word out to Senators to come and vote. We need at least 10 Senators in order to report out this legislation, and also adopt the rules here.

You make a compelling case, Senator. I had a Children's Health Insurance hearing in Billings, Montana, oh, a year or so ago. One of the witnesses there was a pediatrician. He is a dentist, but he specializes in pediatric dentistry. He made one of the most compelling statements I have heard in a long time by anybody, and he drove all the way from Hilda, Montana, which is quite a distance, to get to the Billings hearing.

I will never forget him saying, I told my patients and the parents of my patients I was coming all the way here for this hearing. I had to cancel a lot of my appointments today, but I am here because this is so important. I told my patients that they are going to be helped out if we can get some assistance here. For all

the reasons you have indicated, Senator Kerry has indicated, many other Senators have indicated, dental care for kids is proportionately probably as important, if not more important, than other care that kids might get. I think you make a very compelling case.

Senator Bingaman?

Senator Bingaman. I want to just compliment the Senator on this amendment and I am proud to co-sponsor it. I think it is clearly a major benefit to the bill.

The Chairman. Thank you.

Senator Conrad?

Senator Conrad. Mr. Chairman, I would ask the gentlelady if I could be added as a co-sponsor as well.

Senator Snowe. Absolutely.

Senator Conrad. I was just recently home to see my dentist in Bismarck and we got into a conversation with some of the staff there. They were telling us about cases of kids, and they are on their own time, for free, treating kids. They told us about the backlog that they are faced with. And even though they are spending a considerable amount of their own time, their own resources to treat kids, there is no way they can handle this backlog.

One of the interesting points they made was the ripple effect on the children's other health. That is,

they get a tooth infection and that weakens the immune system, and then the child has another health problem. They were talking about how important the preventive aspect would be. So, I hope we will accept the amendment.

The Chairman. Senator Stabenow?

Senator Stabenow. Thank you, Mr. Chairman. I would like to be added as a co-sponsor as well.

Senator Snowe. Thank you.

Senator Stabenow. And congratulate the Senator on her amendment.

Senator Snowe. Thank you.

The Chairman. Without objection, the amendment is agreed to. [No response.]

Are there any further amendments? [No response.] Seeing none, I think we are going to have to just hope and urge other Senators to quickly attend so we can wrap up our business here. We only need 10.

Senator Bingaman. Have you considered the possibility of doing a vote there in the President's Room at 4:30 when we have the other TARP vote?

The Chairman. That is a possibility, but I would prefer to do it here.

Senator Bingaman. Here.

The Chairman. Yes. I do not like setting that

precedent unless we have to.

Senator Grassley. I have got amendment number 24.

The Chairman. All right.

Mr. Bousliman. I am sorry. Mr. Chairman? Just a clarification on what the amendment was. Was that an increase, Senator Snowe, on the cigarette tax only?

Senator Snowe. Yes.

Mr. Bousliman. All right.

The Chairman. Thank you.

Senator Grassley?

Senator Snowe. It is on tobacco products, all.

Mr. Bousliman. All tobacco products.

The Chairman. We are going to clarify, it is all tobacco products.

Senator Snowe. All tobacco. Yes.

The Chairman. All right. Thank you.

Senator Grassley. Could I go ahead?

The Chairman. Yes, why do you not go ahead?

Senator Grassley. Mr. Chairman, since the committee does not seem to want to improve the citizenship documentation provision in the mark, I do not see why we are bothering to include it. It will encourage identity theft. It does not confirm that people applying for it are actually the people applying. It seems to be nearly $2 billion that could be better

spent. So this amendment strikes the citizenship documentation provision in the mark. Let us just stick with the original statutory DRA provision.

Instead, Mr. Chairman, then we would in turn spend the $2 billion on kids. This amendment sets up a grant program to States with $2 billion. The Secretary can award grants to States so long as the funds go to improve the quality of coverage provided to eligible children. States could spend the money to provide improved dental coverage, but if Mrs. Snowe's language stays in the bill they obviously will not need to do that.

But they still have got money they could spend on things to provide treatment for childhood obesity, which is a terrible problem. Another major medical problem we have increasing is treatment of diabetes, and you can go on and on. These would be grants for States for them to make that determination.

I am sure that the Secretary and States, working together, can design a robust set of policies for improving the quality of coverage provided to eligible children. So it boils down to this choice: spend $2 billion making improvements to a provision that is still lacking or spend $2 billion improving quality of coverage provided to kids. So, that is what the amendment does. I urge support for the amendment.

The Chairman. Is there any further debate? Senator Bingaman?

Senator Bingaman. Mr. Chairman, let me just ask staff, this $2 billion figure, I assume that this is an estimate or a number that the Joint Tax Committee or somebody has come up with. CBO? CBO has come up with. They are estimating that it will cost an additional $2 billion because we will be covering a lot more kids under the Chairman's mark than we would be covering otherwise.

So the effect of your amendment would be to ensure that we did not cover those additional kids, which seems to me to be a pretty strong argument against your amendment. I favor covering those additional kids, and therefore I would not want to see us delete this provision in the Chairman's mark. Am I wrong about this, Mr. Schwartz?

Mr. Schwartz. No, I believe you are correct, Senator. Just to clarify, it looks, in reading Senator Grassley's amendment number 24, that he is not striking the entire Section 211. So it is not clear, just upon reading it, if all of those dollars actually go away because Senator Grassley's amendment would retain the application of current Medicaid law to the CHIP program, but it looks like he would remove the Social Security option in this amendment. So, I cannot say how that

parses out on the score of $1.9 billion.

The Chairman. Any further discussion? We have 10 Senators here. We can now enact and do some business here. Any further discussion on the amendment? [No response.] Does the Senator ask for a recorded vote?

Senator Grassley. No, a voice vote.

The Chairman. A voice vote. All right.

All those in favor of the amendment say aye.

[A chorus of Ayes.]

The Chairman. Those opposed, no.

[A louder chorus of Nays.]

The Chairman. The nays have it. The amendment is not agreed to. All right.

First, I would like to turn to --

Senator Grassley. I have one last amendment.

The Chairman. One last amendment. Senator Grassley?

Senator Grassley. What I am doing here with this amendment, this is 29, but I am modifying it with amendment 13.

The Chairman. All right.

Senator Grassley. All right. Section 115 of the bill provides States with the ability to increase their Medicaid eligibility for children so that they can also increase their SCHIP eligibility level. That is the way

I understand how it works. It was my understanding that that is what Montana and North Dakota needed for their Medicaid and SCHIP programs. After discussing this with counsel today, I am not convinced this provision does what I thought it did.

As I now understand it, this provision lets States create a Medicaid sandwich. A State can cover kids up to one eligibility level in Medicaid. Then a State covers kids at a higher income eligibility level in SCHIP. Finally, a State can then cover more kids at an even higher income eligibility level in Medicaid, so that creates a Medicaid sandwich. I am sure that Senator Hatch can better recall how SCHIP was supposed to work, but I do not think this is how it was supposed to work.

So this amendment actually does what I always thought the provision was supposed to do. The amendment strikes Section 115 of the mark, replaces it with a provision that allows a State to increase its Medicaid eligibility for children so long as it increases the SCHIP eligibility by the same amount. That should take care of Montana and South Dakota's concerns.

The amendment further states that a State may not create a Medicaid eligibility category above SCHIP eligibility for Healthy Moms and Kids. And to make certain that there are no other misunderstandings, that

is why I added in the modification my amendment number 13. That amendment states, very simply, that no State can receive a bonus for covering a child in a family with an income greater than 300 percent of the Federal poverty level.

Now, that is $63,000. That is more than the median family income in the country. I do not know how we are supposed to ever get entitlement spending under control. Maybe I could ask the Senator from North Dakota this: how do you get entitlement spending under control if States can cover kids' Medicaid with incomes of more than the median income and get bonuses for doing so?

The Majority would be well served to spend some time, I think, reviewing everything Senator Conrad and his charts have pointed out on this issue for many, many years. If Senator Hatch were here he could speak on further implications of this, because I have talked to him about it. But this just does not make sense, and my amendment corrects this.

The Chairman. Any further debate?

Senator Conrad. Mr. Chairman?

The Chairman. Senator Conrad?

Senator Conrad. Well, I appreciate very much the Senator from Iowa's endorsement of my charts. [Laughter.] I appreciate very much his endorsement of my urging our

colleagues to pay attention to these long-term imbalances.

I do not think killing 115 of this bill is going to do anything to affect our long term. I think that is going to require all of us to sit down and work out a long-term plan that deals with the promises we have made on entitlements that cannot be kept and to adjust the revenue system.

115 in this bill that affects Montana and North Dakota is because of the unusual nature of our populations, both those eligible for CHIP and those eligible for Medicaid. The hard reality is, unless something like this is adopted there will not be an opportunity to add to the already low numbers--in my State, very low. We only have 3,600 children eligible under current law. This would make possible an expansion of 2,400. There are only 6,000 children in the State of North Dakota that would be able to have health care coverage. As I said before, I personally believe it is a moral responsibility to cover these children.

Senator Grassley. But Senator from North Dakota, my amendment takes care of what you need to get done for North Dakota. You do not dispute that, do you? And --

Senator Conrad. Yes. My understanding is that the Senator from Iowa's amendment would actually strip out

the ability to cover the additional 2,400 children.

Senator Grassley. Could I ask Mr. Schwartz if that is true? Because that is not my intent.

Mr. Schwartz. Sorry. I was just consulting, too, so I did not hear your statement, Senator Conrad.

Senator Conrad. Well, if you would just agree with it we could move on. [Laughter.]

Mr. Schwartz. I would. Maybe I will just --

Senator Conrad. Look, the point that was made to me is, if 115 is altered in the way that Senator Grassley has described in his amendment, the ability to add children in North Dakota would be at risk and prevented.

Senator Grassley. So then I said, while you were visiting otherwise, that my intent is not to do that, to structure the amendment so North Dakota can still meet its goals. So I am asking you if my language does not do that.

Mr. Schwartz. From reading and consulting with legislative counsel, it looks like Grassley amendment number 29 language does limit flexibility somewhat because it appears to require simultaneous increases in Medicaid and CHIP of the same percentage or to the same degree. So I am not familiar exactly with what North Dakota's plans for expansions or increases in eligibility levels are, but it appears that this would adopt sort of

a stair-step instead of the sandwich that you described, the existing Section 115 language in the mark.

Senator Conrad. Can I just conclude by saying to the Senator from Iowa, my great-grandfather was from Iowa. You see what I am saying? [Laughter.]

Senator Grassley. And he left Iowa and got rich, you told me, too. [Laughter.]

Just one further comment on the macro point of view that you were making, you do not think this would make much difference. Can I remind you of something I think I have told you often: how do you eat 10,000 marshmallows? You eat one at a time. If we are going to get your, and our, budget problems under control, we are going to have to do it with little things as well as big things.

Senator Conrad. Is this an endorsement of the Conrad-Gregg approach to dealing with the big things?

Senator Grassley. Things are so bad, I might look at anything. [Laughter.]

The Chairman. All right. Any further debate on the amendment? [No response.]

Senator Grassley. I would like a roll call.

The Chairman. A roll call is requested. All those in favor, signify by saying aye.

The Clerk. Mr. Rockefeller?

The Chairman. No by proxy.

The Clerk. Mr. Conrad?
Senator Conrad. No.
The Clerk. Mr. Bingaman?
Senator Bingaman. No.
The Clerk. Mr. Kerry?
Senator Kerry. No.
The Clerk. Mrs. Lincoln?
Senator Lincoln. No.
The Clerk. Mr. Wyden?
Senator Wyden. No.
The Clerk. Mr. Schumer?
Senator Schumer. In honor of Kent's great-grandfather, no.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Ms. Cantwell?
Senator Cantwell. No.
The Clerk. Mr. Salazar?
The Chairman. Pass.
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Hatch?
Senator Grassley. Aye by proxy.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.

The Clerk. Mr. Kyl?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Bunning?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Roberts?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Ensign?
Senator Grassley. Aye by proxy.
The Clerk. Mr. Chairman?
The Chairman. No.
The Clerk will announce the result.
The Clerk. Mr. Chairman, the final tally is 8 ayes, 10 nays, and 1 pass.
The Chairman. The nays have it. The amendment does not pass.
We have two orders of business here that we will address very quickly. The first is for the committee to organize the 11th Congress, and to do that we must adopt the committee rules. A quorum is present. I thank my colleagues for being present. The Senators should have a copy of the committee rules in the materials before them. They are exactly the same as last Congress.
I will now entertain a motion to adopt the rules.

Senator Grassley. I move that the rules be adopted.

The Chairman. If there is no further debate, without objection, the rules are adopted. [No response.]

Next, is the main business before us. Before we go on, I want to congratulate the committee. We began working together in April of 2007 to renew and approve the Children's Health Insurance Program. We ran into a lot of obstacles along the way, but today we can take the first step to finally fulfill the promise of the Children's Health Insurance Program to more than 10 million uninsured low-income children in this country. I know that some here are not happy with some elements of this legislation, but all of us can be happy and be very proud of the additional help we are giving children. The Finance Committee's work today will ensure that uninsured low-income kids get the doctors' visits and medicines they need to stay healthy.

I will now entertain a motion to report the Chairman's mark, as modified and as amended.

Senator Bingaman. So moved.

The Chairman. All those in favor will say aye.

[A chorus of Ayes.]

The Chairman. Those opposed, no.

[No response.]

The Chairman. Is a roll call requested?

Senator Grassley. No, not on this one.

The Chairman. All right. The ayes have it. The mark is ordered reported. That is reported by unanimous consent.

Senator Grassley. Well, we want a roll call on final passage. I misunderstood.

The Chairman. That was final. All right. A roll call vote has been requested after all.

Senator Grassley. I am sorry.

The Chairman. All those in favor vote aye. No, it is a roll call vote. The Clerk will call the roll.

The Clerk. Mr. Rockefeller?

The Chairman. Aye by proxy.

The Clerk. Mr. Conrad?

Senator Conrad. Aye.

The Clerk. Mr. Bingaman?

Senator Bingaman. Aye.

The Clerk. Mr. Kerry?

Senator Kerry. Aye.

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Wyden?

Senator Wyden. Aye.

The Clerk. Mr. Schumer?

The Chairman. Aye by proxy.
The Clerk. Ms. Stabenow?
Senator Stabenow. Aye.
The Clerk. Ms. Cantwell?
Senator Cantwell. Aye.
The Clerk. Mr. Salazar?
The Chairman. Aye by proxy.
The Clerk. Mr. Grassley?
Senator Grassley. No.
The Clerk. Mr. Hatch?
Senator Grassley. No by proxy.
The Clerk. Ms. Snowe?
Senator Snowe. Aye.
The Clerk. Mr. Kyl?
Senator Grassley. No by proxy.
The Clerk. Mr. Bunning?
Senator Grassley. No by proxy.
The Clerk. Mr. Crapo?
Senator Grassley. No by proxy.
The Clerk. Mr. Roberts?
Senator Grassley. No by proxy.
The Clerk. Mr. Ensign?
Senator Grassley. No by proxy.
The Clerk. Mr. Schumer?
Senator Schumer. Aye.

The Clerk. Mr. Chairman?

The Chairman. Aye.

The Clerk will announce the result.

The Clerk. Mr. Chairman, the tally of the members present is 10 ayes and 1 nay. The final tally including proxies is 12 ayes and 7 nays.

The Chairman. All right. The ayes have it. The bill is ordered reported. I ask consent that the staff be granted authority to make technical, conforming and budgetary changes. Without objection, so ordered. [No response.]

I thank all Senators. Thank you.

[Whereupon, at 4:01 p.m. the meeting was concluded.]

I N D E X