EXECUTIVE SESSION

- - -

THURSDAY, JUNE 28, 1979

- - -

United States Senate,

Committee on Finance,

Washington, D. C.

The Committee met, pursuant to recess, at 9:20 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long, Chairman of the Committee, presiding.

Present: Senators Long, Nelson, Bentsen, Baucus, Boren, Dole, Packwood, Danforth, Chafee and Durenberger.

The Chairman: Let me call this meeting together and let us see where we stand now.

What do you have to suggest to us that ought to be decided this morning, Mr. Constantine?

Mr. Constantine: Mr. Chairman, on page 2 --

Senator Dole: Is this on cost containment, or catastrophic?

Mr. Constantine: Continuing on the catastrophic health decisions at this point.

On page 2 of the supplemental list dated June 27, number 6, effective date of coverage of employee, and the Committee had tentatively decided to hve coverage of the employee on the first day of the first month followiing the month of

employment.

We would suggest to avoid requiring employers covering people during brief periods of employment, trial periods and so on, that coverage begin no later than the day following completion of of four consecutive weeks of full-time employment, with full-time employment defined as an average of the employee of $25 or more per week.

We understand the administration -- do you have problems with that? I see they were on hospital cost containment. This was on effective date of coverage of new employees.

Mr. Champion: I thought it would be the 1st of the following month.

Mr. Constantine: The problem with that, Mr. Secretary, was you have part-time employees who may very well work full-time for a few days. You can have trial periods for a couple of weeks for employees who are not retained by the employer.

Mr. Champion: I think our original proposal was for four weeks. We had accepted the staff position of the following month. We are perfectly willing to go back to our original proposal.

Mr. Constantine: The administration proposed ten weeks.

Mr. Champion: You are making it four weeks?

Mr. Constantine: Yes.

Mr. Champion: That is fine.

The Chairman: Is there objection. Without objection, agreed.

Mr. Constantine: On item 8, there was discussion last week as to whether the administration proposal to require employers to cover expectant mothers, the delivery and the infant during the first year of care on a first dollar basis, belonged in a catastrophic insurance program.

The administration is proposing to cover that. We had problems. The staff had difficulties with that, because it is really not a catastrophic benefit at all.

The Committee is considering the Child Health Assistance Plan, and a multiplicity of other federal programs which now exist for maternal and child health, plus the fact that it would increase the cost, the first-year cost, by $1.6 billion for employers and employees.

That is assuming the administration's benefit package for the sake of comparison. Instead of $4.8 billion in 1980, fully implemented, it would be $6.4 billion at the $3,500 level in 1983.

The Chairman: Right now, I do not think we ought to put that in. We can talk about it later on, if we want to. Here is what I think we will do. It will come down to the end, and then we are going to look at what we do for low-income employees and then we are going to try to consider how much we have to pay for all of this.

If budgetary considerations will permit, we can do more of this, and if they do not permit, we are going to have to look at some of the things where we have been pretty generous and cut back on some of that, so that for the moment, I think, we have to clear the catastrophic aspects. If these maternal costs exceed $3,500, people are under it.

Mr. Constantine: Yes, sir.

Mr. Chairman, I might point out, during the course of testimony by Senator Kennedy and others, reference was made to the New England Journal of Medicine article on catastrophic costs in San Francisco. This was a survey in 17 hospitals. We read the article and it was kind of interesting, because what it did was point out that the large majority of people there were really not catastrophic. They were already covered by Medicare. The average age was 66 and that they defined catastrophic as more than $5,000 in medical expense.

There were very few of these exotic procedures such as coronary bypass surgery, but the highest cost item in those exotic procedures was neo-natal infant care.

That is the one that would be covered on a catastrophic basis, under the committee's decision made thus far, but not be covered on a first dollar basis under what the administration is proposing.

The Chairman: Mr. Champion?

Mr. Champion: Mr. Chairman, I understand you wish to put

this over in terms of dollars. That is perfectly reasonable to do, but I do want to make strongly one point about this. Mr. Constantine's statement for the moment, and reserve for a later time to go into a longer discussion of this problem. To

The fact is that that is true. That there is a lot of catastrophic in this area, and it is catastrophic well before $3,500 for the young people who are having these and the poor who are having very high mortality rates.

I agree to go over. I do not agree that this is not a serious problem and further, that we should remember one of the fundamental principles in which this was chosen as the leading possibility was to give some preventive insurance coverage into the mandated insurance area.

I would like to come back to that when it is appropriate before the Committee.

The Chairman: On that subject, there are some of us here ---I think Senator Dole and myself both would take the attitude that we can find the money to do all kinds of things like that if you people go alone with us in cutting down what we believe is some of the waste in the program.

For example, our view is that you ought to ask people to do a little something in return for these payments especially if they are well able to do it. If we did that, that would tremendously reduce the pressure elsewhere in the welfare program and to do that type of thing would make a lot of money

available that we are spending right now in that area to take care of some of this.

If you look at the areas in the overall program that claim the lowest priority, some of which are absolutely counterproductive and save money in those areas and put that over into these areas where you have a very appealing case. My thought is that we could find money to do all kinds of things like this, but we are going to have to think about the cost of all of this if, for no other reason, we feel these same temptations to be generous, that the administration feels when we do what happens, and the administration yanks us up.

It is a two-way street.

So go to the next point, then.

Senator Dole: I think in that same area that Senator Schweiker has a good suggestion, which is to preventive coverage. I am not sure it belongs in catastrophic, either, but in checking around, we may even have to go back and look at our deductible.

I think we have avoided a great deal of costs with a single-family deductible of $3,500. So I think we would defer other costly items until we get a total add-up of the cost.

The Chairman: I have a hunch that when you add up the costs --

Senator Dole: You may lose some cosponsors.

The Chairman: We might have to start taking something

back out again.

Go to the next point now.

Mr. Constantine: Mr. Chairman, I suppose we are running out of things. We would suggest -- there was an extensive discussion of the pools yesterday and how they should be organized, and some of the technical problems, some of the philosophic problems.

We discussed it further following the committee's meeting with both the Blue Cross Association people, Blue Cross representatives and the private health insurers and informally with the administration and with the committee's permission, the discussions were constructive and we would like your permission to continue to work with the possible, reasonable approach utilizing the private sector to use the pools, but on a basis where you do not have a multiplicity of pools of an inefficient size around.

I think we can come back with a constructive recommendation.

The Chairman: As far as I am concerned, I like the idea of regional pools. I just think that if you are only going o have a relatively small number of people in them but you require those in the area to contribute, big states, no problem, small states, put them into regional pools. I would think it would work.

Mr. Champion: Mr. Chairman, we are still not satisfied

about the problem we talked about yesterday. I do not know what conversation Mr. Constantine is referring to with the administration, but we are very concerned that many of the kinds of reports that we are talking about get left out of those pools.

We still have HMOs to worry about. We still have got the increasing movement toward self-employment. We have a lot of the competitive things that we need to be concerned about. To go into one more area that borders on anti-trust problems without thorough examination as to how those problems get handled, we do not think that is appropriate until that has been worked out.

Mr. Constantine: Mr. Chairman, I discussed the thing with Dr. Mongan. We have difficulty sometimes figuring out who is speaking for whom.

The Chairman: It seems to me if we require, by an act of Congress, that all the employers have to participate, if you want to, you could even add those who do not insure more than 100 employees, or something like that, but all the employers have to participate if they have a substantial business at all, and that is the condition, I would just as soon not tax the insurance companies. We could even say if they do not participate, they pay us a tax. Anyway, they have to participate in whatever pool is necessary for people they do not want to insure.

So the pool, then, has the burden of insuring those people.

Now, that makes such sense that anybody thinks that it might meet the anti-trust laws, all you have to do is put the word "notwithstanding" in there -- "Notwithstanding any other provision of law that they must participate." If we are going to mandate that they do, we can say -- I think that is almost implicit. I do not even think you would have to put it in there -- out of abundance of caution, you could.

If we mandate by law that you do something, the way you read statutes, the last one prevails. If you say you have to do this, it seems to me as though that prevails over the previous statute.

If there is any doubt about it, we could say, "Notwithstanding any other provision of law."

Mr. Champion: I agree with that, Mr. Chairman. That is really not my fundamental concern here. My concern is that what this committee, or what this law says, must be done in terms of participation in that pool in effect may have a lot to do, or put the insurance companies wherever this mandate is put, in the position of deciding a lot of the competitive factors involved in dealing with catastrophic insurance in that state or that region or however it is set up.

Just as Blue Cross indicated yesterday that they did not want to be in the same pool with the insurance companies

because their interest modes were not the same, I am raising the same question with respect to HMOs and I am raising the same question with those people who have chosen to self-insure.

What we would like is the opportunity to go into the staff with all of those questions to be sure that, whatever conditions before there is a decision to make sure that those things can be protected. At this point, we do not think that has been done.

Mr. Constantine: Mr. Chairman, since yesterday, the Blue Cross people have indicated that they thought they might be able to work out something, or explore something, with the commercial health insurers in terms of pool participation. All insurers, self-insurers, HMOs, everybody else. The HMOs reinsure, in many cases, themselves, would be a proportionate share of the general risk.

But the key thing is that pools are not competitive devices. They are residual things. In other words, the competition in the insurance area comes with the basic groups and healthy individuals. That is where it comes. But the pools job is filling all else, assuming that you cannot get coverage, and the overwhelming majority of people get coverage through the basic competitive mechanism, then you have access to the pool. It is sort of like a screen that filters through and then finally, if you cannot get it anywhere else at a

reasonable price, you get it in the pool.

The Chairman: Here the people are, they are all fighting to insure General Motors. All right, standing in line, waiting to make a pitch to General Motors. Here comes some fellow, some old, broken-down worker, who has 50 complaints and they say no, we do not want to insure him. We think that is a poor risk.

Somebody has to insure him so if you are the guy that got the business to insure General Motors, then that means you have to pick up more of your share of these pools that nobody wants.

It is a perfectly proper device to get everybody under the tent. Companies are doing it. It is the answer to a question or a problem.

If you are going to go the private, mandated route, it ought to be in there.

Mr. Constantine: It is like the auto insurance pools, so the competition for the auto insurance business is not really with the pool, but it is among the companies. Anyone who could not get coverage from regular auto companies can have coverage through the pool.

The Chairman: If you want some of the butter in the buttermilk, you have to take your share of the whey. You cannot have it so you take the cream and leave the rest of it. You have to take your share of all of it.

Mr. Champion: Mr. Chairman, the people who pay for all of this are not the insurance companies. They are people who pay the insurance companies, so it is not the insurance companies largess. Whatever is the cost of covering those people is going to be in those premiums, and the way in which those costs are distributed and the way in which those benefits are provided are different in different systems.

The insurance company puts it together alone without agreement with the others involved and they do it the insurance companies' way, and they benefit it.

The Chairman: I think, Mr. Champion, if you had your proposal up here, I might vote for it. As it stands, you do not have it here, so I am going to have to vote on whatever we do have, and then if you can come up with a better one, fine. Let's see it.

Mr. Champion: All right. We will attempt to bring something.

The Chairman: If there is no objection, then, we will agree to this pooling arrangement for right now. We will try to improve on it later.

Without objection, agree to.

Senator Chafee: When is the unveiling of Mr. Champion's proposal?

Mr. Champion: We had a proposal for health care. We did not have a proposal for pools. As of yesterday, the

discussion turned to the pool thing, and we raised several questions about it, in terms of its competitive effects, Senator. We said that we would go back and look at that to see how that could be done under this general structure. We have not had a chance to do that. We will do it as quickly as we can, and we will bring it back.

Mr. Constantine: Mr. Chairman, the previous legislation, the Long-Ribicoff bill and other bills have had insurance pool structures described in the legislation for years. It is not a new proposal. I think the Committee's decision has to be really your choices, whether you want to -- with whatever standards and specifications you want -- require the private insurance, any private insurer, self-insurers, HMO, commercial, Blues, to establish a residual pool mechanism to take care of their needs, or whether you follow the administration's approach to set up a federal program, a governmentally-run program, to do the same thing. I think that that is the essential choice.

Senator Baucus: Within the first alternative, the first structure, the structure we are dealing with, do you not also have to address limits on premiums that the insurer would have to pay and also who would finance the subsidy of any?

Mr. Constantine: Senator, basically there are three things you have to assure in the pool: one that the premium structure is reasonable; two, that it operates efficiently in

terms of administering plans, its overall administrative costs. Finally, that its benefits are, in fact, available to everyone.

As far as the premium structure is concerned, yesterday you will recall in the decision in Connecticut, I believe, the pool rates are set not in excess of 50 percent above the average group rates for groups for ten or less, less than ten.

Now, a pool may or may not lose money. Its rate structure may be enough to yield enough money to give the benefits in the required costs. If it does lose money under the pool requirements, all insurers who are underwriting catastrophic health insurance would bear a proportionate share of the excess cost.

So you are right, Senator, that the premium rates have to be reasonable and accessible in that sense.

In effect, what you are asking people to do is the old concept of community rating. That is where a single rate -- Blue Cross used to do that years ago. Now they talk about it -- where you have a single rate for everyone in the community, the blind, young, old -- you got them all together and you came out with a single rate. That is, in essence, what the pool does.

Senator Baucus: What insurance is there that there is not excessive shift from a non-high-risk category to high risk?

Mr. Constantine: Adverse selection?

Senator Baucus: There is no assurance, Senator. You can have a pool where, in essence, it becomes the place where virtually all of your high risk individuals and employers go -- that is, an employer who has had a very high claim experience, may be offered a premium by his insurer that he thinks is way out of line and he goes to the pool in those circumstances.

Under the pool structure, there is a limit under the premium that could be charged him. If all of that results in losses, those losses are shared by all of the insurers.

I think I described it.

Senator Baucus: Thank you.

Senator Durenberger: Yesterday, we talked about the Minnesota pool experience. I do not have all the information, but somebody indicated they were going back to the legislature to get more money. This is in response to Senator Baucus's question.

As I understand the Minnesota pool, it is very narrow and very high risk, mostly uninsurable. They have had 125 percent rather than 150 percent. I think that is one of the reasons that combination, why they sought to get more subsidization.

My only concern, Mr. Chairman -- and I am all for the pool concept and I would like to support it in concept -- is to make sure that we know exactly how to get HMOs, both

federally and state qualified HMOs, into the system. I would like the opportunity to have somebody meet with staff on that issue.

Mr. Constantine: Mr. Chairman, what we would do on this, as we flesh out these things, we would just come back with a tentative draft and the committee is certainly free to take it apart. It is just putting it down on paper.

The Chairman: All right.

Mr. Constantine: Mr. Chairman, beyond effective dates, there was one more point, that is, the question of whether it would be mandatory that employees pay the contribution in an employer plan. I think that was a tough one that the committee passed over yesterday.

The Chairman: Frankly, the more I look at this, the more I am constrained to believe that the way to do this thing is by putting the whole cost on the employer and that way we do not have to argue about whether you mandate any employee, and you do not have to argue about these negotiations and all of that. It is something they have to do. It is not that many dollars, when you look at the fact that when they are working on an incremental basis, all we are doing is assuming the burden of saying that the policy that the person has, it has to provide enough benefits so that they take care of this thing in existing policies.

All they have to do is add a benefit to what they already

have, and then we say we are going to subsidize the employer. Now the administration has some money to subsidize both the employer and employee. If you take whatever subsidy money you have up here, you would put it all on one end, the employer end, and subsidize the employer for whatever amount you want to and you think it is so.

What appeals to me, say you are not going to pay more than 1 percent of payroll to do this job. Then you do not have a problem about mandating it. You do not have to argue about making the employee do something. I think, for those of us who want to support this bill, we would be a lot better off to go out and tell the people there is no free lunch here. You are paying for this program when you buy a can of beans or a shirt out of the store.

I think I would enjoy it more telling people that than having them tell me that they are having to pay something and they do not get to see the benefit. So I think by the time we get through discussing this with the insurance companies, everybody else is going to begin to find that it makes better sense just to mandate this and not worry about having a mandate on the employee.

Otherwise, if you make it optional, you are going to have all kinds of people, poor people, low-income people, or just irresponsible people who just do not go in. Then we have to pick them up with a welfare program at some point.

Mr. Constantine: Mr. Chairman, the cost difference, if you mandated for the committee's consideration, if you mandated the full cost -- that is, without employee contribution -- it would be essentially identical with the cost of the proposal including -- in other words, if you did not include the maternal and infant care first dollar thing, the cost of the proposal at a $3,500 level would be the same as the full employer thing.

The cost to the employer would be about the same if you made it full employer payment as it would be if you made it 75 percent employer payment plus the maternal and infant. You have a choice at that point as to what you want to do.

Mr. Champion: We have a real apples and oranges discussion here, because he is saying one is the same as the other, if you change the other. I do not think that is the right way for the committee to understand this problem. To change this mandate to the employer on the same basis of benefits is to make it much more expensive, because we have subsidized only those employees in the low income area, not for the whole range.

Whereas, if you go full employer mandate, you subsidize all employees and you have a lot more people thinking there is a free lunch.

The problem here is, do we have only the employers involved in this transaction, or do we also have the employees

involved in it. While there are some merits in terms of administrative simplicity, the question comes as to when we are going to engage the employees and the general population in this problem of health costs, and understand there will be concerns.

The Chairman: There are all kinds of subsidies built in here. There are subsidies within subsidies in the bill. You start off with group insurance. Here is one fellow with two wives -- not necessarily living with both of them. Let's just assume he has had two marriages along the way. Here is one fellow with a present wife and a former wife and ten children but each one of them -- and you have to pick up all the burden.

On the one hand, maybe that person is not making much money anyway. Here is somebody else, just one person, with a very substantial income. He is in the group. So the fellow who is single is paying quite a bit to subsidize the person who has a large family.

You start off with that. Then some people have better health than others, and so on.

Then we proceed to subsidize the premium for these small business employers, all kinds of subsidies in it. In the last analysis, the consumer is going to pay for almost all of this in the price of the product. I do not care whether you are paying something to somebody as a wage or whether you are

paying it as a tax. It is still an expense, if you have to pay and pass it on to the public when you sell your product. There are all sorts of subsidies in this program.

Senator Danforth: Mr. Chairman, my understanding of one of the reasons for the tremendous acceleration in the cost of health care is that when you involve third-party payers, as is true with any kind of insurance program at all, the tendency of the consumer health care is that he has no stake at all in it. He just is a passive recipient of health care. The more health care that he can get, the better, and he has absolutely no stake in it at all.

So I take it that the reason for wanting to involve the employee is not just to complicate matters, but to provide some sense of participation for a stake in the program by the employee with the view that that is necessary if you are going to have some sort of control on cost.

I do not know what kind of analysis has been made by either the Department or the staff of Senator Schweiker's proposal yesterday. I thought it was a very interesting concept.

The theory was to provide the consumer of health care with a range of choices so that you could build in competition and thereby restrain the cost. In fact, he thought that there was going to be a saving by that plan. I do not know whether that is true or not.

In any event, the economic concept that I understand him to be arguing for, which he based apparently on Professor Feldstein's theory, is that the extent to which you have choice, the extent to which you have competition, the extent to which you have involvement of the consumer in deciding what sort of insurance to opt for and what sort of health care service he wants on a day-to-day kind of basis, you are going to get some kind of control, some sort of handle on the escalation in the health care field.

The Chairman: For this purpose, it seems to me that his point is irrelevant.

Senator Danforth: I thought it was right on target

The Chairman: I know you think so. You would not have said it otherwise.

Implicit in everything I say is "That what I think." I do not mean that it is necessarily so; I just think so.

If you pay the first $3,500 before you get in the catastrophic, you are going to be very cost-conscious, because you are paying 100 percent of that, and that is good. We want cost consciousness.

When you go above the $3,500, we ought to see to it that the charge for a hospital day is no more when the catstrophic part of it is paying for it than it would be for the rest of it.

In that respect, that is the administration's philosophy,

and it is my philosophy. I do not think that just because the government is paying for it that we ought to pay more than what you pay when a private individual is paying for it.

Where you are going to get the limitation on costs, it seems to me, is in that type of thing. You are not holding down the cost just by making an employee pay one-quarter of the premium at the lower end because where you are going to contain the costs when he starts paying for the first $3,500, or you want to put a co-payment feature in.

That is when you constrain the costs, and that is all right with me. I am willing to consider all those kinds of things.

What we are talking about is a situation that the employee is paying his share as a consumer. In any event, he is not getting this thing for free and he ought to be told that. He is paying his shre as a consumer.

But the employer is paying it, and he is passing it on through to him, the cost of the product. We are trying to find some way to get all these people in to it.

Frankly, I would think that if I am going to vote for a bill and I am going to go out there and tell the American people that I voted for the bill, I would rather say that we put the tax on the employer, at least put the burden on him to do the insuring, and tell everybody. I would rather tell them, look, fellows, there is no free lunch in this thing.

You are paying for the whole thing everytime you are buying something off the shelf in the grocery store, or in the department store.

I would rather tell him that than have him raise the devil with me about that 25 percent he had to pay where he has yet to see any benefit out of it, and may never. He may ever have a catastrophic illness.

Between the two, I personally would prefer -- I think by the time we think it over, if you vote for the bill, you are going to want to vote for something where hopefully it will be as popular as you can make it, and I just do not see that it helps matters to put this one-quarter of 1 percent or one-quarter on the employer. When you put it on the employees too, then you have to go to all of these contracts, open them up and renegotiate them all. That puts off the effective date.

Then you have this question -- I know that we can mandate this on the employers. We will do it. We will put on a tax in case they do not do it. Employers have been mandated to do other things. They understand it. I am not sure that the average worker understands that. **The average worker does not understand that.**

Is it mandatory, or is it voluntary? If it is voluntary, then all kinds of people are dying without the hospital care they ought to have, or in the alternative, you have a great

number of others where you are having to pay for them in the form of charity because they did not insure themselves.

It makes better sense, it seems to me, to cover them on the way to cover them all if you put it on the employer and mandate him to take it.

Senator Baucus: Mr. Chairman, I kind of agree that it is a lot more simple. It avoids the contract renegotiation problems that you mentioned to require 100 percent employer. The slight problem I have, it again has a disproportionate effect on small business.

We agreed for a subsidy above 80 percent, if it is 80 percent rather than the employer, any employer contribution, 80 percent or 20 percent of the increase, is going to be an additional burden on small business. It forces us to go back and relook at it.

The Chairman: I think we ought to, the more I think about it. In due course, I want to suggest that we consider reducing that and simply say that the employer has to pay 1 percent and that we subsidize 100 percent of what it costs over the 1 percent.

Then you have the scaledown where, in the years to follow, that employee contribution, that 100 percent would be reduced by 10 percent a year. We have that in there already.

The second or third year it would be reduced by 10 percent, down to where it is 50 percent. At some point, we

might want to say we do not want it to be that much, so you can stop at whatever point you want to.

Senator Danforth: Mr. Chairman, what we are doing is just feverishly hiding the cost of this program. That is what we are doing. And we are saying well, we are going to tell everybody that there is no free lunch, because they are going to pay for it in a can of beans. That is the way we hide everything around this place.

They say inflation is a hidden tax. It is hidden. The real problem around here is visibility of a program and a program's cost. That is what is at stake here.

It seems to me that to have some sense of participation, some sense of knowledge of what is going on, is something that is a very important idea.

The Chairman: I am not thoroughly familiar with the Senator's bill. As I recall it, he has a lot of substance in his bill. I think the Senator from Missouri has a lot of substance in his bill. He would pay for it with a cigarette tax.

It does not make any difference who you put it on. There are going to be subsidies in this thing no matter how you do it.

Senator, we are all pregnant, if we vote for the bill. It is only a question of degree. So there will be subsidies in it. I you are going to subsidize, you have to set out

where you want to go.

It is my thought if you are going to do it, you ought to put it all on the employer instead of putting part on the employer and part on the employee. Subsidize the employer and subsidize the employee. Put it on one and pay whatever subsidy you ought to provide on the one that is assuming the burden.

Senator Danforth: Obviously it is a subsidy, Mr. Chairman, but I think there is a difference between a total subsidy so really there is no participation at all on the part of the consumer and a very substantial subsidy, so at least they have something to do, and some stake in it.

I think people understand that. I think, for the sake of keeping down the costs of the program, that it is an important concept.

The Chairman: The only argument that I see, the only good argument that appeals to this Senator for making the employee pay one-quarter of the cost, if someone wants to provide some additional benefit in the future, the fact that the employee has to pay more for his one quarter would cause the employers to be inclined to be against it.

So you would have more political pressure and more political resistance to overcome to provide for a further benefit.

With all the budgetary restraints we have and the

budgetary constraint we have in government and all the employers are going to be complaining about it every time you expand the benefit anyway, it is like any tax. It works out the same way as a tax. Here is something you must do and we are going to make you do it. It will cost you money to do so it works out the same as a tax.

What do you do? You try to do it in the way that raises the least squawk and the least complaint. I can find ways to put a far more obnoxious tax on people than anything you are suggesting, Senator, but my thought is that you ought to try to make it as painless as possible to keep the quarrel down to a minimum.

Senator Danforth: I am not anxious to create the most obnoxious possible program that I have learned something at the knee of the master, namely you. I can remember when we were talking about Social Security financing and how you told us the story of Wilbur Mills when he was chairman of the Ways and Means Committee and he was running for President.

He was up in New Hampshire, I believe, and he came up with this idea that we were going to expand Social Security benefits and nobody was going to have to pay anything for them, and it was great. It was just tremendous political hay. But we got into a problem as a result of that.

I think that this notion of saying there is no cost to you at all, you are going to be the consumer of this service,

you are not going to have to participate in the cost of it at all other than the normal cost of inflation, which we try to hide from people to the best of our ability, to me, that is not the kind of approach that keeps us out of future trouble.

The Chairman: Senator, I have led the charge to make the Social Security tax high enough so that anybody running this year will have a lot of explaining to do already. I just hope that you are not going to make this bill one that has so much resentment among the public that I have to retire from the Senate in order to vote for it.

I just think when we put it together that we ought to try to put a program together that will be as well-received as we can, and I also want it to be as easy to administer as we can. If you put it clearly on the administration -- if you put the burden on the employer, it is so much easy to administer than putting it on the employee. If you want to put it on the employee and make it voluntary on each employee, you might as well forget about it. If you put the burden on the employees, then you are going to have to mandate that they take it. Then you are going to have the collection problem.

It seems to me when you look at the overall picture, it is going to be a lot easier -- I am not asking you to vote on it, but in due course I think we should vote on it. I will ask before it is over to vote on it. It is so much easier to

do this thing by putting the burden on the employer with one understanding, that it is being passed on to all of us in the csot of the product that we are going to find it is to our advantage to do it that way.

We do not need to settle that now. I just thought, since it came up, I would make my position clear.

Mr. Constantine: Also, Mr. Chairman, in repsonse to Senator Danforth, during the recess, we are working on an analysis, summary and analysis, of the various proposals as requested, including Senator Schweiker's to moderate and contain costs. We hope to have that when you come back from the recess.

In addition, we are preparing the low income material for the committee, too.

The only other noncontroversial issue at this point is the question of sanctions. On page 1 of the supplemental thing, the June 27th document, sanctions on employers who do not provide catastrophic coverage, and the staff is not suggesting anything with respect to revenue sharing in that regard.

All of the proposals, in one form or another suggests an excise tax approach. That is, the employer does not, in effect, provide the coverage for his employees, that a tax is liable.

The administration has a 150 percent number. One

approach that we came up with -- and I am sure there are any number of approaches -- if you have a pool, you make all employers liable as a tax for whatever the pool rate is applicable to that.

In virtually all cases, the pool rate would be considerably higher than the rate they otherwise would pay and the tax liability is deemed met once they get insurance, regardless of what they actually pay. It is just a technique.

There are a number of other approaches which we suspect could be utilized.

Mr. Champion: Mr. Chairman, there is a slight difference which is a little more than a technicality. Actually, what we have proposed is not an excise tax, although it would function very much the same way, but a civil penalty of 150-percent.

The Chairman: That is all right with me.

Mr. Constantine: Mr. Chairman, in that regard, our concern is to assure the committee's jurisdiction in terms of the laws and so on and the rules of the Senate. If the Committee does not object, we would be willing to sit down with the administration and see what might be worked out which would be consistent.

The Chairman: All right.

Mr. Constantine: Beyond that, Mr. Chairman, the remaining issue, of course, is the question of effective dates, and I believe that was left -- Senator Ribicoff wanted

the presence of the insurance companies to insure the timeframe.

We are wondering whether it might not be better, with the committee's approval, for us to try to draft something up along the lines that you have made, that you have given tentative approval to, to see what that looks like and leaving the effective dates out at this point in time.

It also would be easier, we suspect, for the insurers, for Blue Cross, for the administration, for those involved, to have a better idea of realistic effective dates. When we look at the proposal as a whole, at least a segment of it, the mandated employer catastrophic coverage. We believe that you have made essentially enough decisions to permit us to draft something up for your consideration and refinement and changing whatever else you want to do.

The Chairman: I would think you might want to consider the effective date where you start the part for the larger employers first, then give the smaller employers 90 days to come in.

It seems to me if you start out by saying all those who have more than 50 employees have to be in at a certain point, at that point, I think the companies could make that very easy because there are not many of them. Then give them another 90 days, or six months, if need be, to bring in the smaller employers and then you would have them all in.

Mr. Champion: Mr. Chairman, we would like the opportunity to work with the staff on that. I would say if we are to follow the general approach that you are outlining today, or discussing, whereby, in effect, we are taking out the employee involvement, going to the employer subsidy and then dealing with the employer subsidy, something like you are suggesting in that area.

We are talking about $3 billion to $4 billion or perhaps more in a relatively early budget year and the administration has to go back and look at that because we have not ever contemplated any real costs for 1983.

The Chairman: How much difference are we talking about, Mr. Constantine?

Mr. Constantine: We have to take their numbers, Mr. Chairman. If they say $3 billion or $4 billion, at that point, they also tell us it would be $2 billion if you had a 100 percent subsidy above 2 percent.

Mr. Champion: The figure used before is 1 percent. It is a geometric progression -- not geometric, but rapid progression as you go down. 5 percent does not cost you very much, but 4 percent a lot more, and so on.

The Chairman: It does not particularly jolt me to hear this administratoin complain about the cost of one of my health proposals. For some time, it has been the other way around. You have been saying I am too niggardly, I am not

generous enough. He is not willing to do enough. You just want to do a great deal more than I did.

I do not particularly object.

Mr. Champion: I just wanted to give you that figure, Mr. Chairman.

Senator Dole: I think there is another factor. If we are going to have a family deductible of $3,500 and not index it for two years, we are adding about another $2 billion to the program, at least, and it seems to me that the rate of inflation of 14 percent per year, we are talking about a deductible of between $250 and $2,500 by the time 1983 rolls along, which is a far cry from what most of us suggested early on, with a family deductible of $5,000 and maybe an individual deductible of $2,500.

So that is another area. When you put this all together ---we asked for some costs estimates so we can tell where we have to address the changes. We have not really tightened down anything. We have loosened up every provision of nearly every proposal.

Senator Danforth: May I ask, Mr. Champion, what was your figure again for the difference in cost without employee participation?

Mr. Champion: Originally -- if you are not looking at a change in the original employee subsidy, it is about $1 billion, roughly. If you take $1 billion out, we do not

subsidize every employer, just subsidize low wage employees through the EITC.

When you switch to the employer, you pick up all the other employees and subsidize the whole thing that way. We have been doing it on the back of the envelope here and we will have to come back to you with accurate figures. We think it is $1 billion.

Senator Danforth: $1 billion in adjusted cost to the Treasury?

Mr. Champion: That is right.

Then if you go ahead and do the further things in terms of subsidizing the employer, depending on what level you choose to subsidize, 4 percent, 3 percent, 2 percent or 1 percent -- at 1 percent, we think it is around $4 billion, if you do a 100 percent subsidy over 1 percent.

We will try to do a chart that will lay out the options, so there are several ways to do it that are less costly. I was just taking the rough ones that had been mentioned before the committee.

Mr. Constantine: We were just looking at the 2 percent also, Mr. Chairman. The decision yesterday was 80 percent above 2 percent.

The Chairman: If we just did the 100 percent over the 2 percent, that will not cost that much more.

Mr. Constantine: No, sir.

Mr. Champion: Roughly $2 billion.

The Chairman: You do not mean $2 billion to go from 80 percent to 100 percent. We voted 80 percent the way it was.

Mr. Constantine: That would be the total.

The Chairman: $2 billion.

Mr. Constantine: That is right,, the total, not the increase, over the 80 percent. That includes the 80 percent. The total amount of the 100 percent tax credit.

The Chairman: What does it cost?

Mr. Constantine: $2 billion.

Senator Dole: With the 80.

Mr. Champion: $1.7 billion.

The Chairman: If you think in terms that you are mandating something, most of it is on this small business employers, is it not? Have we not agreed that it is the small business employers that we are talking about in this area?

Mr. Constantine: Yes, sir, that is right. Agricultural service, retail trade and service.

Senator Dole: The employer could really add a lot of things under the policy. There are limits to what he can put into the policy to get under 102 percent.

Mr. Constantine: It is only the mandated part the committee agreed to yesterday.

Mr. Champion: The only new thing would be the 90-day extension, the exclusion of the pre-existing conditions. That

would be for large companies where there would be additional expense.

The Chairman: In this area here, if you did this thing where you just had one big federal program and you put a tax on it to pay for it all, that you would not have to go by that 2 percent, is that not right? If you had one federal program, the Long-Ribicoff bill, we could have taken the insurance companies out of providing catastrophic, letting the government do it all.

We thought we could do that with a 1 percent of payroll tax. I think it might be possible when you do it the private enterprise route, then because some companies are going to have much more insurable groups than others, the best you could do is hold it to a 2 percent tax, a 2 percent premium, that is what the tax was for. Then if it is the 80 percent feature, that is generous. That could add another point to make it 3 percent you have got to pay that you are mandating on.

That can be very steep. I can picture there is a lot of objection among the people that you have to report to among these constituents to discuss this. It seems to me as though if you are thinking in terms of we have it in our power to provide a program financed entirely by the tax, going the public route, and we do it that way, it only has be a 1 percent tax. If we are going to go the private industry route

and put a 2 percent tax on, I think the 2 percent is plenty enough, and I have my doubts that we ought to go as high as the 2 percent.

Senator Bentsen: I would like those figures re-examined. I do not recall that much differential.

Mr. Constantine: I think the difference was in the Long-Ribicoff bill which was a payroll tax of 1 percent of total payroll. Now you are talking about an employer tax related to premiums, so you could have an employer with an average payroll of, say, $8,000 and he has to pay $600 per employee under those circumstances.

Similarly, you could have another employer with an average payroll of $20,000. He also only pays $20 per employee. In other word, under the payroll tax approach, the employer with the lowest average payroll would pay considerably less because it is a less regressive approach. The 1 percent was adequate perhaps six years ago. We now understand that it is short.

If you did it on a payroll tax basis, you would be short a half a percent.

The Chairman: Take 1.5 percent.

Mr. Constantine: Yes, sir. Even there, you would have to go across on all taxable payroll, Social Security wage base, taxable payroll. As I recall, the employer could help satisfy a portion of that liability for 1.5 percent by

purchasing approved coverage from a private insurer. He would pay the difference between the premium and his 1.5 percent liability to the government.

Mr. Champion: If you looked at the whole proposal as we originally made it, the total payroll cost is somewhere around .5 or .6 of 1 percent. If you are examining the whole payroll, that 1 percent is not that large.

Ms. Davis: That is the incremental burden as to what they are currently paying. If you include what they are currently paying over the deductible of $2,500.

The Chairman: Then you are talking about $5 billion.

Ms. Davis: That is correct, but if you are talking about including the amount that they are currently paying over the deductible, it would take a 1.8 percent payroll tax on the current taxable earnings base to finance all expenditures over $3,500.

The Chairman: Right, but the point I am getting to is that if we had it in our power, if we wanted to do it that way, to pay this whole thing matched by .9, 1.8 -- if that is what you are saying what it would cost to do all of this if it went the public route, where you just tax and HEW does it, if you do it that way, that is $1.8 billion.

Now, when we go the free enterprise route, some companies are going to be able to buy that coverage for less than that, because they have high wage employees. General Motors and

people like that can get it for less and these small business people are going to have to pay a lot more, especially those who have low wage employees.

Mr. Champion: It is not the difference in the cost to do it. It is the difference that that 1.8 includes what people are now doing, so why raise employers who do not have to do any more, basically because they have full plans, so the difference here is how much a given firm has to add to come up to whatever standard you set.

That is the fundamental difference.

The Chairman: All I am saying is that we could have done everything we are talking about doing here for 1.8 percent payroll tax with the credit where the employee prefers to go the private route and pay the difference into the kitty, you might say.

That being the case, I find some difficulty voting to make any one of these employers pay more than 2 percent. That is why it seems to me that the 100 percent -- if you take the Dole amendment and make it 100 percent instead of 50 percent, and phase down over a period of years, we can talk about that in future years and see whether we actually want to have the phasedown. It might be that we do not want to do that.

We could say here is what you have to pay in future years. We could take a look and see if it takes that much.

Senator Durenberger: Does this question not lie in why

can General Motors provide you with coverage at 1.8 when your store operator has to charge more? A lot of that is in the way the insurance industry approaches premiums for different kinds of groups. It goes back to your community rating issue.

The Chairman: Suppose the average employee for General Motors makes $15,000 a year and the average employee in the shoe store is making $7,500. Then they are taxing twice as much payroll because the average worker is making twice as much.

That being the case, they can sell that at a cheaper rate.

So we would undertake to make that back up by subsidizing these small employers. Of course, these small ones ---these are usually the ones who have the minimum wag employees, that sort of thing, but basically you are subsidizing where you have to subsidize.

A company that comes in and looks at my situation, the average worker is making $7,500. You have to look at how much payroll we have got to pay. So when he sells us a policy, he is selling it at so much a person he is covering. That works out to be a higher percentage of payroll than it does if he is insuring the payroll of average workers making $15,000.

Senator Durenberger: That part I can understand, if that is te only difference we are talking about. I am concerned

that part of the difference is that if everyone were at $15,000, when you are talking about two or three people being employed in the shoe store, the insurance company is offering a much larger premium for the coverage of those people because of the way they do the rating.

Mr. Constantine: The increase in the cost is because of the change in deductible. The Long-Ribicoff had two deductibles, hospital and medical. Now you have them combined.

The other point is, under the payroll tax approach, Senator, General Motors, even though it has coverage which meets the statutory requirements would continue to pay the cost for its coverage for its employees, but it would also pay the 1 percent payroll tax under this, which would help subsidize those others.

Under the aproach that the committee is taking, the mandated employer approach, the telephone coverage, the auto workers coverage, there would be no cost, in all probability in thoe industries, because they are already named statutory.

The Chairman: They are not paying the other guys' cost. They just do not see that they are paying the other guy's cost. They will pay their share of the subsidy because they are paying taxes into the general fund.

To the extent they are paying anything to the general fund or using the tax credit for this, they will be picking up

their share of the load.

Any other problem?

Mr. Constantine: No, Mr. Chairman. Those were the only problems that we had. I believe Senator Nelson had a proposal.

The Chairman: If there is nothing else, now ---are there other things the Senators want to bring up at this point?

Senator Boren: Mr. Chairman, will the staff develop all of these options in terms of cost? I personally -- I think it is going to be devastating if we propose additional payroll taxes. I also think it will be devastating if we do what we talk about doing to the small business people. We had better face up to the cost in a more direct way.

Will they be developing the options as to what the earlier thing you talked about, the 100 percent of subsidy above 1 percent? Will they develop that?

Mr. Constantine: Senator, what we could do is list the specifications that the committee had tentatively agreed to, just list $3,500 combined family deductible and so on, and everything that has been agreed to tentatively so far. Then in terms of financing, list the variety of options, the cost at these levels and what different subsidies would do at those points.

I think that is what you are getting that. We can certainly do that for you, so.

Senator Boren: Thank you.

The Chairman: Does anybody have anything else they want to bring up on the catastrophic?

Senator Dole: Let's move on to the Nelson amendment.

Senator Nelson: Mr. Chairman, I think we might as well proceed and have Secretary Champion present the balance of what needs to be presented here, but I have made a count, and I have more troops missing than the opposition does, so I do not want any votes today. I think we should wait until everybody is back.

The Chairman: If that is the case, I would just as soon not debate it.

Senator Nelson: There are so many people missing. I do not have proxies.

Senator Dole: We do.

Senator Nelson: If you have proxies, that is why we do not want to proceed. If we could have a date ---how much time do you think it would take to complete the presentation?

The Chairman said he did not want to proceed this morning.

Mr. Champion: I think it can be done within an hour, Senator. We have a few changes from the administration bill, some of which are responsive to various Senators' interests and we could present them in half an hour. It really depends on the question.

Senator Nelson: Do you want to set a date for us to take it up?

The Chairman: As far as I am concerned, I can vote any time you want to, but I think if you do not want to vote today we will come back to this later on anyway and you can just bring it up then. Any Senator can bring up his amendment any time he wants to and we will just take it up whenever you want to.

Senator Nelson: I think the Majority Leader wants to take up the issue some time in July. It does not matter to me. If they are prepared to complete the presentation, we can complete it when everybody gets back.

The Chairman: You can move the amendment when you want to.

Senator Nelson: All right.

The Chairman: Meanwhile, we can talk about some of the rest of it. Would you like to talk about these low-income things now, or do you want to pass it over?

Mr. Constantine: We would prefer if we could have the recess to finish our work on it. We wanted to include some of the issues that Senator Moynihan raised about the possibility of an income-related deductible, those kinds of modifications. We are working on a low income but with the various options that the Committee has raised, Mr. Chairman.

Then, additionally, the cost containment elements of the

various proposals, I think Senator Baucus and Senator Boren and Senator Chafee were particularly interested in that and we are preparing that for the committee as well.

There are further matters to consider when you come back.

The Chairman: Let me ask you, are you ready to lay before us some suggestions at the HMO or the type of suggestion --

Mr. Constantine: We will have that in the book that we are preparing now on various cost containment proposals, both the pros and cons of each of those options including Enthoven's, the administration's 90 percent --

The Chairman: The Kennedy plan?

Mr. Constantine: The Kennedy plan, yes, sir. WE have had the Library going through each of the proposals we are working on, Senator Schweiker's --

Senator Dole: Is there any reason we could not report out 507 and 508?

Mr. Constantine: No, sir. S. 507, the committee has completed action. S. 505 is the Talmadge-Dole bill which the committee is working on, and that is the proposal to which, I believe, Senator Nelson wants to offer his amendment.

S. 507 is the Dole-Talmadge bill which has a lot of minor Medicare and Medicaid improvements which the committee already has agreed to. They have completed work on that.

S. 508 is a bill to make the administrator of the Health

Care Financing Administration subject to Senate confirmation, future appointments subject to Senate confirmation. All of those have been completed.

On those two bills, the committee has made a decision on.

TheChairman: The latter two bills?

Mr. Constantine: Yes, sir.

The Chairman: I have no objection to reporting them. Do you want to report them?

Without objection, we will report the bills.

Mr. Stern: Would you want the other amendments that the committee agreed to in the area of Medicare and Medicaid modifications, such as the amendment on planter warts, the home health amendments, and those things as amendments?

Senator Bentsen: By all means, let us not overlook anything as momentous as that. I thought I put my best foot forward on that, and we had accomplished quite a feat.

Mr. Stern: Up to this point, the committee has considered the provisions themselve. You could combine them all in one bill, if you want to do it.

In any case, it would be reported for the time being as an S-numbered bill which would be sitting on the calendar until you have a House-passed bill.

The Chairman: It seems to me that we might just as well wait until we have a bill to put it on. When we have a bill to put it on, that is something else.

Mr. Stern: At the moment, there are no House bills in the Finance Committee that relate to health in any way. There is a private relief bill pending in committee, if you simply wanted to have a vehicle to use. That is a House-passed bill.

Other than that, the other two House-passed bills are pretty substantive. There is only one small House-passed bill pending in the Finance Committee at the moment.

The Chairman: The private relief bill?

Mr. Stern: Yes, sir.

The Chairman: Any objection to us?

Mr. Stern: I do not think so.

Senator Dole: Let me add it on that.

The Chairman: Do you want to add your bill?

Mr. Constantine: We have an urgent amendment to 505 you may want to add on thee to which there is no objection, and that is the teaching physician's provision which Senator Bumpers has introduced to suspend the operation of the change in how we reimburse teaching physicians under Medicare until October 1 of this year.

The Department has been looking the other way since October 1 of last year and there is a lot of controversy over the regulations. There is no objection, either in the administration, to our knowledge, and certainly the House wants it. They have passed the same thing. The Committee has approved it. The Senate approved it previously, but it is in

505.

We would like to move it to 507.

Mr. Champion: Mr. Chairman, I would like to say we have not been looking the other way, although there are some features of that particular arrangement which need careful examination and we have been discussing them with all of the people involved.

There is no chance, however, that we would have an effective change in regulations before October 1st, whether you acted on this legislation or not.

The Chairman: If there is no objection, we will add that amendment to those two bills, and those two bills will be added, then, to the private relief bill.

Mr. Stern: S. 505 provisions, narrowly considered, will still remain in committee until you take action on Senator Nelson's amendment.

The Chairman: Without objection, we will report that.

If there is no further business, then --

Mr. Stern: In terms of scheduling, as of now you are tentatively scheduled to begin hearings on the windfall profit tax after the July 4th recess so that suggests you would probably not be back on health matters until after Labor Day.

Senator Bentsen: Mr. Chairman, I would like to tell you I appreciate the support of my soul brothers on that amendment.

Mr. Champion: On that last question, you said that Senator Nelson could bring up that amendment. We would hope to do that in that first week after you return.

Senator Dole: When are you leaving?

Mr. Champion: This is my last day.

Senator Dole: We appreciate your help.

The Chairman: It was nice doing business with you.

(Thereupon, at 10:35, the Committee recessed, to reconvene at the call of the Chair.)

- - -