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MARKUP OF S. 951: HEALTH BENEFITS FOR THE UNEMPLOYED

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Tuesday, July 12, 1983

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United States Senate

Committee on Finance

Washington, D. C.

The Committee met, pursuant to notice, at 2:09 p.m., in Room SD-215 Dirksen Senate Office Building, the Honorable Robert Dole (Chairman of the Committee) presiding.

Present: Senators Dole, Packwood, Danforth, Chafee, Heinz, Durenberger, Grassley, Bentsen, Moynihan, Baucus, Bradley and Mitchell.

The Chairman: It is my understanding that we are waiting for a minute or two for some printed material, but I wonder in the meantime if we might announce tomorrow's schedule.

Mr. DeArment: Yes, Mr. Chairman. In order to accommodate the Members' schedules, rather than meeting at 10:00 as previously announced we will meet at 10:45 to have the hearing and the Executive Session on Mr. Swift's nomination to the Tax Court. Then we would resume our markup on spending reductions at 2:00 in the afternoon.

The Chairman: Sheila, are we waiting for the handouts?

Ms. Burke: Yes. They are arriving right now, sir.

The Chairman: We are waiting for a couple more bodies, too.

Senator Grassley: Mr. Chairman, there are one or two things that I would like to have happen when you start business. You know I have an amendment adding high type language on abortion to this bill, and I want to offer that amendment, but the problem is, if I could do that as the first order of business, I would like to do that. Otherwise, I would like to chair a hearing of the Subcommittee on Aging that would be going on right now and then come down and do that before you adjourn.

Which way are we going to go?

The Chairman: Well, since we are waiting for a few of my colleagues on the left to appear before we begin -- and I think there are some on the way -- it might be better for you to come back. We could notify you at the appropriate time. And if you cannot be found -- well, we will find you. Can you be back at 4:30?

Senator Grassley: No, no. I will be in Room 430.

The Chairman: Very good. Thank you.

Senator Grassley: Thank you.

[Pause.]

The Chairman: Let me make a brief statement while we are waiting for a few more Members to show up. We are here today to address a temporary problem which affects millions of

people in this country, the loss of health insurance due to prolonged unemployment.

As I have indicated before, this is not a new problem. It is simply one that has been exacerbated by economic conditions. Our discussions on how best to address this issue began some months ago. There has been a great deal of interest on the part of many, as demonstrated by the number of proposals pending before both the House and the Senate.

As many of you know, Senator Heinz, Specter and Durenberger were among the earliest supporters of efforts to solve the problems of the unemployed. The proposal we have before us today is in large part the result of their efforts and those of many others, including Senator Riegle, who has testified before this Committee on this issue.

The proposals my colleagues and I have offered, S. 951, is intended to be a limited and temporary approach to this problem by providing some protection to those individuals who are not able to finance the purchase of private coverage during a period of unemployment and have no other health insurance coverage available to them.

It is not a bill to create national health insurance or to address the needs of every individual who does not currently have health care coverage. Some, including the House Ways and Means Committee, have suggested that we spend more monies, while others, including the Senate Labor and

Human Resources Committee, have suggested the creation of a new title in an existing Act.

What we have strived toward is a time-limited, financially-limited proposal that creates a narrow Federal role in helping these people through a difficult time and also makes use of the best aspects of the private sector.

Most importantly, I want to make absolutely certain that we do not contribute to our bloated Federal deficit by enacting this program without comparable revenue increases or spending cuts. At some point this Committee needs to decide how either to raise $1.8 billion in revenues during the period when this program is in effect, or else come up with an additional $1.8 billion in spending reductions in that time.

I am steadfastly committed to making financing a contingency for the enactment of this legislation that we are marking up today. Obviously, I am hopeful the Committee can reach some consensus on a proposal. I understand that may not be as difficult as reaching some agreement on how to finance it.

There is a real need and we are taking this first step, and again there are a number of proposals that I have indicated are pending. Some are very expensive, some are not as limited as ours, and I assume some would suggest that ours does not go far enough. But I think based on weeks and

literally months of consultation with Members on both sides of the aisle we are fairly close to some consensus on what we should do. I am not certain we are so close on how it should be financed.

It would be my hope that we would not report out the bill itself without either appropriate spending reductions to pay for it, or appropriate tax changes to pay for it.

Does anybody else want to make an opening statement while we are waiting for our Democratic friends to come?

Senator Heinz.

Senator Heinz: Thank you, Mr. Chairman. First I want to commend you on an excellent statement and I want to thank you for all of the assistance that you have been in moving this legislative package toward the Senate floor and to enactment.

S. 951 was not the first bill on the subject of health insurance for the unemployed, but it is a very good bill. It follows from legislation that Senator Specter and I introduced a few weeks earlier, S. 811, which went to the Human Resources Committee.

We are going to take certain actions on the legislation today which I think will improve it further. It is my understanding that you, Mr. Chairman, will offer a package of amendments that will give considerably more flexibility to the states in the administration of this money, to make it more nearly a block grant. I commend you for that and

strongly support it.

I do want to take this opportunity to perhaps lay before our colleagues the notion of one further amendment which I believe the staff has now worked out. This is clearly not the first time that the Congress has been forced to take action during the period of or in the aftermath of a recession, depending on what the unemployment level is in your state.

To deal with some of the difficulties of a recession, sometimes we pass jobs bills. This year we are going to pass a bill here, and the emergency health care bill for the unemployed. Persistently -- and this was true of the '75 recession as it is today -- there are people whose private sector coverage because of unemployment is terminated and we are forced to come back to Washington, D. C. as Senators here to the Finance Committee, I suppose as House Members to the Ways and Means Committee, to deal with the problem anew.

One of the things that we have tried to do as individuals and as a group of Senators working together is to come up with some language for this legislation that would mandate private sector coverage of separated workers for a substantially longer period than is now the case. For the most part, the amount of coverage available is very limited indeed, post-employment, post-separation.

We have been somewhat hamstrung in that effort because

the kinds of information that we need to legislate wisely is not available to us. What would be my hope, Mr. Chairman, is that the Committee would mandate by amendment that when this program expires we will have the information, even the draft legislation, to put into place some permanent private sector provisions to help future unemployed workers.

So specifically what I would like to do is to amend S. 951 and add language which requires the Department of Health and Human Services to study and report back to Congress by June 1985 their recommendations, including draft legislation for changes in the private health insurance marketplace which would mandate adequate continued coverage and conversion privileges for employees who were involuntarily terminated from their jobs.

The Department's report to Congress, in this Senator's judgment, should include, at a minimum, the projected expense to employers, assuming no contributions from former employees. Hopefully, Mr. Chairman, armed with appropriate cost data and some legislative specifics we could not only hold hearings but we could move forward to put that kind of issue to rest once and for all.

It is my understanding that Sheila Burke and Nancy Kingman of my staff have worked out appropriate language to implement what I have just described.

The Chairman: That is my understanding, too. It would

be a good amendment and I hope it may be adopted.

Senator Heinz: As soon as we have enough people here, it would stand a better chance, I suppose.

The Chairman: As soon as we have a few more Senators, I thought I would ask Sheila to go through the legislation, compare it with the House-passed bill and the bill passed out by the Labor Committee, and then there will be a series of amendments, including one that the Senator from Pennsylvania has mentioned.

I understand the Senator from Missouri has an amendment. Senator Grassley indicated he has an amendment. And I believe Senator Moynihan has an amendment. There also may be others, but we are aware at least of those amendments.

Let me call on Senator Durenberger.

Senator Durenberger: Thank you, Mr. Chairman.

Let me confine myself to perhaps just broadening the scope under which this problem comes before us. I think there are probably a lot more people concerned about this problem than those who have been mentioned, who for one reason or another have gotten involved in authoring legislation, because it has been a problem that has been with us for a long time.

It is part of a larger problem that we face in this country. We spent $300 billion a year on health care. We find a variety of ways to provide incentives to build health

care systems in this country, and so we have our elderly pretty well covered, and we have people who are in most places of employment very well covered. But there are an awful lot of Americans who go without adequate health care.

I think the problem that we are seeing during the course of this recession is a sort of induced manifestation of a much larger problem. I spent a day last week in Colorado with a committee that has been privately financed looking at the problem of health care for the indigent.

How many times have we had the public hospitals and the charity hospitals in here telling us you cannot change Medicare, you cannot change this, you cannot change that because we have this tremendous burden? Well, out in Colorado they are trying to address that problem and they are trying to address it in a larger scope than we have been able to do in Medicaid or that we will be able to do in this program.

Now there are a couple of things that are important to me in considering the vehicle that we choose here and rejecting some of the other vehicles. Mainly, we are talking about health insurance for the unemployed, and we are doing it at a time when 75 percent of the people in this country have some kind of thing called an insurance policy that goes way beyond insurance.

I mean it goes way beyond the point where you are taking

into consideration the original notion of insurance, what people could pay for themselves and what they needed some protection, some economic protection, against. So in looking at health care for unemployed persons, I think there is a value in looking at the kind of coverage that is going to be provided for people who are unemployed.

Secondly, as our colleague John Heinz pointed out, and as his study certainly will point out -- and he had said 1984 instead of 1985 I would be just as happy -- and that is that the place to provide for the unemployed is the same place that we provide for pregnancies and disabilities and a whole lot of other work-related health coverage. It is in the employment sector.

A lot of states have started off on this track already with continuity of coverage. A lot of the unions have mandated one-year and two-year extensions. So all we are doing here, I think, is filling a kind of temporary gap in a process that started before we ever got into the business, and that is to try to provide through the health insurance program that you get with your employer protection for those periods of time when you are unemployed.

So it is really important to keep all of those kinds of things in mind when you compare what this Committee is doing with the large new block grant, new spending of money that we do not even have, that is coming out of the other body or

even coming out of other Committees on the Senate side.

It is unrealistic financially. It is waste in the context that not all of that money is absolutely needed. And I just think if we ever lose sight of the direction in which we have been moving on this Committee toward cost containment by just getting people to be more sensitive about the cost of their health care, then we will have bought ourselves large deficits and a lot of promises that we cannot deliver on.

So as we approach this issue today I hope that we are joined by our colleagues on the other side of the aisle so that we can report out a bill that can be built on and not just shoved aside two years from now and have to do what we could do this year.

The Chairman: Thank you. Senator Chafee, do you have any opening comments?

Senator Chafee: No.

The Chairman: Senator Danforth?

Senator Danforth: No, thank you.

The Chairman: We understand Senator Baucus and Senator Bradley are on their way. When they arrive, we will have the magic number of seven to start doing something. In the meantime, why do we not just visit about the bill?

[Laughter]

The Chairman: Sheila, why do we not have an informal visit? Would you explain, please, the principal features of

this proposal and how it may be at variance with the House-passed bill and the bill passed by the Labor Committee?

Ms. Burke: Senator, the real differences is with respect to all of the legislation are really perhaps in three key areas. The first is with respect to the spending levels in each of the proposals. The second is with respect to the modification of current law to establish the programs and the cost-sharing requirements and requirements with respect to eligibility of individuals.

With respect to the spending levels, the proposal that was agreed to by the Labor and Human Resources Committee provides for $1.8 billion expenditures for this new program. They also modify the Public Health Service Act by creating a new title to provide for benefits for the unemployed.

The Chairman: You are now speaking about which -- S. 242?

Ms. Burke: Yes, Senator, Labor and Human Resources.

The bill that was agreed to by the Ways and Means Committee provides for expenditures of approximately $4 billion over an equivalent period of time and provides for a program through a new title to the Social Security Act.

The eligibility between the legislation provided for by Labor and Human Resources, Ways and Means, and the proposal which is suggested in S. 951, also differs in terms of the

number of individuals eligible and the relationship to the unemployment compensation system.

The eligibility, as provided for in S. 951, would provide for eligibility for those individuals who had been in receipt of unemployment compensation or who had exhausted it within six months after exhaustion of those benefits.

The eligibility, as provided by the Ways and Means Committee legislation, is really three-fold: those individuals who are receiving unemployment compensation; those who have received unemployment compensation within the prior two years; and those who have been previously employed and meet reasonable financial or medical standards.

The provision contained in the Labor and Human Resources Committee's suggestions provides again for threefold coverage: one for those who receive and then lose unemployment compensation with respect to the most recent benefit year ending no earlier than January of 1983 and no later than September of 1985; those who have been unemployed for not less than 26 weeks; and, finally, those who have been unemployed for at least 13 weeks but have not lost their unemployment compensation.

So in each case there is a slightly different definition of individuals who are eligible for coverage.

With respect to the benefits provided in each piece of legislation, they are comparable in that they are designed in

part to look at hospital coverage, physician services, prenatal and post-partum care.

The cost-sharing requirements differ between each of the proposals. The proposal agreed to by Labor and Human Resources allows the states to require a premium of the individuals participating in the program of between five percent and 7.5 percent of their weekly unemployment compensation benefit. They do not provide for co-payments.

The legislation as agreed to by the Ways and Means Committee provides for a premium requirement of up to five percent of the weekly unemployment compensation program and allows the states to apply some co-payments.

S. 951 provides for a premium of up to eight percent of your unemployment compensation weekly check, and would also provide for cost-sharing that the states may design, which is limited to a certain extent as compared to a takehome in terms of unemployment compensation.

Each of the bills also provides for some changes with respect to the private sector. The bill, as agreed to by the Labor and Human Resources Committee, has three provisions with respect to mandates on private employers. The first provides for a 90-day continued coverage at the same premium relationship so that if an employer offers private coverage and an individual who is employed accepts that coverage and then loses his job --

The Chairman: Sheila, is that the little two-page amendment you have there?

Ms. Burke: Yes, sir.

The Chairman: Do you have additional copies of that?

Ms. Burke: We can certainly have them made.

The Chairman: Okay. We are having copies made right now, I believe.

Ms. Burke: Again, the Labor and Human Resources Committee provides that the employer must continue benefits for 90 days after loss of employment at the same premium relationship. So if the employer paid 90 percent of the premium, for example, and the employee paid ten percent, that relationship would be continued for 90 days.

They also require for a second 90-day period that the group coverage be made available at the full cost to the employee, so the employee could continue coverage for 90 days, again at their responsibility -- no employer cost.

Senator Bentsen: Which bill are you now referring to?

Ms. Burke: To the Labor and Human Resources Committee legislation.

Senator Bentsen: What is the number of that one?

Ms. Burke: S. 242.

Senator Bentsen: Thank you.

Ms. Burke: The third private sector requirement in the Labor and Human Resources Committee legislation, S. 242,

provides for a mandated 30-day open enrollment period so individuals during that period of time would enroll their spouses were their spouse to have lost coverage because of loss of employment.

The Ways and Means Committee legislation, H.R. 3021, also provides for mandates on private employers. The first is a 90-day continued coverage, that is, a mandate on the employer to continue for 90 days the insurance provided to employed individuals. Again, it is similar to that of Labor and Human Resources at the same premium relationship. So if the employer were to pay, for example, 100 percent of the premium they would continue to do so for 90 days.

The Ways and Means Committee legislation also provides for a mandated open enrollment period to provide an opportunity for an individual to enroll the spouse or family, if that individual has lost coverage because they were covered unier a spouse who lost their employment.

They also provide for a mandated opportunity to convert into an individual plan for an individual who had has private sector insurance.

S. 951 provides for one requirement with respect to the private employers, and that is they provide for an open enrollment opportunity for 30 days, again like Ways and Means, to provide for an opportunity for individuals to enroll their families or enroll themselves if they have lost

coverage because their spouse had insurance and has lost it because of the loss of employment.

The Ways and Means Committee legislation also exempts employers with 25 or less employees. That will be one of the suggestions that we make with respect to S. 951 in modifications, and that is to exempt small employers, to only apply to those employers of 25 or more.

Each of the legislations has different termination dates, but they are all approximately two years in length with respect to the length of the programs created by both the Labor and Human Resources bill, the Ways and Means Committee legislation, and S. 951. They all end in 1985, toward the middle to end of 1985.

The Chairman: That information is available in summary in the sheets just passed out. It might be well to have a general idea.

As I understand it, from a cost standpoint, S. 242, which was reported by the Labor Committee, and S. 951 have identical figures. Is that correct?

Ms. Burke: That is correct, Senator.

The Chairman: $200 million, $900 million, and $700 million, for a total of $1.8 billion over the next three fiscal years. In fact, it would be fiscal 1983, 1984, and 1985.

The Ways and Means bill is substantially more costly

because it has additional features that we do not have in our proposal.

Ms. Burke: It does have a higher spending level, yes, sir.

The Chairman: What I would like to do now, again, is to indicate for the record that what we have tried to do in the past and what we have been doing in this bill is to have all of the staff participate in discussions of the bill itself. We understand those discussions were held, final discussions were held yesterday. Is that correct?

Ms. Burke: Yes, sir.

The Chairman: And members of the Committee and their staff have had an opportunity, plus the professional staff on both sides, to discuss this. They have discussed at length, I understand, certain provisions of the bill.

Ms. Burke: Yes, sir.

The Chairman: At this point I would suggest that we use S. 951 and there are a number of suggested modifications to 951. If someone would like additional explanation of 951 itself, we can go into that at this time, or we can go into some of the suggested amendments which have been brought to our attention and have been discussed by staff, amendments that have been, I think, pretty much blended as a result of staff discussions.

Let us just go over the suggested modifications which I

think everyone has a copy of.

Ms. Burke: Yes, sir. It is dated July 12, 1983, and is entitled "Suggested Modifications to S. 951". That should be before each of the Members.

The Chairman: We have seven members with us. Senator Bentsen is in the back room, so we are now legally permitted to proceed with our work on this legislation.

So let us take a look at some of the suggested modifications to see whether or not there are questions. If not, it is my hope that we can adopt the amendments that are suggested in this group and then go to the amendments that other members may have.

Ms. Burke: The first amendment or suggested change is with respect to those individuals who would be excluded from eligibility to the program. The bill currently excludes from coverage those individuals who are eligible for Medicaid. The suggested amendment, which is indeed consistent with the amendment on the House side, would also exclude those individuals who are otherwise eligible for private coverage either because of the open enrollment opportunity for themselves or for their spouse.

So this simply makes consistent the exclusion of those individuals who have some other opportunities for coverage.

The Chairman: Is there any objection to the first amendment?

[No response.]

The Chairman: If not, it is agreed to.

Ms. Burke: The second amendment deals with the benefits that would be covered under the legislation. S. 951, while

providing the states the opportunity to define the amount, duration and scope of the benefits, does provide some limit to the type of benefits that should be provided under the program. It currently limits those benefits to in-patient hospital services, emergency out-patient hospital service, physician services including those provided in clinics, and prenatal and postpartum care. The bill specifically excludes coverage of nursing home services and drugs or biologicals except when they are provided as part of an in-patient service.

The suggested amendment is twofold. The first is to permit coverage of laboratory, x-ray and radiation therapy services and the services of a nurse-midwife. In addition, we would permit coverage of home health benefits where the state determines that such benefits are cost effective.

Senator Bradley: Mr. Chairman.

The Chairman: Senator Bradley.

Senator Bradley: Could you qualify that? Under what circumstances would home health benefits be covered here?

Ms. Burke: Presumably, Senator, if they were determined to be used in lieu of institutional services, found to be less costly for the state in terms of providing services for an individual. It would be that in lieu, perhaps, of additional days of hospitalization or perhaps long term care.

Senator Bradley: So that is left to the state to decide?

Ms. Burke: Yes, sir.

Senator Bradley: Whether x-ray or lab therapy or services of a midwife are desirable, but then, in addition to that, the questions about which benefits would be covered, what home health benefits would be covered, that is the question.

Ms. Burke: That would be left up to the state, Senator.

Senator Bradley: So the state could determine whatever benefits it wanted.

Ms. Burke: Yes, sir, within this context. Again, they have always been permitted to determine the amount, duration and scope of benefits.

Senator Bradley: Okay. Thank you.

The Chairman: Are there any other questions?

Senator Chafee: Well, Mr. Chairman, it seems to me that any time you have an enlargement of the benefits, we are all for it. The only problem is under the ground rules under which we are operating, these things have to be paid for. I think with the enlargement of the benefits, if would be helpful if we could have a suggestion as to how much it is going to cost.

As I understood your presentation, this is going to pay for it, that is, we are somehow going to figure out a way to

pay for this.

Ms. Burke: Yes, sir. Determining how much the benefit would cost would depend in large part on the benefits the states chose to provide. They may also provide for cost sharing on any one of those benefits, thereby recouping some of their costs of providing the service. But the benefit package cost would really depend upon the state and what they decided they could afford within the context of the money provided to them. There are no mandatory requirements on the state with respect to a minimum benefit package. It is entirely up to their discretion.

The Chairman: But the total cost would not exceed $1.8 billion?

Ms. Burke: That is correct. To the federal government, the cost would not exceed $1.8 billion. It is a block grant in that sense. So a change to allow the states to provide a broader range of benefits would not alter the federal responsibility for costs.

Senator Chafee: Was that true of the prior amendment too?

Ms. Burke: Yes, sir.

The Chairman: Well, on some of these amendments you are going to be cutting back and not expanding, is that not right?

Ms. Burke: The total amount of dollars provided for

would not be altered by any of these amendments. It would simply provide the states more discretion in the case of the benefits.

The Chairman: Okay, let's take Part B.

Ms. Burke: Part B simply states that if indeed -- it is a minimum requirement in a sense, and that is to suggest that if the state provides any benefits, it must provide at a minimum at least a mixture of both institutional and ambulatory services. Again, they would continue to have discretion with respect to amount, duration and scope, and the mix of benefits, as long as they provided both in-patient and ambulatory. The concern is that they reflect in their benefit package a desire to use less costly alternatives wherever possible.

The Chairman: Well, following the same question Senator Chafee raised, in some of these instances you might in fact lower the total cost by broadening the option, is that correct?

Ms. Burke: That is correct, Senator.

The Chairman: Rather than have them as in-patients, they might have home health care which could be less costly.

Ms. Burke: Yes, sir. We wanted to be sure the states have that option.

The Chairman: Do you share that view, Mr. Hoyer?

Mr. Hoyer: Yes, I do.

Senator Durenberger: Well, Mr. Chairman, I think any time we do not mandate what has to be covered and leave that election with those who are dealing with the specific circumstance, we are going to save money.

The Chairman: Are there any other questions on either A or B?

[No response.]

The Chairman: If not, it would be agreed to.

Cost sharing is next.

Ms. Burke: S. 951 currently permits a state to impose cost sharing requirements for covered services which could not on the average exceed 10 percent of a monthly unemployment benefit. That was designed to ensure that the cost sharing was not excessive in the context of what an individual actually received in terms of a cash benefit.

The suggested amendment would permit the state to require cost sharing on out-patient services that does not on average exceed 5 percent of a monthly unemployment compensation benefit, and with respect to in-patient services, that the state may require cost sharing up to the limits provided for under the Medicaid program.

It is also suggested that at a minimum the state must require of these individuals cost sharing equal to that required of those who are eligible for Medicaid.

The Chairman: All right. Now, how does that track with

the Ways and Means bill, that provision? You do not have to go into detail, but is there a substantial difference?

Ms. Burke: There is not a substantial difference, Senator, as I recall but let me just double check.

In fact, it is comparable to the Ways and Means Committee legislation.

The Chairman: That is what I thought.

Is there any objection to that amendment?

[No response.]

The Chairman: If not, the amendment is agreed to.

Next is administration.

Ms. Burke: The legislation currently provides that state unemployment insurance agencies would determine program eligibility, and funds are indeed provided under the legislation for that to take place. It also provides that the health benefits would be administered by the state agency already designated to administer the state Medicaid program, and reimbursement for those costs are also provided for in the legislation.

The suggested amendment would continue to require the state to utilize its unemployment compensation agency but would permit flexibility with respect to the administration of the health aspects of the program. Again, there is a desire to leave the states the option to use an agency, to contract with an outside organization, perhaps, with an HMO,

with a private sector insurance company who would be willing to enroll or provide for eligibility for these individuals.

Senator Bradley: Mr. Chairman?

The Chairman: Senator Bradley.

Senator Bradley: The others in the suggested amendment, the entities that you have just mentioned, the HMCs, etc.?

Ms. Burke: Yes, sir.

The Chairman: Okay.

If there is no objection to that amendment, good.

Some of these may become rather technical. If so, would you identify them, please?

Ms. Burke: Yes, sir.

The next one you may want to set aside for just a moment because it may involve a lengthy discussion, and pass on to the more technical.

The next is the state-federal funding issue. Following that is a question of the reallocation of the unexpended funds.

Because the program provides for a voluntary choice on the part of the states with respect to participation, there may be those states who would choose not to participate. Currently, S. 951 provides that any funds allotted to a state which did not establish a program would be reallocated at the end of the 12 month period beginning in 1984, which means the reallocation would not actually take place until 1985.

The suggested amendment is that those funds be reallocated at the end of the first 12 month period, that is, in the beginning of 1984, and at the end of the second 12 month period. Again, recognizing that there may be states who opt in during the year, you want to make sure there are funds available to them, but if at the end of that period of time they do not use those funds, they would be reallocated to those states who did choose to participate.

The Chairman: Is there any objection?

Senator Baucus: Mr. Chairman.

The Chairman: Senator Baucus.

Senator Baucus: Thank you, Mr. Chairman.

Sheila, as I understand it, we no longer in this bill have the 13 week IUR determination? Rather, it is on a 12 month basis, is that correct?

Ms. Burke: That is correct. In terms of the determination of the matching formula, it is a 13 week IUR.

Senator Baucus: We do or do not have 13 weeks?

Ms. Burke: There is in the legislation a 13 week IUR week used in determination of the matching rates.

Mr. Baucus: Well, Mr. Chairman, I frankly thought this was discussed with staff and agreed to by staff, that that be changed to a 12 month period due to the fact that different states have different summer employment levels, particularly the extractive states in the northwest, like Montana, has

very low unemployment in the summer months, which does not reflect the unemployment levels the rest of the year, the logging industry, for example, and it just seems to me that for this to be fair, it should be on a 12 month basis, not on a 13 week basis.

Senator Durenberger: What if we went to six months? Would that solve the seasonal factor?

Senator Baucus: Six months is fine, too, but I do think 13 weeks is too short.

Ms. Burke: That is an issue in the context of the matching formula which we have yet to discuss, but I think six months or whatever the matching formula ends up being --

The Chairman: Well, six months is okay.

If you have no other objection, the amendment is accepted.

Ms. Burke: So then that is the use of a six month moving average IUR to determine the matching rates.

Senator Baucus: Yes, thank you.

The Chairman: Well, now, let's see. The private sector provisions, is that the next one, the next issue?

Ms. Burke: Yes, sir.

The Chairman: Mr. Belas.

Mr. Belas: Mr. Chairman, S. 951 as it was introduced provides for a 30 day open enrollment period when the spouse

or parent of an employee becomes unemployed. The sanction to convince employers or to provide an incentive for employers to provide this open enrollment period was a denial of 50 percent of the business deduction associated with the costs of the employer-paid plan, medical plan.

The suggested amendments would change the sanction to $500 per violation rather than a denial of 50 percent of the otherwise available deduction, and the $500 penalty tax would be expressly required to be paid with an annual tax return by the employer. In addition, the penalty in the suggested amendment would be applicable to nonprofit organizations as well as taxable entities.

One of the problems with S. 951 as introduced is that it would not apply to nonprofit organizations but only to profitable.

In addition, it is suggested that you may want to consider that a state would not be eligible to receive funds under these provisions unless it has complied with the open enrollment period itself; and finally, that you may want to consider limiting the open enrollment period to situations where the employee's spouse has become unemployed rather than spouse or parents. The reason for this is that virtually all group insurance plans that we have seen do not cover an employee's parents but only cover his immediate family of wife and children, spouse and children, and it would be a

meaningless requirement to include parents, and would be probably a very major change in group health insurance practices.

The Chairman: Does it also exempt entities with less than 25 employees?

Mr. Belas: Yes, sir. That would be the last suggested change. That obviously is a provision that is a policy decision as to whether the committee wants to put the additional administrative burden on a smaller employer who has less ability to deal with the administrative complexity.

The Chairman: Is there any discussion of this amendment?

Senator Chafee: Well, in other words, instead of doing away with the deductibility or half of it, you are going to do what, have a fine?

Mr. Belas: It would be a penalty tax of $500 per violation. The reason for doing the excise tax type concept rather than denial of the deduction is that there would be no sanction to induce a nonprofit corporation to comply with the open enrollment period.

The Ways and Means Committee provided for a 10 percent additional tax of the amount of the premiums for the group policy. The Ways and Means version of the bill also included for continuation of benefits and conversion to an individual policy. Those provisions have additional cost factors, and

probably would make some sense to have a larger faction. It seemed that it may be too draconian a solution to have a 50 percent denial of the deduction for merely the open enrollment period provision, which is a very minor cost item to an employer.

The Chairman: In other words, our is less severe.

Mr. Belas: This would be a less severe penalty and would increase with the number of violations rather than being a flat amount.

Senator Chafee: What constitutes a violation?

Mr. Belas: A violation would mean where an employee was not able to be able to change his insurance status from employee only to family.

Senator Chafee: So there could not be more than one violation per employee?

Mr. Belas: Per employee, yes.

Senator Chafee: And it would not even apply to those with 25 or less employees?

Mr. Belas: That is correct. That also is consistent with the Ways and Means bill.

The Chairman: What is the rationale for the administrative burden? Do we know how many people might be impacted by this provision?

Mr. Belas: No, sir, we do not.

Senator Heinz: Mr. Chairman, let me inquire about how

long employers have to come into compliance with this provision.

Mr. Belas: Under S. 951, it would be a 60 day period from enactment.

Senator Heinz: Is that a reasonable period?

Mr. Belas: We are told by the administrators of these plans and some of the providers to whom we have spoken that 60 days would be sufficient for the open enrollment period. If the committee decided to go further and provide for the continuation of benefits or something in addition, perhaps you would need a longer lead time, but 60 days would be sufficient for open enrollment.

The Chairman: Is there any further discussion of this amendment?

And they are all open for additional discussion if somebody wants to raise a point.

[No response.]

The Chairman: Without objection, it is accepted.

As I understand, the last amendment on the group of suggested amendments, or at least not counting the one we passed over, is the effective date.

Ms. Burke: Yes, sir.

The Chairman: What you are suggesting is to make it August 1 to August 1, as the 12 month period beginning August 1, 1983?

Ms. Burke: And August 1, 1984, that is correct, Senator.

The original legislation began June 1 of 1983.

The Chairman: It is now past that date, right?

Ms. Burke: Yes, sir.

The Chairman: I do not know of any objection to that amendment. We will have to change it again if we do not get moving.

Now, we have one amendment that we did want to discuss in some detail, but I think if Senator Heinz wanted to offer his amendment, we might be able to consider it. I do not believe it is controversial, and it would fit into the private sector area.

Senator Heinz: Mr. Chairman, I spoke on this amendment in my introductory remarks. But for Senator Bentsen's benefit because I think we got started on our discussion at least before he arrived, let me say this. This amendment would be a study amendment. It would essentially require the Department of Health and Human Services to study and report back to the Congress by June 1985 their recommendations, including draft legislation for changes in the private health insurance marketplace that would mandate adequate continued coverage and conversion privileges for employees who are involuntarily terminated from their jobs. And as I also observed, that report should include as a minimum the

projected expense to employers, assuming no contributions from former employees.

This is an area, you may recall, that Dave Stockman testified as to the desirability of Congress finding a way o mandating continuing postseparation coverage. There is a lot of information that is not available, that we simply do not have, and rather than legislate unwisely and too much, we decided we had better get some more information. And this we think is the best way to do it.

Senator Bentsen: I would say that would certainly be expected to make a contribution and is obviously a worthy objective. I would be glad to support it.

The Chairman: Are you going to change the date in accordance with Senator Durenberger's suggestion?

Senator Heinz: Well, I assume that that date has been chosen for good reason.

Sheila, would you care to explain what that good reason is?

Senator Durenberger: Yes, explain it to me, too, please.

[General laughter.]

Ms. Burke: The good reason was --

The Chairman: January 1, 1985?

Senator Heinz: I think any date after November 4, 1984 probably would be all right.

[General laughter.]

Ms. Burke: We were trying to coordinate it to a certain extent with the completion of the public sector program prior to its completion so that you could plan in advance for any long term private sector changes that would indeed enhance the ability of individuals who are unemployed to obtain insurance. So certainly any time prior to the end of this program would certainly be fine.

Senator Heinz: I would think the January 1, 1985 date would make sense for a variety of reasons in addition to making Senator Durenberger happy.

The Chairman: How much time would that give us, eight months?

Ms. Burke: A year and a half, but it would be eight months until the termination of the program.

Senator Bentsen: This is an amendment of Senator Durenberger's to yours, John, and I would like to know if we will have the rest of the day before the bill is reported out to change our minis on this.

[General laughter.]

The Chairman: Well, you may even have several days.

Senator Heinz: The Chairman has assured us that we can waffle all we want, Lloyd.

The Chairman: All right. Without objection, we will adopt that amendment.

Well we have just adopted the Heinz amendment which calls for a study.

Senator Moynihan has an amendment.

Senator Bradley: Mr. Chairman, I have an amendment that I think is similar.

The Chairman: Why do you not go ahead?

Okay, we have one that will take some discussion, unless we want to go back and take care of that. Then Senator Grassley has an abortion amendment, and Senator Packwood wants to be here for that one, and Senator Danforth has an amendment.

So why do you not go ahead and raise yours.

Senator Bradley: All right.

Well, I really have two. The first one goes to when the state match will be required. I think under the bill it is required as of September 30 the state would have to come up with its share of the funds, and I think we have to be realistic here. We are not going to really get this thing passed into law until early fall, and this is going to require state legislatures to change, if they are going to participate, their budgets and raise the revenues, and I just think if we are realistic, we ought to push that date back up to January 1984.

It is when the state has to come up with their money. Under the bill now, it has to come up with it September 30,

and since we are probably not going to get the whole thing passed until September, we might as well be realistic and push it back to January 1984.

The Chairman: I have no objection.

Is there any objection to that amendment?

Senator Heinz: It sounds like a good amendment to me, Mr. Chairman.

Senator Chafee: What date were you saying in January?

Senator Bradley: January 1, January 15, you pick it, whatever you would like.

Senator Chafee: Well, I should think the latter part of January, because if the idea is the states are going to come up with the money --

Senator Bradley: Most budgets will not be out until late January, you are right.

Ms. Burke: Would you suggest February 1, then, that they should be required to match?

Senator Bradley: February 1 is fine, sure.

The Chairman: Do you have another amendment?

Senator Bradley: Yes. It deals with the state match.

The Chairman: That gets back into the federal-state funding, right?

Senator Bradley: Yes.

The Chairman: Maybe what we should do is discuss that provision.

I think Senator Bentsen raised that early on, so why do we not discuss the provision and the suggested amendment? You may have an amendment, or there might be other amendments to that amendment.

Senator Durenberger: Mr. Chairman, before she begins, let me just reinforce that both Senator Bentsen and I believe Senator Roth raised this issue around the initial formula, and we have spent a lot of time over the last few weeks trying to come up with a formula that is fair to everybody in the country.

I think Sheila has a grasp on it now, and if she does, nobody else does. So I think she will be able to incorporate that into the overall state funding issue.

Ms. Burke: The original legislation provides for participation by states who have an insured unemployment rate in excess of 4 percent so that any state, under the original legislation, who had an IUR below that rate would not have been eligible to participate.

Each member of the committee should have before him a long sheet entitled "Health Benefits for the Unemployed" with a whole series of columns of numbers. If you refer to the first column on the left hand side, those numbers are indeed the insured unemployment rates. So that provides you an opportunity to get a sense of where states fall in that context.

The original legislation provided that only those states with a 4 percent or greater rate would be eligible to participate beyond September. There was also a determination made with respect to requirements on states for matching rates based on the IUR, and there was a graduated matching rate requirement which began at 4 percent and topped off at 5 percent. Anyone in excess of that amount was required to provide 5 percent in terms of a matching rate, and the maximum matching rate was 20 percent. So it went from 20 to 5 in terms of the matching requirements, and only those states with 4 percent unemployment rates were permitted to participate.

There have been a number of suggestions made with respect to altering that matching rate requirement, and also with respect to the allocation of funds to the states. Two things take place. At the beginning of the program, the beginning of each 12 month period, each state is allocated a certain amount of money. That is the total allocation available to that state for that 12 month period of time. That allocation is based on a formula that reflects the number of insured unemployed in each state and the number of unemployed who have been unemployed more than 26 weeks in each state. That allocation is made once every 12 months. That does not alter during the year. The only thing that would alter is what the state was required to provide with respect to a matching

rate. And again, that was linked to the insured unemployment rate.

The concerns that were raised with respect to the formula reflected a concern, one, of those states who were below a 4 percent IUR who could not participate, and two, whether or not either the allocation or the matching rate reflected the actual ability of the state to provide for matching funds.

If you look at the sheet before you, those federal allocation numbers do not change between the proposal that is described to you in the Dole amendments and the original S. 951. That allocation was made again on the basis of the insured unemployed in a state, the number, and on the number of individuals unemployed for more than 26 weeks.

However, there was a suggestion with respect to changing the matching formula which is described in the amendments, and the change that was recommended at that time was that any state with an IUR of 2 percent or more be permitted to participate, and that the matching requirements for those states begin at 50 percent and go up to 95 percent, again dependent upon the insured unemployment rate. That rate that is published weekly is a 13 week moving average.

The recommendation made by Senator Baucus which the committee has agreed to is that whatever we use, that we use a 6 month moving average and not a 13 week. So that number would be done on a six month basis.

Again, the suggestion was that there be a minimum contribution of at least 5 percent on the part of the states, a maximum contribution of 50 percent for those states with the lowest insured unemployment rates.

In addition to that proposal, there has been some concern about the lack of attention to the ability of a state to finance a program that is simply using the insured unemployment rates does not reflect the state's fiscal capacity. What we have received is an additional formula to consider that would take that into consideration. That additional formula to be considered would allocate the funds and would also provide for matching rates which takes into consideration three factors.

One is the per capita income in a state. Secondly is again the insured unemployment rate, and third is the number of unemployed in a state who have been unemployed for 26 weeks or longer. So the change is the inclusion of the per capita income into the determination of state matching rates. We should have available the descriptions of this additional formula along with the difference it would make with respect to the allocation. Those should have been distributed.

The Chairman: Is that part of the two-page document?

Ms. Burke: No, Senator. This [indicating] would be something that is described as an allocation formula, health benefits for the unemployed. It is being distributed now.

The Chairman: Why do we not just hold off until everybody has a copy?

[Pause.]

The Chairman: Okay. Do we all now have the title allocation formula health benefits for the unemployed paper?

[Pause.]

Ms. Burke: The formula that is contained on this sheet that you were just handed, if I might simply explain its concept, again, it basically takes into consideration the per capita income in the state, the number of individuals who are unemployed for 26 weeks or longer, and the insured unemployment rate in the state. It assumes that the matching rates for states would range from 75 percent to 95 percent, so in comparison to what was the Dole proposed amendment, this provides for a maximum matching rate which is lower from the state's perspective. The Dole amendment would have suggested a minimum matching rate of 5 percent, maximum 50 percent. This would provide for a maximum matching rate of 25 percent and a minimum of 5 percent. So in all cases under both of these proposals the states at the most would have to provide a certain amount of cost sharing. There would be no state who would receive 100 percent federal money. In all cases states would have to contribute some portion of funds.

The allocation formula also under this proposed amendment takes into consideration the per capita income along with both of those measures of unemployment, both long-term unemployed and the insured unemployed. This proposal, as I understand it, would also provide that only those states with

insured unemployment rates of 2 percent or greater would be eligible to participate.

As under the suggested amendment, the allocation would be made annually. The matching formulas would be set every six months so that a state would begin a six-month period of time knowing what its matching requirements would be. That would then be changed at the end of six months to reflect any changes in the insured unemployment rate or the number of individuals who are long-term unemployeds.

Senator Bentsen: Mr. Chairman, may I ask a question, please?

The Chairman: Of course, at any time.

Senator Bentsen: Sheila, would you tell me, please, what the objective was in changing to this last formula from what we had previously presented?

Ms. Burke: Yes, sir. The suggestion was that the formula did not take into consideration the ability of a state to finance the program, that in simply reflecting the insured unemployment rate, it did not reflect the state's fiscal capacity. This is a surrogate for fiscal capacity. By looking at the per capita income, as we do, for example, with Medicaid, that it was a better test of the states' ability to help finance a program.

Some of the disparities that we found --

The Chairman: Where did the suggestion originate?

Ms. Burke: Senator Durenberger asked that we propose this for the Committee's consideration, based on his experience with the Intergovernmental Affairs Committee and some of their concerns with respect to states' ability to finance programs. One of the disparities, for example, that we found was that California was required under the original proposal and under the suggested amendment to match $4.4 billion in order to receive $84 million. The state of Georgia, for example, was required to match $11 million to receive $11 million, and there was some concern that that did not truly reflect California's ability to finance nor Georgia's ability, that the requirements were unfair. It was hoped that the per capita income would help reflect some of those differences.

Senator Durenberger: Mr. Chairman?

The Chairman: Senator Durenberger.

Senator Durenberger: Sheila, one of the unfair things we were trying to avoid was this. If you look at the old proposals on the large sheet, you see 15 point notches, as we call them, between states that might be bordering each other. In other words, a big jump from 65 to 80, and then a big jump from 80 to 95. And if you look at the newer formula, we have tried to eliminate that kind of big jump notching as between states, and if you look under federal share, for example, in that first column on the final

formula, you will see that everything is fractionalized, and we just tried to get all of the states much closer to each other rather than leaving those large gaps.

Senator Bradley: May I ask Senator Durenberger a question?

The Chairman: Yes.

Senator Bradley: The purpose of this program was to get health benefits to the unemployeds in states where there is high unemployment basically. The numbers that I read say Michigan, which is clearly the state with the highest unemployment, it gets $59 million under the approach here, and $56 million under the former approach. Is that correct?

Ms. Burke: No, Senator. Under the original S. 951, Michigan would have been allocated $54.5 million, and under this proposal it would be $56 million.

Senator Bradley: Well, then, how does it affect states like Michigan that have a high Medicaid match? If you have a high Medicaid match, you are paying more in your state share. So you would end up paying more under this?

Ms. Burke: The per capita income would certainly influence the matching requirements, so if you had a high per capita income in your state, your matching requirements would reflect that, but also offsetting that on Michigan's behalf would be the number of individuals who are unemployed over 26 weeks, and also their continued high rate of insured

unemployment. Michigan under the original proposal would have been a 95 percent state, would have beenr required to provide approximately 5 percent. Under this proposal, they would receive 94.2 percent, so they lose about .8 percent in terms of match. So, to a certain extent the per capita income is offset by their high rates of unemployment.

The Chairman: I assume some states do better under this and some do not do as well as in the other case.

Ms. Burke: That is correct, Senator. The matching rates for any state who under the original proposal or under the modification of the suggestion was below 75 percent in terms of the matching rate would receive better treatment in the sense of receiving a higher matching rate, because the maximum how now been moved from 50 percent to 75 percent.

Senator Bradley: Mr. Chairman, I must say, I do not know if I understand exactly how this works, other than these two tables, where I start to compare. Can we make another attempt to explain it, or give us a little time to look at it?

The Chairman: Okay. We are not going to be able to complete this today in any event, so this is the one area that we think probably deserves extended debate.

Do you have anything else you want to add, Senator Durenberger?

Senator Durenberger: [Nods negatively.]

The Chairman: There is precedent for this formula, right?

Senator Durenberger: Oh, yes, this is as close as we could get.

Senator Baucus: Mr. Chairman.

The Chairman: Senator Baucus.

Senator Baucus: Mr. Chairman, I see two words, "personal income," twice in this fraction. Is the intent here to increase or lower payments to be paid based on personal income in various states?

The Chairman: Do you mean in the little example [indicating]?

Senator Baucus: In this handout here [indicating].

Senator Durenberger: To the degree that personal income in a state is a criteria of the ability of the state to raise funds, then the higher the personal income, the more capacity the state has to match, and so it would affect their federal match.

Senator Baucus: Well, my question is, if one state has higher personal income versus another state, would that state do better or worse under your formula?

Senator Durenberger: Well, it depends on their IUR, et cetera.

Senator Baucus: I am assuming everything else is constant.

Senator Durenberger: Oh, well, I suppose, then.

Senator Baucus: So is it the higher personal income, the higher or lower one? I mean, let us say Minnesota has a higher personal income than some other states. Would Minnesota do better or worse, Senator, under your formula as compared to before?

Senator Durenberger: Well, I guess they would probably do worse. Is that right, Sheila?

Ms. Burke: To the extent that you would incorporate per capita income, the states with the higher per capita income would in a sense do worse, although in terms -- well, it takes into consideration all three of the factors also, the rates of unemployment and the long-term unemployed, so when you look comparatively at the two proposals in terms of both the allocation and the matching requirements, again, the states vary all over the place.

Senator Danforth: I am sorry to be dense on this, but normally when we have allocation formulas in the Senate, we look immediately at our state and how our state is doing, and we pick the one in which our state is doing the best. Just as a matter of policy, why should we do anything else here, in looking at these two variants?

[General laughter.]

Senator Danforth: Is there some great matter of public policy or equity that we are achieving here, or is it simply,

how is Missouri doing?

Ms. Burke: Well, Missouri does better.

[General laughter.]

Senator Danforth: I do not think so. I think it does worse. I mean, just for a lay person, what are you trying to achieve with this chart?

Ms. Burke: The desire is to reflect in the formula some measure of the states' ability to finance a program. There is a concern that simply using an insured unemployment rate or long-term unemployment to both distribute the funds and also to determine how the state is required to spend its dollars, for example, under the original proposal, Missouri --

Senator Danforth: You mean if the state has a lot of poor people in it, it would have a lesser ability to raise funds to kick into it from its own standpoint?

Ms. Burke: That is correct.

Senator Danforth: If it has a lot of poor people in it, you want it to do better, and that is the reason for the new formula?

Ms. Burke: That is correct, Senator. Yes, sir. It reflects in a sense what we have done traditionally under the Medicaid program, which is to look at per capita income as a measure of a state's fiscal capacity. That is correct.

Senator Danforth: And this then is the tried and true

formula for accomplishing that?

Ms. Burke: Well, no, but it is an option which is not tried and true in the sense of having any prior experience other than the use of per capita income as a surrogate. Certainly we do not have any experience that I am aware of with respect to using a combination of the IUR and long-term unemployment and per capita income, but the use of the per capita income certainly has precedent.

Senator Bentsen: If I may pursue the questioning for just a moment here, as I understand the totals that we finally arrive at, which are not shown here, we are talking about the same amount of federal money being spent here.

Ms. Burke: Yes, sir.

Senator Bentsen: What about the state matching part? Does that remain constant also? Now, I note the variants and the escalation among states, but does the total finally come out the same way, or not, on the state matching part?

Ms. Burke: The total that is to be matched is $1.8 billion. The total with respect to state responsibility under the two proposals, I do not know in the aggregate if those are the same amounts, Senator, but we can certainly check that.

Senator Bentsen: So in the aggregate, you do not know whether we are talking about an equivalent effort on the states' part?

Ms. Burke: That is correct, Senator. I can certainly run a total. I do not know that. I did not, unfortunately, receive the numbers in time to do that. I would assume it is comparable, but I cannot tell you that as a fact.

Senator Bentsen: Well, not unless you have done some actuarial computations there. It would not just by happenstance come out the same, because you have made some very major changes in the states' matching portion.

The Chairman: Does anybody have the information?

Ms. Burke: I do not know, Senator. I have not had an opportunity to do that.

Senator Bentsen: Well, what I am trying to do, really, is get down to the total. That fellow who is out of work.

Ms. Burke: The total with respect to federal allocation is the same. I cannot tell you with respect to the state allocation, in terms of the state participation, whether that total is the same, but we can certainly determine that very quickly. That will give us the number in terms of total allocation.

Senator Bradley: Mr. Chairman?

The Chairman: I think we should have the information. It should be readily obtainable. Senator Bradley?

Senator Bradley: Sheila, did I understand that you said the per capita income was an indication of fiscal capacity of the state?

Ms. Burke: What I indicated, Senator, is that there is some precedent in the use of per capita income in formulas with respect to the allocation of federal funds. For example, the Medicaid program, which looks at per capita income in terms of determining matching rates.

Senator Bradley: It is, though, per capita income in conjunction with a variety of other factors, and that varies from formula to formula.

Ms. Burke: Yes, sir.

Senator Bradley: I would just like to make a point, that maybe if what we are after is fiscal capacity in the states, you want the states that have the ability to raise the money to raise it, and then the federal government to put in a somewhat lesser amount, that if your measure for that is per capita income, that does not always parallel, because you find a lot of states with low per capita income who have not made any effort to raise taxes at a state level.

I think there have been any number of recent studies on that by the GAO, that make this point very well about per capita income. So I think all of that argues for having some time to look at it, and massage the numbers.

Senator Durenberger: If I might react quickly, obviously, we were searching for capacity. I happen to believe the ultimate in capacity is the representative tax formula, and we addressed that very briefly under general

revenue sharing. I think the Senator from Texas raised good questions, and I think we are a way away from the ideal in capacity, so then we backed off and searched, and there are 194 different formulas that we actually use here.

Senator Bradley: Almost as many as federal pensions.

Senator Durenberger: That is right. We tried to use here with per capita income something, given the fact that this is a vested two-year program, given the fact that we are just trying to provide the incentives for the states to move on this program. We tried to find that one capacity tax that came the closest to being the fairest without representing to anybody that we had found the ideal and without penalizing anybody. I think one of our other options, of course, to do fairness to this, and we do understand the Texas situation where statewide you might have a low figure but in parts of that state you have some very, very high figures, if we were to use the old formula, we would have taken away from the Michigans and some of those other states in order to provide some equity here.

For those various reasons, then, we finally came around to a formula that is the least imperfect as a current measure of capacity that we could come up with, and again, this is not a permanent program. We all know this is not going to last forever, and we will be able to do this better in another year and a half. Given that, we felt this was, and

all things considered in avoiding the John Danforth problem, that this would be the fairest way to go about it.

The Chairman: Well, I think in accordance with your suggestion, Senator Bradley, because I do not think we can complete this entire proposal, let us spend tonight trying to review this, and give everybody and staff a chance to look at it. That is the only amendment of those recommended that has not yet been accepted. There are other amendments that I think Members may have. This would take care of your amendment, though, would it not?

Senator Bradley: Well, it would affect my amendment.

The Chairman: It would affect it. Okay. Senator Moynihan also has one in the same area that would also be affected by this.

We now have a vote in progress. I am wondering how many can come back and maybe dispose of the Grassley amendment.

[A show of hands.]

Senator Chafee: Maybe we can take it up just right now. Do you know what it is?

[General laughter.]

The Chairman: It is an abortion amendment. He wanted to be here to present it. So why do we not vote and come back at a quarter to 4:00 and try to wrap up all but this one area of funding and how we are going to pay for it?

Senator Bradley: It is an abortion amendment?

The Chairman: Yes. Plus we may want to make some technical corrections to the prospective payment bill and add them to this legislation.

Senator Bentsen: Mr. Chairman, I would like for the Committee also to be thinking about the problem and the plight of the public hospitals now. They are really getting an inordinate amount of burden placed on them with the high unemployment, and it has become extremely difficult for them. It is difficult to find a solution to that, but I would hope some thought could be given to it.

The Chairman: It is a very important vote, and I would instruct the sergeant at arms to round up the absent members.

[Whereupon, a brief recess was taken.]

The Chairman: All right. Let us see. We have four present now. We have had seven. We have had as many as ten.

Mr. DeArment: We will need one more, but you could have a casual discussion. We do need one more Member.

Senator Grassley: Mr. Chairman, I am prepared to offer my amendment, but I assume I cannot until there is one more person present, and the only reason I raise the issue is because I have recessed my hearing for the Subcommittee on Aging.

The Chairman: Well, why do you not discuss it, and I think by the time you finish your discussion there will be a fifth Member here. Senator Bentsen is coming back.

Senator Grassley: Very well. As I indicated to the Committee before, I am going to offer language identical to the Hyde language that has already been added to appropriation bills in the last two years.

None of the funds provided under this section shall be used to perform abortions except where the life of a mother would be in danger if the fetus were carried to full term.

Now we have before us a bill for the expenditures of some public funds and, as everybody knows, over the last seven, eight or nine years various forms of amendments have been offered under the philosophy that we can put some restriction on the use of public funds.

And so my amendment follows that same philosophy in this bill, where public funds will be expended. I do not want to go into the arguments that you hear time after time about the rights of the unborn. You know, we all have individual feelings on these. I would just simply ask that this amendment be considered.

I would ask for a vote on this amendment and I would remind the Committee that legislation with similar ends for health insurance for unemployed people was reported out of another Committee of which I am a member, the Labor and Human Resources Committee, and the language that I am proposing is a part of that bill.

There was an effort to strike it in that Committee and it was defeated. So the other legislation before the Senate then has language identical to what I am adopting or, I should say, urging you to adopt.

The only other thing, Mr. Chairman, that I could go into, and I suppose maybe for the benefit of this Committee because this issue is not debated in this Committee very often, would be to go into the pros and cons of the value of the amendment and the protection that we want to give to unborn babies, and I don't think we want to repeat those.

Senator Packwood: Let me ask you one question. You have no rape, incest or other provisions. This is solely the life of the woman, right?

Senator Grassley: Yes, and that is identical to the last Hyde language that was adopted by the Senate.

Senator Packwood: Well, Mr. Chairman, of course I am going to oppose it, but I am with Chuck. I am not sure that there is any necessity for extraordinary deliberation on this subject. It is one that we have debated frequently on the floor, and I am afraid we are going to debate more from time to time.

Chuck and I feel quite differently and sincerely about it, but I would be prepared to vote on it.

The Chairman: Is there any further discussion?

Senator Grassley: Mr. Chairman, I have proxies for Senators Armstrong, Durenberger and Symms that I would like to vote when you call the roll.

Senator Packwood: And I have the proxy of Senator Bradley.

The Chairman: Do we have enough for business on the amendment?

Mr. DeArment: We have enough to conduct business.

The Chairman: Do you want a roll call on the amendment?

Senator Grassley: Yes, I would like to have a roll call. I would ask for a roll call.

Mr. DeArment: Mr. Packwood?

Senator Packwood: No.

Mr. DeArment: Mr. Roth?

[No response.]

Mr. DeArment: Mr. Danforth?

Senator Danforth: Aye.

Mr. DeArment: Mr. Chafee?

Senator Chafee: No.

Mr. DeArment: Mr. Heinz?

[No response.]

Mr. DeArment: Mr. Wallop?

[No response.]

Mr. DeArment: Mr. Durenberger?

Senator Grassley: Aye by proxy.

Mr. DeArment: Mr. Armstrong?

Senator Grassley: Aye by proxy.

Mr. DeArment: Mr. Symms?

Senator Grassley: Aye by proxy.

Mr. DeArment: Mr. Grassley?

Senator Grassley: Aye.

Mr. DeArment: Mr. Long?

[No response.]

Mr. DeArment: Mr. Bentsen?

[No response.]

Mr. DeArment: Mr. Matsunaga?

[No response.]

Mr. DeArment: Mr. Moynihan?

Senator Moynihan: No.

Mr. DeArment: Mr. Baucus?

[No response.]

Mr. DeArment: Mr. Boren?

[No response.]

Mr. DeArment: Mr. Bradley?

Senator Packwood: No by proxy.

Mr. DeArment: Mr. Mitchell?

[No response.]

Mr. DeArment: Mr. Pryor?

[No response.]

Mr. DeArment: Mr. Chairman?

The Chairman: Aye.

The absentees will be permitted to record their votes. We will not be reporting out this bill today.

Senator Grassley: Mr. Chairman, I am going to go back to my other Committee meeting. I thank the Committee for their indulgence and particularly for letting me know exactly when I could offer the amendment so I could conduct the business of the other Committee as well.

The Chairman: Thank you. The vote is the following: The yeas are six; the nays are seven.

Senator Packwood: May I ask you who did not vote?

The Chairman: If you want to see who did not vote, here is the list (indicating).

[Pause]

The Chairman: Did we actually have proxies for Roth, Matsunaga and Baucus?

Mr. DeArment: Yes, staff had those proxies and recorded those votes.

The Chairman: Has staff voted?

Mr. DeArment: No. We simply reported the proxies.

[Laughter]

Senator Heinz: This, then, is up or down on the Grassley amendment? I vote no.

Senator Packwood: Does that make is seven-seven?

The Chairman: No. Six to eight.

Senator Packwood: Okay. Wallop, Long, Bentsen, Mitchell and Pryor to go. Are we not missing one?

[Pause]

Senator Mitchell: I will vote aye.

Mr. DeArment: That makes it seven to eight.

Senator Packwood: Okay. Who are we missing, then?

Mr. DeArment: We are missing Mr. Wallop, Long, Bentsen, Mr. Boren and Mr. Pryor.

Senator Packwood: Thank you.

Senator Grassley: Mr. Chairman, I would ask for a clarification for the record, then. Is this still open to vote and, if so, that would run until what point?

Mr. DeArment: If we follow the normal practice, which I would urge the Committee to follow, it would remain open

until the measure is reported out.

Senator Moynihan: Mr. Chairman, this is not with respect to this particular measure, but we raised this just about two weeks ago and it is still not clear to me whether we have a practice that you can continue to vote but you cannot change the outcome, or you can change the outcome. Do we have a rule?

Mr. DeArment: We have followed a rule that we deviated in the revenue-sharing context, and I think we regretted that -- at least I did -- because I heard from many angry Members who wanted to vote. After they had cast a vote to report out the measure, they thought the vote was one way, and then the vote occurred to change it.

Senator Moynihan: Well, as I understand it, our practice has been that you can vote subsequently, but the outcome cannot be changed.

Mr. DeArment: That is correct, once a measure has been ordered reported.

Senator Packwood: Once it has been ordered reported?

Mr. DeArment: That is correct.

Senator Packwood: But if we do not report this for a day or a week, then it can be changed?

Mr. DeArment: That is correct. It could seesaw back and forth.

Senator Moynihan: Mr. Chairman, do I take it it is your

intention to maintain the tradition from which we deviated?

The Chairman: Right, and that deviation was a result of a unanimous consent request that it be permitted, though I am not certain why that request was made. It was not objected to. It was not made by the Chairman. So they will be able to record their votes.

Mr. DeArment: We will poll the Committee, the absent Senators.

Senator Chafee: I presume, Mr. Chairman, that this would apply to any vote, even votes when everybody was here.

Mr. DeArment: That is correct. The Members do sometimes have second thoughts and change their minds.

Senator Packwood: They have a chance to change?

Mr. DeArment: Sure.

The Chairman: They can change their mind on the way out if some lobbyist bumps into them or something.

[Laughter]

Senator Grassley: Is this by unanimous consent?

Mr. DeArment: Until we have ordered the measure reported, absent Members can record their votes and Members that were present can change their votes.

Senator Grassley: If you see the light later on?

Mr. DeArment: That is correct. But once we have ordered the thing reported we do not permit switching if it changes the outcome.

The Chairman: As I understand it, the only other amendment that I know of, well, there are two. Senator Moynihan has one but it is related to funding, and I was hoping maybe Senator Bentsen and Senator Bradley might come back so we could discuss that in more detail because I think some of the fears they have Sheila pointed out.

For example, even though Texas might receive less, they also match less. Is that correct? The same with New York, although that may or may not be a factor.

Ms. Burke: That is correct, Senator, and we have computed the state matching requirements under the original proposal -- the Dole amendment, excuse me -- and under the alternative suggested by Senator Durenberger. The state matching requirements under the amendment to S. 951 contained in the Dole descriptions was $179 million.

The requirement with respect to state matching under the Durenberger alternative was $81.6 million.

The Chairman: So the states would be required to provide less matching under the Durenberger proposal?

Ms. Burke: That is correct in the aggregate.

Senator Moynihan: Mr. Chairman, may I ask this question? Is this a Committee proposal (indicating) -- this thing that was just passed out a moment ago?

The Chairman: This is the one suggested by Senator Durenberger as a substitute for the one that I proposed to

offer on behalf of the Committee. I think because Senator Bentsen is not here and Senator Durenberger is not here we probaby had better pass that one up until tomorrow.

But there is one other amendment we might be able to deal with and that is from Senator Danforth. Senator, do you have an amendment?

Senator Danforth: Mr. Chairman, I do. This amendment raises the question of whether or not these programs should be means-tested. The amendment would provide that the benefits under the program would only apply if an individual or a family's median income was not more than 150 percent of the state's median income.

Mr. Chairman, any way you cut it, what we are doing in this program is creating a new entitlement program. While it is true that the program is to terminate in two years, I would say that the chance of it terminating in two years is zero. We are establishing a permanent program here and we are establishing a permanent program, an entitlement program at a time when the government is broke.

I know that there has been some discussion of paying for the program. I do not know. I have been, unfortunately, out of the room a good part of the afternoon and do not know whether that has been addressed as yet. But it seems to me that if we are going to have a new entitlement program we should at least assure ourselves that it is to benefit people

who are not too far above the median income and that is exactly what this does.

The Chairman: Do we have any estimates on what impact this would have on the cost of the program? What it would tend to do, I would assume, is to spread the benefits, to still spend the same amount of money, but you eliminate some above that level which would make the program available to others who might be eliminated because of lack of funds.

Ms. Burke: That is correct. My understanding of the amendment is the intention is to work it in the context of $1.8 billion and to simply require that only those eligible, only those who have an income below 150 percent of the median income would be eligible to participate.

The Chairman: What is that figure?

Senator Danforth: For an individual, the median income in 1981 -- this is national. The amendment would apply on a state-by-state basis, but nationally in 1981 the median income was $8,032, so 150 percent of that would be $12,798. The median income for all families was $22,388, so 150 percent of that would be $33,582.

We estimate that approximately 21 to 25 percent of the families in the country would fall within that range, within that upper range -- 21 to 25 percent.

Now how many of those people would have somebody who was unemployed in the family I do not know. It would clearly be

much less than that. But I think the point, Mr. Chairman, is this: If we are going to create a new entitlement program and if we are going to spend, for starters, $1.9 billion a year when we do not have the money, let us at least make sure that the program is targeted to those people who are really in need of it.

Senator Heinz: Mr. Chairman?

The Chairman: Senator Heinz.

Senator Heinz: Mr. Chairman, as Senator Danforth describes his means-testing, it appears on the surface at least to be fairly reasonable. I do not agree with a lot of his assumptions. I do not agree that this is an entitlement program. It does not entitle any single individual any place in the United States to anything.

It is a block grant program, as amended, to the states. It is not unlike entitlement programs. It provides for a match. Entitlement programs typically require no match at all. Indeed, this is an amendment to Title XX, as I understand it, and, of course, Title XX is not a means-tested program. It goes in part to help keep people off of the categorically means-tested programs.

And that is why it finances day care and senior citizens services, to keep people off of welfare. Indeed, it is my hope that enactment of this legislation will keep people from opting for welfare and the Medicaid elibility that would

otherwise come with it.

Notwithstanding those objections to Senator Danforth's assumptions, because of his definition of 150 percent of state median income, which is pretty hard to argue against, my main concern would be an administrative concern.

I would like to pose to you, Jack, a couple of questions. Perhaps you can answer them. We have in Johnstown, Pennsylvania, a clinic, Operation Touch. A doctor from Operation Touch was here before the Committee on this. Would all the people who go to Operation Touch for health care services have to be means-tested by the clinic in order for the clinic to be eligible for any assistance from the state from this program?

Senator Danforth: Well, let me ask Sheila the question. Does this apply to clinics as a whole, or does this apply to individuals who are covered by unemployment? I mean, there is an identity to the individuals who are beneficiaries, is there not?

Ms. Burke: Yes, sir, that is correct. The eligibility is on the basis of an individual and the receipt of unemployment compensation, so the eligibility is of the individual for benefits that could be provided through a clinic, but the clinic itself is not eligible.

Senator Heinz: So it will not be possible for a state to make decisions as to how the money is going to be allocated?

Ms. Burke: Oh, no, Senator. It is indeed up to the state to allocate in terms of the agreements with providers to provide services. But the eligibility is linked to receipt of cash or exhaustion of that cash benefit. But the state, for example, could contract with a clinic or with an HMO to provide services to eligible individuals.

Senator Heinz: But only to eligible individuals -- those people --

Ms. Burke: That would be paid for under this program. That is correct.

Senator Heinz: Now that puts an additional burden that does not now exist under Title XX on providers. Is that not right?

Ms. Burke: That is correct, Senator, in the sense that there are specific requirements in terms of eligibility. Title XX also, to a large extent, does not provide health benefits, so it does not have a long history in the provision of health services. In fact, they are prohibited to a large extent under Title XX.

Senator Heinz: This will change that.

Ms. Burke: That is correct, Senator, for this one aspect of the program, not for any of the other funds provided under Title XX, only for these funds.

Senator Heinz: Since we do not require eligibility, specific eligibility for all other Title XX services, and

since we often give a lot of lip service to the notion of states doing what is in the best interests of their citizenry, which I would assume includes targeting assistance to those who are most in need, and indeed Title XX is premised on that principle, why, then, do we need to specify such eligibility in this legislation?

Perhaps my question goes not so much to Senator Danforth's means-testing as it does to the question of establishing categorical eligibility. And if the question of categorical eligibility is dealt with, then Senator Danforth's amendment would fall.

Senator Danforth: Well, I would answer that in this way. What we are doing here is adding a specific amount of money for a specific period of time. We are told two years for a specific purpose. The purpose is not generally to provide social services. It is not generally to provide for the whole range of things covered under Title XX. But it is specifically to provide for health insurance for a category of people.

And that health insurance for that category of people is not now part of Title XX, so when we add to Title XX, when we create a new program, then the question is for whom is it created. Is it created for everybody? Is it created, say, for example, for a United States Senator who loses his job because he loses an election and has substantial outside

means?

Senator Heinz: Who did you have in mind?

[Laughter]

Senator Danforth: I hope neither of us.

Or is it created in a way that is more carefully targeted to those who are in need? That would be my understanding of it.

I think that it is an entitlement program and the exact people who would be beneficiaries under one state or another would differ somewhat, but within each state you would have a category of people whom, as I understand it, would have an absolute right to participate in it.

I think, therefore, the question is are we going to put any kind of parameters on who those people are, and I would hope that the answer to that is yes.

Senator Heinz: Let me address a follow-up question to Sheila. In terms of the administrative burden, what is known about the administrative burden of Senator Danforth's amendment on providers?

Ms. Burke: Senator, I would assume, although not having had an opportunity to talk with Senator Danforth in any detail about his proposal, I would assume that the eligibility determination would be made not at the point of the provider but, rather, at the point of eligibility determination. So it would not be a question of the clinic

making a determination of the individual's income, but, rather, the state agency which qualifies an individual for participation.

So to that extent it would add to their responsibilities a determination of an individual's income. They would know what their unemployment compensation was, but they would not necessarily have any other access to other income data. The unemployment compensation agency would be able to tell you what their weekly check is, what their average monthly check is.

They would be able to tell you whether the state, for example, has an unemployment benefit which exceeds 150 percent of the median income on an annualized basis. But they could not tell you anything else about an individual's income. It is unlikely that it would be done at the point of provider, as I understand it, but, rather, at eligibility.

Senator Heinz: Mr. Chairman, I am not going to quarrel with Senator Danforth's definition of need. Certainly I think we could even accuse him of being overly generous in his definition of need. I just want to be sure we are not putting on any additional administrative burdens.

I continue to reject the notion that this is an entitlement program, even though I think honest people may differ in that assessment.

Senator Chafee: Mr. Chairman?

The Chairman: Senator Chafee.

Senator Chafee: I would like to be recorded as supporting Senator Danforth's proposal. What we are doing here is in a country that is running a $200 billion deficit we have a brand new program which we congratulate ourselves on because we are going to have a way of funding it. Hopefully that will be so.

But the $1.8 billion that we are going to be using to fund this program could be very well used to reduce the $200 billion deficit to $198.2 billion. At least we would be inching our way toward sanity. So I think this is a good proposal.

Frankly, Mr. Chairman, I hope this is but the start of a move in this Committee to have means-testing for a whole series of programs that up to date have not had means-testing. I realize that there are administrative problems. For instance, the cutoff, 150 percent. Somebody who is at 151 percent does not pay. The person who is at 149 percent does. And we know from experience that those are always difficult.

But we have had other programs where we have been told that there are administrative problems, so do not bother with it. I remember when we voted for the student loans and we were told at the time -- I think it was about 1977 when we started a new student loan program -- do not have an

eligibility because that just adds a host of administrative problems.

And we did not, and we had all kinds of difficulties in the cost of that program. Then, as you recall, in the Reconciliation Act we did go on the student loan program to a means test, and it was a very fair means test. So I think not only is this a very generous means test that Senator Danforth has, but at least it starts us in the direction that I hope this Committee will seek out more efforts to do the same in the future in other programs.

The Chairman: Well, I have just suggested to Senator Danforth -- and I do not know of any other amendments -- that perhaps we might reserve final action on this amendment until tomorrow until we get back to the funding area. In the meantime, I would ask the staff on both sides to take a look at it or some modification of it to see whether there is some way that we might accomplish what Senator Danforth has in mind.

Obviously there are going to be a lot of unemployed people who are not going to benefit from the program in any event, and I assume many of those are going to have much less than $32,000 in income because we are not going to have the money.

If there is some appropriate way to limit it, we ought to be certain we are not overlooking it. We are means-testing

now the social security program. We are taxing benefits, which is certainly means testing, and I am not unwilling to look at means-testing Medicare benefits as a way of trying to save that program from disaster in a few years.

Would that be all right with you, Senator Danforth?

Senator Danforth: Yes, and I would just add, Mr. Chairman, that I have absolutely no sense of inflexibility with respect to this particular type of means-testing -- 150 percent of median income. There could be an asset test. I am sure there are other ways of working it out.

Really all I wanted to put forward was a principle and a way of achieving that principle. If the staff has a better way or cleaner way of doing it, that would be fine with me.

The Chairman: I think in any event we should take a look at it. We may not be able to come to any resolution. There may be strong opposition to anything even hinting of means testing, but the point is we are not going to have enough money. There is no way we can appropriate enough money or spend enough money or find the resources to pay for the program.

The more we add to the spending, the more difficult it is going to be to finance the effort. So I think we may as well come back to this and the Moynihan-Bradley type of amendment and the question Senator Bentsen had in that one area. As far as I know, there are no other amendments, though there

may be more tomorrow afternoon.

The schedule calls for returning to this at 2:00 tomorrow. Is that correct?

Ms. Burke: Yes, sir. We are scheduled at 10:45 for a Tax Court nomination and then we are rescheduled to begin markup about 2:00.

The Chairman: Senator Long will be back about when -- 2:30?

Mr. Stern: Yes, sir, 2:30.

Senator Baucus: Mr. Chairman?

The Chairman: Senator Baucus.

Senator Baucus: Mr. Chairman, I would like to ask the status of the Grassley amendment.

The Chairman: What is the vote on the Grassley amendment?

Mr. DeArment: The Grassley amendment vote right now is seven yeas, eight nays.

Senator Baucus: Mr. Chairman, I think it is wholly appropriate that this Committee, as is the case at least in one other Committee that I am on, namely the Judiciary Committee, that we have a policy that proxies may not be voted if they have the effect of changing the announced result in open Committee.

Now it makes no difference to me whether it is on this amendment or any other amendment. I think the policy should

be the same for all amendments. That is, once a result is announced by the Clerk, subsequent proxies may be voted, but they cannot be voted if they have the effect of changing the result of the announced vote.

I think it is unseemly for changes to occur after a vote is announced and after a Committee has recessed or adjourned, because all of the votes are held in open session and I think once the result is announced, regardless of the issue, that should be the result.

Senator Packwood: Do you mean proxies or the Senator himself cannot vote?

Senator Baucus: All I am saying is once the vote has been announced I do not think, whether by proxy or by the Senator himself, the results should be changed. I have another reason for suggesting that, and that is because sometimes a subsequent vote by Members of this panel is conditioned by earlier votes, by the outcome of earlier votes, and if earlier votes are changed, then it makes it very difficult for Senators to sometimes know how they are going to vote subsequently on related issues, and I feel very strongly about this.

This is the Committee rule in the Judiciary Committee and I think it should be the same within this Committee as well.

The Chairman: Well, I will ask the staff about this. I think we need to focus on this. It was raised because of the

vote on revenue-sharing.

Senator Baucus: That is correct.

The Chairman: Well, notwithstanding that, I think we need to take a look at that. Let us do that on both sides and see if we cannot reach some unanimous agreement where we are going to lay it out and that is it. It may displease some who want to record their votes, but there is a certain amount -- well, let me rephrase that, a lot of uncertainty if you vote on an amendment and find out, as I think Senator Danforth did earlier this year, that he left winning and came back the next day losing.

Senator Danforth: It was not even the next day.

The Chairman: Yes, we did have to make a lot of phone calls.

[Laughter]

Senator Baucus: You see, Mr. Chairman, Senators can still vote if they are not here. They can have proxies in. It would be incumbent upon Senators to have their proxies in to be counted.

The Chairman: Well, why do we not go over this tomorrow? We can have a session, perhaps, where we can work that out.

Okay, we will meet tomorrow at 2:00. Thank you all.

[Whereupon, at 4:25 o'clock p.m., the Committee adjourned, to reconvene upon the call of the Chair.]