

Nelson (FL) amendment No. 938, to provide for a study and report on the propagation of concierge care.

Nelson (FL) amendment No. 936, to provide for an extension of the demonstration for ESRD managed care.

Baucus (for Harkin) amendment No. 967, to provide improved payment for certain mammography services.

Baucus (for Harkin) amendment No. 968, to restore reimbursement for total body orthotic management for nonambulatory, severely disabled nursing home residents.

Baucus (for Dodd) amendment No. 969, to permit continuous open enrollment and disenrollment in Medicare Prescription Drug plans and Medicare Advantage plans until 2008.

Baucus (for Dodd) amendment No. 970, to provide 50 percent cost-sharing for a beneficiary whose income is at least 160 percent but not more than 250 percent of the poverty line after the beneficiary has reached the initial coverage gap and before the beneficiary has reached the annual out-of-pocket limit.

Baucus (for Cantwell) amendment No. 942, to prohibit an eligible entity offering a Medicare Prescription Drug plan, a Medicare Advantage Organization offering a Medicare Advantage plan, and other health plans from contracting with a pharmacy benefit manager (PBM) unless the PBM satisfies certain requirements.

The PRESIDING OFFICER. The distinguished Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I see the Senator from West Virginia is in the Chamber.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendments be temporarily laid aside so the Senator from West Virginia can offer his amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The distinguished Senator from West Virginia is recognized.

AMENDMENTS NOS. 975 AND 976

Mr. ROCKEFELLER. Mr. President, before offering my amendments, I am going to discuss both of them because they are being reviewed, at this point, in the majority cloakroom. But I am going to be offering two amendments this afternoon in order.

The first amendment I will offer is to ensure that all Medicare beneficiaries will be eligible for this new drug benefit, including low-income Medicare beneficiaries who are currently eligible for Medicaid and Medicare. They are known as dual eligibles.

The underlying bill precludes Medicare beneficiaries—makes it impossible for Medicare beneficiaries—who are eligible to receive a drug benefit through Medicaid from, in fact, enrolling in the Medicare drug benefit program.

This group is referred to as the dual-eligible group. They are the poorest seniors under Medicare. They are below 74 percent of poverty. That is their income level. A disproportionate share of them—to wit, 42 percent—are minorities. Women make up the majority of them all. Many are likely to have a poor education, live alone, and have more than two chronic illnesses.

The underlying bill precludes these folks that I have just talked about—these dual-eligible beneficiaries—from receiving the Medicare drug benefit. As a result, this prescription drug benefit is not, in fact, at all a universal bill. Now, that is important in a lot of ways. One is philosophical and the other is extremely practical.

The philosophical one is that in 1965, when we created Medicare, it was created as a universal benefit to all who qualify. It was the promise that society made to our seniors: That if you work, if you make your payroll contributions, then you, at the proper time, qualify for Medicare regardless of where you live, regardless of how old you might be, or your income.

As I have noted before, the underlying legislation, for the first time in the history of the Medicare Program, would prohibit some Medicare beneficiaries from receiving a Medicare benefit.

My amendment would make the Medicare prescription drug benefit a universal benefit by adopting the provisions that were, in fact, contained in the tripartisan proposal introduced last summer.

It would eliminate the exclusion of Medicaid beneficiaries and make the new Medicare Part D drug benefit—that is the new part we are creating—available to all Medicare beneficiaries regardless of income. Medicaid would be the secondary payer for Medicare beneficiaries eligible for Medicaid wrapping around this new Part D drug benefit and its low-income protections.

Again, this is exactly the same construction the majority of my Republican colleagues supported in the Grassley-Snowe-Hatch-Jeffords-Breaux Medicare bill that was voted on by the full Senate last summer. The National Governors Association sent a letter to Chairman GRASSLEY and Senator BAUCUS which said the following about the exclusion of some of these seniors, that is, the dual-eligible seniors, those at 74 percent or below the poverty level, from Medicare:

The nation's Governors oppose this approach. It is not good health policy. It is not good precedent. A major reason that States currently have a long-run structural problem in their fiscal outlook is that they have absorbed responsibility for dual eligibles.

They go on to say:

This provision will continue to shift appropriate federal costs to the states.

Governors Patton of Kentucky and Kempthorne of Idaho went on to say:

If the dual eligible populations continue to be a joint responsibility, states will be forced to cut the optional (Medicaid) benefits and

populations—mostly women and children—which are a key investment in the future.

The President agrees. In a speech he recently gave on Medicare, he said:

And all low-income seniors should receive extra help so that all seniors will have the ability to choose a Medicare option that includes a prescription drug benefit.

The Medicare prescription drug legislation being considered by the House of Representatives would shift the entire drug bill to Medicare. It is not on a frequent day that Chairman THOMAS and I are in full agreement. But he does say such a shift "ensures that all seniors across the country will have access to affordable prescription drugs, while alleviating much of the burden that states now confront." I say to my colleagues, as I indicate, I am not always in agreement, but we are going forward directly together on this policy, I hope.

The current system is uncoordinated and sometimes conflicting in terms of coverage policies. It actually creates worse health outcomes for people on both Medicaid and Medicare, either one. Fully integrating a key benefit for prescription drugs into Medicare is a critical first step toward improving the current system's flaws.

It needs to be clearly understood by my colleagues that Medicaid in the hands of Governors, which I had the honor of being at one point, is subject to whatever their whims might be. It is subject to budget pressures. Remember, they have to balance the budget. We don't; they do. And they frequently do it on the backs of Medicaid beneficiaries—that is, that part of these Medicare-Medicaid dual eligibles—so they can increase the number of prescription drugs which are available under Medicaid in their State. They can change it in many ways because the programs vary widely. Not only is it unfair to exclude the poorest seniors from part of the Medicare program, it is a raw deal for some of our neediest seniors.

Prescription drugs are, as I said, an optional benefit under Medicaid. States can and do limit the number of prescriptions. Some States only cover three drugs or they could charge any copayments they want. Remember, what we are looking at here is a group of people who are below 74 percent of poverty which is clearly in single-digit gross income. So the patchwork of the benefits varies tremendously from State to State. For seniors who have worked all their lives, paid into the Medicare system, it is not fair for them to be at the mercy of State coverage decisions.

If you look around the country right now, the fastest growing expense of any State is Medicaid, part of this dual-eligible conundrum, and those programs are being cut. You can see it, read about it, and hear about it. So it is highly volatile, and it is not safe health care policy.

Medicare has failed in its efforts to provide comprehensive prescription drug coverage to seniors ever since the

repeal of the Medicare Catastrophic Act in 1988. Virtually all advances in drug coverage for seniors since then have been delivered not by us but by the States. While at the same time the States have been cutting back in recent years, they have also made improvements. We have done nothing. They have done whatever has been done.

Without some long-term restructuring of the State-Federal partnership for this population, this dual-eligible, 74-percent-of-poverty-minus population, much of the advances the States have made will be lost. All Medicare beneficiaries deserve to receive Medicare benefits. There should be no exceptions for drugs. It would be very bad precedent to make Medicaid pay for items that are clearly the responsibility of Medicare except at the present and in this bill for one particular discrete population.

The intention is for this amendment to be budget neutral. I would like to say it is budget neutral, but I cannot in that I asked CBO for a cost estimate last week and I do not yet have one.

This is a concern and an agony shared by many. Once we have this estimate, we will either conclude that we can go ahead because we will know it is budget neutral or I will be happy to work with the chairman and ranking member on appropriate offsets.

I urge my colleagues to provide all the seniors in their States with the benefit of real Medicaid drug benefit by supporting this amendment.

I will at the appropriate time ask that it be acted upon. I am awaiting a particular series of sheets of paper but in the meantime, in the minute or so that will require, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER], for himself, Ms. MIKULSKI, and Mrs. CLINTON, proposes an amendment numbered 975.

The amendment is as follows:

(Purpose: To make all Medicare beneficiaries eligible for Medicare prescription drug coverage)

On page 10, lines 12 and 13, strike "(other than a dual eligible individual, as defined in section 1860D-19(a)(4)(E))".

On page 21, strike lines 22 through 25, and insert "title XIX through a waiver under 1115 where covered outpatient drugs are the sole medical assistance benefit."

On page 107, line 3, strike "30 percent" and insert "27.5 percent".

On page 116, line 10, insert "and" after the semi-colon.

On page 116, line 12, strike "; and" and insert a period.

On page 116, strike lines 13 through 17.

On page 116, line 24, insert "and" after the semi-colon.

On page 117, line 2, strike "; and" and insert a period.

On page 117, strike lines 3 through 7.

On page 117, line 13, insert "and" after the semicolon.

On page 117, line 17, strike "; and" and insert a period.

On page 117, strike lines 18 through 23.

On page 118, line 6, insert "and" after the semicolon.

On page 118, in line 13, insert "or" after the semi-colon.

On page 118, line 14, strike "; or" and insert a period.

On page 118, strike line 15.

Beginning on page 118, strike line 16 and all that follows through page 119, line 9.

On page 119, line 10, strike "(F)" and insert "(E)".

On page 119, line 15, strike "(G)" and insert "(F)".

On page 119, line 19, strike "(C), (D), or (E)" and insert "(C), or (D)".

On page 120, line 3, strike "(H)" and insert "(G)".

On page 120, lines 5 and 6, strike "who is a dual eligible individual or an individual".

Beginning on page 121, line 24, strike "dual eligible" and all that follows through "and" on page 122, line 1.

On page 146, line 6, insert before the period "and to the design, development, acquisition or installation of improved data systems necessary to track prescription drug spending for purposes of implementing section 1935(c)".

Beginning on page 146, strike line 23 and all that follows through page 149, line 21, and insert the following:

"(c) FEDERAL ASSUMPTION OF MEDICAID PRESCRIPTION DRUG COSTS FOR DUALY ELIGIBLE BENEFICIARIES.—

"(1) IN GENERAL.—For purpose of section 1903(a)(1) for a State for a calendar quarter in a year (beginning with 2006) the amount computed under this subsection is equal to the product of the following:

"(A) STANDARD PRESCRIPTION DRUG COVERAGE UNDER MEDICARE.—With respect to individuals who are residents of the State, who are entitled to, or enrolled for, benefits under part A of title XVIII, or are enrolled under part B of title XVIII and are receiving medical assistance under subparagraph (A)(i), (A)(ii), or (C) of section 1902(a)(10) (or as the result of the application of section 1902(f) that includes covered outpatient drugs (as defined for purposes of section 1927) under the State plan under this title (including such a plan operated under a waiver under section 1115)—

"(i) the total amounts attributable to such individuals in the quarter under section 1860D-19 (relating to premium and cost-sharing subsidies for low-income medicare beneficiaries); and

"(ii) the actuarial value of standard prescription drug coverage (as determined under section 1860D-6(f)) provided to such individuals in the quarter.

"(B) STATE MATCHING RATE.—A proportion computed by subtracting from 100 percent the Federal medical assistance percentage (as defined in section 1905(b)) applicable to the State and the quarter.

"(C) PHASE-OUT PROPORTION.—Subject to subparagraph (D), the phase-out proportion for a quarter in—

"(i) 2006 is 95 percent;

"(ii) 2007 is 90 percent;

"(iii) 2008 is 85 percent;

"(iv) 2009 is 80 percent;

"(v) 2010 is 75 percent; or

"(vi) 2011, 2012 and 2013 is 70 percent.

"(d) MEDICAID AS SECONDARY PAYOR.—In the case of an individual who is entitled to a Medicare Prescription Drug plan under part D or drug coverage under a MedicareAdvantage plan, and medical assistance including covered outpatient drugs under this title, medical assistance shall continue to be provided under this title for covered outpatient drugs to the extent pay-

ment is not made under the Medicare Prescription Drug plan or a MedicareAdvantage plan.

Beginning on page 152, strike line 3 and all that follows through page 153, line 15, and insert the following:

"(f) DEFINITION.—For purposes of this section, the term 'subsidy-eligible individual' has the meaning given that term in subparagraph (D) of section 1860D-19(a)(4)."

(C) CONFORMING AMENDMENTS.—

(1) Section 1903(a)(1) (42 U.S.C. 1396a(a)(1)) is amended by inserting before the semicolon the following: ", reduced by the amount computed under section 1935(c)(1) for the State and the quarter".

(2) Section 1108(f) (42 U.S.C. 1308(f)) is amended by inserting "and section 1935(e)(1)(B)" after "Subject to subsection (g)".

Beginning on page 157, strike line 21 and all that follows through page 158, line 4.

On page 173, beginning on line 15, strike "that is not" and all that follows through "includes" on line 18 on that page, and insert "that includes but is limited solely to".

On page 190, in line 18, strike "and".

On page 190, between lines 18 and 19, insert the following:

"(B) is not a dual eligible beneficiary as defined under section 1807(i)(1)(B); and".

On page 190, line 19, strike "(B)" and insert "(C)".

Mr. ROCKEFELLER. Mr. President, I also have the amendment for which I just spoke. I ask unanimous consent that that be brought to the desk for its consideration and the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection to setting aside the amendment?

Mr. GRASSLEY. Reserving the right to object, and I shall not object, I would like to remind the Members of my caucus we do have an arrangement between the two parties that every other amendment offered could be offered by a Republican and then in turn by a Democrat. We have several Democrat amendments pending. There is nothing wrong with that. It hasn't hurt the process at all. But I think it would be fair for me to remind the Members of the Republican caucus if they have amendments to propose, come over and do it. It will speed up the process and I think be considered a little more fair by everybody here. I will not object.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER], for himself, Mr. CARPER, Mr. GRAHAM of Florida, Ms. MIKULSKI, Mrs. CLINTON, and Mr. DODD, proposes an amendment numbered 976.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To treat costs for covered drugs as incurred costs without regard to whether the individual or another person, including a State program or other third-party coverage, has paid for such costs)

On page 51, strike lines 15 through 25 and insert the following: