

Budget Act for consideration of sections 5001(b)(3), 5001(b)(4), and the relevant sections of 6043 of the conference report to accompany S. 1932.

I understand the Chair is going to rule that the fourth point of order relative to foster care is not well taken.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 52, nays 48, as follows:

[Rollcall Vote No. 362 Leg.]

YEAS—52

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Specter
Burr	Gregg	Stevens
Chambliss	Hagel	Sununu
Coburn	Hatch	Talent
Cochran	Hutchison	Thomas
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Cornyn	Kyl	Voivovich
Craig	Lott	Lugar
Crapo	Lugar	Warner
DeMint	Martinez	

NAYS—48

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Smith
Dayton	Levin	Snowe
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Wyden

The PRESIDING OFFICER (Mr. MARTINEZ). On this vote, the yeas are 52, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. CONRAD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, am I recorded?

The PRESIDING OFFICER. The Senator is recorded.

Mr. CONRAD. Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Chamber will please be in order. Senators will please take their conversations off the floor.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, it is my understanding I would now have the right to offer a second point of order.

The PRESIDING OFFICER. The unanimous consent agreement did authorize that.

Mr. CONRAD. Has the Chair ruled on the point of order?

The PRESIDING OFFICER. The Chair is about to do so.

Mr. GREGG. Mr. President, the Chair is about to rule on the points of order which were just offered, is that correct?

The PRESIDING OFFICER. Correct. The point of order is sustained against section 5001(b)(3), section 5001(b)(4), and that portion of section 6043(a) proposing a new subsection (e)(4) to section 1916A of the Social Security Act as added by section 6041 and as amended by section 6042 of this act. The point of order is not sustained against section 7404.

Mr. CONRAD. I thank the Chair. I now ask if it is in order that I would offer a second point of order under the unanimous consent agreement.

The PRESIDING OFFICER. The unanimous consent agreement did so authorize.

Mr. CONRAD. Mr. President, colleagues, I see no need to ask colleagues to cast another vote. Therefore, I will withhold on the second point of order and we could go right to passage of the reconciliation conference report.

Mr. GREGG. I suggest that is a good approach.

TY8RD-PARTY PAYORS

Mr. BOND. Mr. President, I rise to engage the chairman of the Finance Committee in colloquy regarding clarification of some Medicaid provisions relating to strengthening the government's ability to identify and collect payment from liable third party payors.

Under current law, Medicaid is the payor of last resort. In general, federal law requires available third parties must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual.

The conference report amends the list of third parties named in section 1902(a)(25) of the Social Security Act for which States must take all reasonable measures to ascertain the legal liability to include, among others, pharmacy benefits managers.

Once only the back office to health plans, employers, and State governments, pharmacy benefit managers have expanded their business model to include serving as risk-bearing entities under the Medicare Part D program.

I would like to clarify that the addition of pharmacy benefit managers to the definition of liable third parties is in the instance when they are at risk for the underlying benefit, such as operating as a plan sponsor for purposes of providing health benefits or as a riskbearing entity under the new Medicare Part D program as a stand-alone PDP. This addition is not meant to make pharmacy benefit managers liable when they are acting merely in an administrative capacity on behalf of a liable third party.

Mr. GRASSLEY. I thank the Senator from Missouri. Yes, I want to clarify the intent is not to create an addi-

tional liability where none exists today. Pharmacy benefit managers mayor may not be liable third parties. It is dependent upon whether they are ultimately responsible for the payment of a claim. It is my understanding that the health plan or employer contracting with the pharmacy benefit manager is ultimately at risk for the underlying claim, so it is my belief this will not create new liability for the pharmacy benefit manager.

Mr. BOND. I thank the Chairman.

BONA FIDE SERVICES—CLARIFYING THE TREATMENT OF DISTRIBUTOR SERVICE FEES UNDER THE NEW MEDICAID PHARMACY REIMBURSEMENT METRIC

Mr. LOTT. Mr. President, I again commend Chairman GRASSLEY for the leadership role he has taken in crafting much needed reductions in the mandatory spending programs that fall under his jurisdiction as chairman of the Senate Finance Committee. Regarding the changes to the Medicaid pharmacy reimbursement formula, we both share a strong commitment to ensuring that the Federal dollar is spent in a wise and proper manner while maintaining patient access to their medicines.

I do want to take this opportunity to clarify specifically how bona fide services fees, which are negotiated between a manufacturer and pharmaceutical distributor, should be treated under the new Medicaid pharmacy reimbursement metric.

Manufacturers pay bona fide service fees for specific services provided by the distributor. Service fees are a relatively new business model to the pharmaceutical distribution industry and how they should be treated under Federal reimbursement programs first came into question as the new Average Sales Price, ASP, metric under the Medicare Modernization Act was being implemented. I am pleased to note that Congress specifically did not include service fees as a price concession to be incorporated into the ASP calculation and CMS subsequently confirmed that, "Bona fide service fees that are paid by a manufacturer to an entity, that represent fair market value for bona-fide service provided by the entity, and are not passed on in whole or in part to a client or customer of the entity should not be included in the calculation of ASP."

In light of this, I wanted to make it clear that it was not the Chairman's intent to have manufacturers include such bona fide services fees in the new Medicaid pharmacy reimbursement equation.

Mr. GRASSLEY. The Senator from Mississippi is correct. It was not the intent of the conferees to suggest that by dropping bona fide services fees from the final agreement that those service fees should be included in the calculation of the Medicaid Average Manufacturer Price, AMP, based reimbursement methodology as established in the pharmacy reimbursement provisions of the conference agreement.

I thank my colleague from Mississippi for seeking this clarification.