

## **Chronology of Senator Ben Nelson Blowing the Whistle on Unfunded Mandate On all states in Health Reform**

Senator Nelson would like to share the facts on his efforts to blow the whistle on a \$35 billion unfunded federal mandate in health reform, and the origin of the Nebraska Medicaid provision in the Senate health care bill. Senator Nelson, a longtime foe of unfunded federal mandates as a former governor and now senator, always sought relief for all states. Partisans and others immediately labeled and mischaracterized the Nebraska Medicaid provision to help defeat health reform. Here is a chronology of events. Documentation is attached or follows:

- **9/3/09:** Lincoln Journal Star (NE): “Nelson is ‘very concerned’ about a proposal to expand Medicaid coverage. ‘That’s very expensive, and it could have serious consequences for the state,’ he said. A new unfunded federal mandate could recreate ‘the Pac-man who ate the state budget’ when he was governor, Nelson said.”
- **12/16/09:** Nebraska Gov. Dave Heineman writes to Nelson about the Medicaid expansion in health reform legislation: “the program quickly becomes a substantial unfunded Medicaid mandate...the state cannot afford an unfunded mandate...of this magnitude.”
- **12/16/09:** Nelson responds in letter to Heineman stating that he agrees the unfunded mandate is unacceptable and is requesting that “States be allowed to opt in to the Medicaid expansion.”
- **12/17/09:** At Nelson’s request, Nelson staff meets with staff from Finance and Health committees on opt-in mechanism for all states, giving each an option to not participate in the Medicaid expansion.
- **12/18/09:** The Hill newspaper: “Nelson’s is also concerned about the level of new spending in the bill, particularly the financial burden it could place on state Medicaid budgets, as well as the taxes included to finance it. The spending provisions could create an “underfunded federal mandate for the state of Nebraska,” Nelson said.”
- **12/18/09:** Senate staff says that the Congressional Budget Office is unable to provide a score, fiscal analysis, of the cost of an opt-in for the states. Nelson is told that the Manger’s Amendment proposed by Senator Reid will include a Medicaid provision for Nebraska.
- **12/19/2009:** A story posted in Politico shows partisans were poised to immediately attack Nelson as soon as he announced support for health reform: “*Ben Nelson’s “Cornhusker Kickback,” as the GOP is calling it, got all the attention Saturday...*”
- **12/20/09:** Roll Call: Republicans Attack ‘Cornhusker Kickback’... “Republican Senators Sunday evening took to the Senate floor in a coordinated, political effort meant to embarrass the Democrats...”
- **12/22/09:** In response to what critics have labeled the “Cornhusker Kickback,” Nelson delivers floor rebuttal on how the Government should not pass unfunded federal mandates onto the States.
- **1/7/10:** Nelson released statement that he was working with Senate Leadership to ensure that all States were treated fairly under the Medicaid expansion.
- **1/15/10:** Nelson writes letter to Senate Majority Leader Reid reiterating call to relieve all States from unfunded federal mandate in health care.
- **1/17/10:** Washington Post story on Medicaid provision and unfunded mandates: “Nelson said, he proposed that every state be allowed to cancel the expansion of Medicaid after 2016, when the full federal payments would stop. As a counterproposal, he said, negotiators suggested the permanent payments for Nebraska, estimated to cost \$100 million in their first decade. Several Senate sources, speaking on the condition of anonymity, confirmed Nelson’s account that the money, as one said, ‘isn’t something he came asking for.’”
- **1/25/10:** Nelson delivers floor speech vowing to continue fight against unfunded federal mandates. CBO sends letter to Rep. Ryan that the unfunded mandate would cost all states \$35 billion through 2019.
- **2/22/10:** President offers new reform proposal replacing Nebraska provision with additional federal money for all states in the Medicaid expansion, which Sen. Nelson applauds in statement.
- **2/23/10:** Linda Douglass, communications director, White House Office of Health Reform, affirms that Sen. Nelson was trying to “make sure that all states were protected from additional burdens as they try to cover low income people through the expansion of Medicaid in their states. That’s really what he wanted. That is, in fact, what we wound up with in the new proposal from the president.”

1. Nebraska Gov. Dave Heineman' December 16, 2009 letter.



Dave Heineman  
Governor

STATE OF NEBRASKA

OFFICE OF THE GOVERNOR  
P.O. Box 94848 • Lincoln, Nebraska 68509-4848  
Phone: (402) 471-2244 • dave.heineman@nebraska.gov

December 16, 2009

The Honorable E. Benjamin Nelson  
United States Senator  
720 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Nelson:

I am writing you today because the current Senate health care bill is bad news for Nebraska. America's health care system needs improvement, but this bill is not the answer. You are now the 60th vote, and as Governor of the State that we both represent, I urge you to vote against this bill and against cloture.

You have said that the debate on health care reform needs to be based on facts, not rhetoric. I agree. The facts are compelling and undeniable. This bill increases taxes, cuts Medicare and is an unfunded expansion of Medicaid.

In reviewing the current Senate bill, it appears that while the increased state costs for the initial three years of the Medicaid expansion would be covered, the program quickly becomes a substantial unfunded Medicaid mandate. Late yesterday, the Nebraska Department of Health and Human Services completed the analysis of the bill in full. The report is enclosed.

In just six years, FY 2014-FY 2019, the Nebraska Medicaid program will cumulatively grow by a new \$2,493,852,279. This \$2.5 billion will be passed on to citizens through direct or indirect taxes and fees.

Federal reimbursement to the State would fall short by approximately \$45.5 million by FY 2019. Ultimately, this means the cost will be greater than \$450 million over a ten year period. Furthermore, program costs are projected to increase twice as fast as reimbursements.

The State of Nebraska cannot afford an unfunded mandate and uncontrolled spending of this magnitude. Additionally, Nebraskans are very concerned about the bill's increase in payroll taxes. Rural hospitals are very concerned about their ability to survive. Seniors are very concerned about the cuts in Medicare.

The bottom line is the current Senate bill is not in Nebraska's best interest. Therefore, I strongly urge you to oppose the current Senate health care legislation. Please vote "no" on cloture and vote "no" on the bill. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dave Heineman".

Dave Heineman  
Governor

Enclosure

cc: U.S. Senator Mike Johanns  
Congressman Lee Terry  
Congressman Jeff Fortenberry  
Congressman Adrian Smith

**2. Sen. Nelson's December 16, 2009 response letter:**  
[http://bennelson.senate.gov/press/press\\_releases/122009-01.cfm](http://bennelson.senate.gov/press/press_releases/122009-01.cfm)

NELSON SENDS LETTER RESPONDING TO GOVERNOR HEINEMAN

December 16, 2009 – Today, Nebraska's Senator Ben Nelson responded to a letter he received from Nebraska Governor Dave Heineman regarding the expansion of Medicaid in the health care reform proposal offered by Senate Majority Leader Harry Reid. The governor urged the senator to oppose a cloture motion to end debate on the Reid plan.

The Honorable Dave Heineman  
Governor  
State of Nebraska  
PO Box 94848  
Lincoln, NE 68509-4848

Dear Governor Heineman:

Thank you for your letter of December 16, 2009 regarding the expansion of Medicaid.

In your letter you note that the current Senate bill is not in Nebraska's best interest. I agree. That is why I continue to work to change it.

Please be advised that I have proposed that the Senate bill be modified to include an "opt-in" mechanism to allow states to avoid the issues you have raised. Under my proposal, if Nebraska prefers not to opt in to a reformed health care system, it would have that right.

Thank you.

Sincerely,  
Ben Nelson  
United States Senator

**3. December 18, 2009 article in The Hill.**

**The Hill: Nelson a 'no' on health reform bill pending further changes**  
<http://thehill.com/blogs/blog-briefing-room/news/72767-nelson-a-no-on-health-bill-pending-further-changes>

Jeffrey Young and Michael O'Brien  
December 18, 2009

Centrist Democratic Sen. Ben Nelson (Neb.) said Thursday he won't vote to advance the Senate healthcare bill unless it's changed.

Nelson said more stringent restrictions on the use of federal funds for abortion must be included in the bill if it is to win his vote.

"If it's not at the point where I think it needs to be with the improvements that I'm pushing — and they've made a lot of them — then I will not vote for cloture on the motion to end debate," Nelson said in an interview on KLIN radio in Nebraska.

"There's a lot of improvement on the legislation but the basic question on funding for abortion hasn't been answered yet," he said.

Senate Majority Leader Harry Reid (D-Nev.) needs 60 votes to move forward, and has been struggling to bring together the 60 senators who caucus with Democrats.

Nelson said the bill is not yet at a point that he could support it, and that his concerns involve not only abortion, but also other key elements of the legislation.

"No," he said when asked if he'd vote for the bill at this point, even if his concerns on abortion were met.

Nelson offered an amendment this month that would have imposed stronger restrictions on the use of federal funds for abortion services. But it failed on the Senate floor last week.

The House healthcare bill includes a provision backed by Rep. Bart Stupak (D-Mich.) that imposes tougher abortion language.

On Thursday, Nelson rejected a new compromise crafted by fellow Democrat and abortion-rights opponent Sen. Bob Casey Jr. (Pa.). Anti-abortion-rights groups have also come out against the Casey language, which has not been publicly released.

**Nelson's is also concerned about the level of new spending in the bill, particularly the financial burden it could place on state Medicaid budgets, as well as the taxes included to finance it. The spending provisions could create an "underfunded federal mandate for the state of Nebraska," Nelson said.**

#### **4. December 19, 2009 07:56 PM EDT article in Politico**

##### **Politico: Payoffs for states get Reid to 60**

<http://www.politico.com/news/stories/1209/30815.html>

**Ben Nelson's "Cornhusker Kickback," as the GOP is calling it, got all the attention Saturday, but other senators lined up for deals as Majority Leader Harry Reid corralled the last few votes for a health reform package.**

Nelson's might be the most blatant – a deal carved out for a single state, a permanent exemption from the state share of Medicaid expansion for Nebraska, meaning federal taxpayers have to kick in an additional \$45 million in the first decade.

But another Democratic holdout, Sen. Bernie Sanders (I-Vt.), took credit for \$10 billion in new funding for community health centers, while denying it was a "sweetheart deal." He was clearly more enthusiastic about a bill he said he couldn't support just three days ago.

Nelson and Sen. Carl Levin (D-Mich.) carved out an exemption for non-profit insurers in their states from a hefty excise tax. Similar insurers in the other 48 states will pay the tax.

Vermont and Massachusetts were given additional Medicaid funding, another plus for Sanders and Sen. Patrick Leahy (D-Vt.) Three states – Pennsylvania, New York and Florida – all won protections for their Medicare Advantage beneficiaries at a time when the program is facing cuts nationwide.

All of this came on top of a \$300 million increase for Medicaid in Louisiana, designed to win the vote of Democratic Sen. Mary Landrieu.

Under pressure from the White House to get a deal done by Christmas, Reid was unapologetic. He argued that, by definition, legislating means deal making and defended the special treatment for Nelson's home state of Nebraska.

"You'll find a number of states that are treated differently than other states. That's what legislating is all about. It's compromise," he said.

It was Nelson who proved that he who plays hardest to get, gets the most.

He forced Reid to redraft the bill's restrictions on federal funding of abortion. And while most insiders were focused on that deal, Nelson was quietly ensuring that his state would never have to pay for the Medicaid expansion being written into the bill – an agreement that had been in the works for weeks.

Medicaid is usually paid for with a mix of federal and state funding, but Nelson's carve out means that any Medicaid beneficiaries who join the program under the bill will be fully paid for by the federal government.

It's an important deal considering that many governors are worried that the Medicaid expansion will further strain already stressed state budgets – and one that came after Nebraska Gov. Dave Heineman called on Nelson to vote against the bill.

"The State of Nebraska cannot afford an unfunded mandate and uncontrolled spending of this magnitude," the governor wrote to Nelson.

Nelson deferred all questions on the provision to Reid, saying only that he was "comfortable" the deal took care of Nebraska.

But Nelson's deal could be a pittance compared to where the Nebraska compromise might ultimately lead – to 49 other states demanding that the feds pick up their share of health reform's new Medicaid burden when it kicks in during 2017.

"When you look at it, I thought well, God, good, it is going to be the impetus for all the states to stay at 100 percent [federal funding]. So he might have done all of us a favor," Sen. Tom Harkin (D-Iowa) said of Nelson's dealings.

Nelson and Levin also pushed a provision that exempts non-profit insurers in Nebraska and Michigan from an annual multi-billion dollar excise tax on insurance companies.

Not surprisingly, both states are home to non-profit insurers who control a high-percentage of the industry's profits. In Michigan, non-profit insurers control 76 percent of the industry's profits – one of the highest percentages in the nation – while Nebraska non-profits control 46 percent of their state's profits.

And in an example of how closely senators guarded details, Levin's office did not answer any questions about the proposal when asked about it on Friday.

Republicans, meanwhile, expressed outrage at the wheeling and dealing, as if their party had never cut a legislative deal in its 150-year history.

“This bill is a monstrosity, a 2,100-page monstrosity full of special deals for people who are willing to vote for it,” said Senate Republican Leader Mitch McConnell. “And they’re playing these kind of games with the nation’s health care. This is an outrage.”

But Sanders didn’t sound outraged when he talked about the extra Medicaid funding Vermont will get for six years. Massachusetts, meanwhile, received three years worth of additional Medicaid funding. Under the original bill, neither state had qualified for the money.

Republican Sen. Mike Enzi accused Democratic leaders of favoring Medicare Advantage beneficiaries in Pennsylvania, New York and Florida at the expense of seniors in other parts of the country.

“The Democrats are playing ‘Let’s make a deal’ with trillions of your hard-earned tax dollars. You and all the American people should know that the majority leader is buying his votes with your money,” said Enzi (R-Wyo.) “The Reid bill gives sweetheart deals to a few states and the rest of the country will foot the bill. Making unfair deals like this is the wrong way to legislate and the American people know it.”

And while there were plenty of state-specific deals, some of the changes were clearly aimed at pleasing specific Democratic factions. For instance, tightened insurance regulations went a long way toward putting a smile on the faces of liberal senators who have lost their much-loved public option.

The amendment mandates that insurers spend no less than 80 percent of their premium revenues providing medical care. Currently, insurers spend about 70 percent of their premiums paying for health care. The bill also eliminates insurers’ ability to cap annual coverage amounts.

In brief remarks at the White House, President Barack Obama also highlighted some new provisions, including penalties for insurers who “arbitrarily jack up rates” and an immediate prohibition on insurers’ ability to deny children coverage.

Obama, too, talked of the deals as just the cost of doing business in Washington.

“As with any legislation, compromise is part of the process,” Obama said. “But I’m pleased that recently added amendments have made this landmark bill even stronger.”

## **5. Roll Call: Republicans Attack ‘Cornhusker Kickback’**

[http://www.rollcall.com/news/41789-1.html?type=printer\\_friendly](http://www.rollcall.com/news/41789-1.html?type=printer_friendly)

David M. Drucker  
20 December 2009

Republican Senators Sunday evening took to the Senate floor in a coordinated, political effort meant to embarrass the Democrats for agreeing to pay the cost of Nebraska’s Medicaid expansion as a means to secure the vote of moderate Sen. Ben Nelson (D-Neb.).

Early in the six o’clock hour, four Republican Senators — one after the other — asked for unanimous consent that the manager’s amendment to the Democratic health care package currently be set aside in order to consider a proposal that would extend the deal Nelson secured for Nebraska to other states. The states included in the GOP’s request were California, Colorado, Montana and Virginia.

Finance Chairman Max Baucus (D-Mont.), manning the floor for the majority, quickly objected and the GOP moves failed.

Republicans spent most of the day Sunday criticizing the “Cornhusker kickback,” a deal Majority Leader Harry Reid (D-Nev.) made with Nelson that calls for the federal government to pay for Nebraska’s share of the Medicaid expansion as proposed in the health care reform package.

Nebraska appears to be the only state that would not have to pay its share of the expansion. Medicaid, which provides health coverage to the poor, is funded jointly by the federal government and the states.

Sens. Mike Enzi (Wyo.), Chuck Grassley (Iowa), Jon Kyl (Ariz.) and Jeff Sessions (Ala.) took part in this effort for the GOP.

6. **Congressional Record excerpts from December 22, 2009 floor speech by Sen. Nelson**  
<http://thomas.loc.gov/cgi-bin/query/F?r111:1:./temp/~r111PXICSC:e102521>:

“You can twist and you can turn and you can try to distort what happens, but it does not change the underlying facts. The underlying facts are, this was pursued initially as an opt-in or opt-out for all States. It was impossible to do that at the present time, and so as a matter of fix, there was, in fact, the extension of the Federal dollars from the year 2017 on, well into the future, as a marker to lay down so that every State could object to this manner of unfunded mandates.

“As a Governor--and my colleague is a former Governor--we fought against Federal unfunded mandates. As a Senator back here, I have also fought against unfunded and underfunded Federal mandates. This was, in fact, exactly that. While we were not able to get in this legislation an actual opt-out or opt-in for a State-based decision, what we did get is at least a line, if you will, so that in the future other States are going to be able to come forward and say: Hey, either the Federal Government pays for that into the future or the State will have the opportunity to decide not to continue that so that we do not have an unfunded Federal mandate.

“Governors asked for relief. As Governors, we asked for relief against these continuing unfunded mandates. Time and time again, we fought against them. This was one more opportunity to fight.

“It is not a special deal for Nebraska. It is, in fact, an opportunity to get rid of an unfunded Federal mandate for all the States. Let me repeat that: for all the States. There is nothing special about it, and it is fair.

“What we have done is we have drawn a line in the sand and said: This is unacceptable, and it is unacceptable for all States as well. I cannot believe that this sort of a situation would continue. There is no misunderstanding here. I think it is just an opportunity to mislead, distort, and , unfortunately, confuse the American public all the more, and to use the State of Nebraska and the name of a good company for partisan political purposes on the other side of the aisle.

7. **January 7, 2010 press release: NELSON: HEALTH REFORM WILL TREAT ALL STATES EQUALLY ON MEDICAID EXPANSION**  
[http://bennelson.senate.gov/press/press\\_releases/010710-01.cfm](http://bennelson.senate.gov/press/press_releases/010710-01.cfm)

January 7, 2010 – Today, Nebraska’s Senator Ben Nelson said he’s working with Senate leaders and others to change the pending health reform legislation to treat all states the same concerning its unfunded federal mandate on states for expanding Medicaid.

“As a former governor, I’ve long fought against unfunded federal mandates, which force Washington rules on states with little or no money to pay for them,” said Senator Nelson. The current health care bill has an unfunded

mandate for expanding Medicaid. While helping more Americans obtain health coverage is important, this mandate could burden state budgets in uncertain economic times ahead.

“I’ve been in serious discussions with Senate leaders and others to secure changes in the bill to treat all states equally,” Nelson added. “At the end of the day, whatever Nebraska gets will apply to all states.”

Among options Nelson has discussed would be for the House and Senate conference committee to change the legislation to provide full federal funding of the Medicaid costs for all states, or allow every state the ability to opt out of the expense they’ll begin to pay in 2017.

“My view is: either fund it or un-mandate it,” Senator Nelson said.

The Senate-passed health reform provides full federal funding for expanding Medicaid to 2017. Then, states will be required to pick up a share of the costs. In mid-December, Nelson had sought in negotiations with Senate leaders for all states to be allowed to opt out of paying the expense for the program beginning in 2017.

In the absence of a fiscal analysis from the Congressional Budget Office, Senate leaders added a provision exempting Nebraska from paying the additional funds as a result of the bill.

Nelson said that was a placeholder that now enables the House and Senate conference to address the unfunded mandate issue and work out fair and equal treatment for every state on paying the costs of the Medicaid expansion.

“My intent has been and remains absolutely clear,” Nelson said. “Every state should be, and will be, treated the same.”

**8. January 15, Sen. Nelson sends letter to Senate Majority Leader Reid: NELSON REITERATES CALL FOR RELIEVING UNFUNDED MANDATE FOR ALL STATES IN HEALTH REFORM**  
[http://bennelson.senate.gov/press/press\\_releases/011510-01.cfm](http://bennelson.senate.gov/press/press_releases/011510-01.cfm)

January 15, 2010 – Today, as conferees continue to deliberate on a final health care bill, Nebraska’s Senator Ben Nelson reiterated his position regarding the unfunded mandate contained in the Senate bill in a letter to Senate Majority Leader Harry Reid.

The text of the letter follows:

The Honorable Harry Reid  
Majority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510-0001

Dear Majority Leader Reid:

As a former Governor, I have long fought against unfunded federal mandates, which force our state governments to redirect their priorities and funding to meet rules imposed by Washington, D.C. In evaluating the Patient Protection and Affordable Care Act, H.R. 3590, I was concerned that the Medicaid expansion in the bill represented an unfunded federal mandate since state governments would have to pay for new Medicaid enrollees after 2017.

After raising the issue of the unfunded mandate during Senate negotiations, a provision was added to exempt the State of Nebraska from paying any additional Medicaid funds as a result of the bill. This was intended to serve as a placeholder that would be removed during the conference negotiations and replaced with a mechanism applying to all state governments.

I request that this specific exemption for the State of Nebraska be removed, and that it instead be replaced with a provision giving all state governments the same treatment regarding the state match for the new Medicaid expansion.

I believe I have been clear that my intentions during all stages of negotiations were not that the State of Nebraska be given a special deal, but rather that all states be given the same tools to address an unfunded federal mandate. To remove any attempts at continued distortion or miscommunication on this point, however, I ask that the Nebraska Medicaid exemption be removed and that all states receive equal treatment under the Medicaid expansion.

Thank you for your consideration. I look forward to working with you on this matter as you continue to craft the final health care reform legislation.

Sincerely,  
E. Benjamin Nelson  
United States Senator

**9. Washington Post, January 17, 2009: “Medicaid provision for Nebraska raises ire”**  
<http://www.washingtonpost.com/wp-dyn/content/article/2010/01/16/AR2010011602884.html>

By Amy Goldstein  
Sunday, January 17, 2010; A03

It was a single paragraph, added at the last minute on Page 2,129 of the Senate's mammoth health-care bill: a promise that the federal government would pay forever for extra poor people to join Medicaid in Nebraska. And it triggered a swift, partisan backlash.

The rebellion against the \$100 million promise has spread to nearly one-third of the nation's attorneys general, including two Democrats. Meanwhile, the Nebraskan whose state would get the help -- Sen. Ben Nelson, a conservative Democrat who was the crucial 60th vote for the bill -- says he never asked for the favor to get his vote and wants it to go away.

The dispute is one of the issues Senate and House negotiators are trying to resolve as they work with the White House to mesh their health-care bills. On Friday, former president Bill Clinton joined the critics, telling House Democrats in a private speech in the U.S. Capitol, "That Nebraska thing is really hurting us."

As talks go on behind closed doors, debate rages off Capitol Hill over whether the Senate's offer of extra Medicaid money to one state is unconstitutional, as its critics allege, and whether any court would intervene. The furor comes from two sources: states' long-standing worries about the financial burden of Medicaid, and the polarized politics of health-care reform.....

Under the Senate bill, the government would pay the entire cost of expanding Medicaid from 2014 through 2016. After that, all states would get substantially more federal help for newly eligible patients than they do today. But only for Nebraska would the government pay the whole cost permanently....

Nelson said that, during his negotiations with Senate Democratic leaders courting his support, the question of Medicaid funding was "not what got my vote." But he added that he did tell Senate Democratic leaders the Medicaid expansion would be an "unfunded mandate" imposed on states -- the kind of fiscal liability he has criticized since his tenure as Nebraska's governor in the 1990s.

**To solve the problem, Nelson said, he proposed that every state be allowed to cancel the expansion of Medicaid after 2016, when the full federal payments would stop. As a counterproposal, he said, negotiators suggested the permanent payments for Nebraska, estimated to cost \$100 million in their first decade.**

**Several Senate sources, speaking on the condition of anonymity, confirmed Nelson's account that the money, as one said, "isn't something he came asking for."**

#### **10. January 25, 2010: NELSON Senate floor speech on need to end unfunded mandates**

<http://bennelson.senate.gov/press/speeches/012510-02.cfm>

January 25, 2010 – Today, Nebraska's Senator Ben Nelson spoke on the Senate floor about the need to end unfunded mandates. The text of his speech as prepared for delivery is below:

I rise to discuss a serious problem with the way Washington has done business for years. The problem is its habit of passing unfunded federal mandates onto the states that throw state budgets into disarray.

Everyone in Congress has to decide how to best look out for their state. A little over a month ago, I decided to look out for all of their states, and mine, too. But the efforts I made to protect my state—and all other states—should not be the issue. The issue should be why wasn't everyone taking steps to protect their states?

And why weren't the critics reacting to the real issue, rather than coining names to describe this effort to protect state budgets from the effects of another unfunded federal mandate?

The reason is that all along they've wanted to derail health reform. Misrepresenting this issue would help that goal.

So, it was too easy, too convenient to come up with a catchy name and to impugn motives. It was too easy, too convenient to ignore the problem facing Nebraska and every other state...another mandate without money.

Unfunded federal mandates aren't just bad for Nebraska. They're bad for all states, from sea to shining sea. They are a fiscal injustice that I've fought for two decades, during my tenure as a senator and through two terms as governor. They are a burden on the states that I'll keep fighting to eliminate as long as they continue.

Unfunded federal mandates are really pretty simple but they appear in many unexpected and unwanted ways. They are orders that arrive from Washington on state capitol doorsteps with too little or no money to carry them out. Unfunded federal mandates force states all across our country into no-win choices-- cut spending on state priorities OR raise revenue with tax hikes.

They are a fiscal injustice states have no option to avoid. Unfunded federal mandates are both bad federal policy and bad fiscal policy.

As a U.S. senator I've said that I will put Nebraska first, Nebraska always, but not Nebraska only. That remains the case with questions about how the Senate health care bill dealt with an underfunded mandate for expanding Medicaid.

First, my goal has always been to draw attention to—and fix with one approach or another—any unfunded federal mandate that would be passed onto every state through the Senate’s health care bill.

The bill sought to expand Medicaid to provide health insurance to millions of Americans who do not have it today.

The federal government would pay 100 percent of the cost for the first three years, through 2016. 2017 and thereafter, states would have to pick up a portion of the cost. In other words, they’d pay for a new unfunded federal mandate.

I sought an opt in or out for all states to ease the federal unfunded mandate. Because there was no Congressional Budget Office analysis available for that approach, a provision was placed into the bill for Nebraska. It’s not something I sought. It is something I accepted to launch the larger battle against the unfunded mandate affecting all states.

I’ve taken criticism over this issue. If I’ve received it because I drew attention to unfunded federal mandates, fine. But the larger question is: How do we in Congress eliminate the practice of passing these mandates onto the states?

Rather than criticize me, others should join me in fighting the war to stop all of these burdens on the states. It’s an effort I’d welcome the governors to join, too.

The Nebraska provision was a victory in the battle against unfunded mandates necessary to win the war. What otherwise had gone completely unaddressed is now part of the debate--not only in the nation’s capital, but in state capitols across America.

We only have to look back a few years to see what trouble unfunded mandates cause for states. When Congress passed the No Child Left Behind Act, it was hailed as a landmark that would improve education nationwide.

It established new standards to measure educational achievement in our schools, and required states to develop assessments in basic skills to be given to all students in certain grades. States had to make sure that happened for their schools that received federal aid. But the law provided far too little money to meet its requirements.

This was a fact acknowledged by its chief sponsor, the late Senator Kennedy. He said: “The tragedy is that these long overdue reforms are finally in place, but the funds are not.”

Was that ever a true statement!

States have paid and paid, and are still paying for that whopper of an unfunded mandate.

In fact, No Child Left Behind—which I opposed—has cost my state of Nebraska at least \$382.7 million. Nationwide, it cost all of the states a total of \$70.9 billion dollars, from 2002 through 2008, according to U.S. Department of Education data. Those costs have just kept piling up since. And that’s not right.

I fought another unfunded federal mandate in the 2003 major tax cut bill. At the time, cutting federal taxes also would have forced cuts in state taxes. That, in turn, would have blown holes in state budgets.

I teamed up on a bipartisan basis with my colleague Senator Collins from Maine and Senator Rockefeller from West Virginia to help the states. We won a provision that provided \$20 billion in federal funding to the states to make up for the lost money they needed to pay their Medicaid costs.

Today, we are again hearing from financially strapped states across the country asking for additional federal money to pay for other previous unfunded Medicaid mandates. I don't blame them for asking.

The government tells them they have to pay a share of certain social services and medical expenses. And in tough economic times like these, they just don't have the money.

Unfortunately, neither does Washington.

Then, while states are currently seeking aid from Congress, we're busy creating this new unfunded mandate set to hit states beginning in 2017. When would that one be addressed? 2018? 2019? Sometime later?

Talk about the left hand not knowing what the right hand is doing!

I've been asking, "Why not now, in this health reform legislation?"

Just last week we learned how big this unfunded mandate would be. The Congressional Budget Office estimated that covering the Medicaid expansion costs for all states would cost the federal government \$35 billion.

That means, Congress was about to pass a \$35 billion unfunded federal mandate onto the states--until I got wind of it. Let me say that again, Congress was about to send a \$35 billion bill to the states, until I blew the whistle.

We need to stop this madness of passing these fiscal time bombs onto the states. I would hope my colleagues on a bipartisan and bicameral basis would work with me to make sure Congress stops passing unfunded mandates of any kind onto states. And that the governors will join in also. They certainly don't like Washington telling them how to spend state money.

Now, I would hope people would put aside the spin, the partisan talking points and misrepresentation they've heard on this issue. I hope people would stop citing the inaccurate interpretation of it as an excuse to avoid working for health reform that provides coverage to millions of Americans who today don't have insurance and lower costs to all other Americans who pay ever rising costs for health care.

And I hope we can stop the practice of Washington burdening the states with unfunded federal mandates, which are truly bad for every single state, not just mine, but all states from sea to shining sea.

Mister President, I yield the floor.

**11. February 22, 2010 Press Release: NELSON applauds extension of Nebraska provision to all states**  
[http://bennelson.senate.gov/press/press\\_releases/022210-01.cfm](http://bennelson.senate.gov/press/press_releases/022210-01.cfm)

February 22, 2010 – Nebraska's Senator Ben Nelson issued this statement on the President's proposal for health care reform released today, which in part would change the Senate health care bill to largely extend the Nebraska provision to all states in an expansion of Medicaid:

"I am pleased to see the Nebraska Medicaid provision is extended to all states. The President's plan would significantly shrink a \$35 billion unfunded federal mandate set to hit all states in health reform, which had gone unnoticed until I blew the whistle. I have said all along that the federal government needs to either fully fund the new Medicaid costs for states, or to un-mandate the requirement on state budgets.

“Right now, we’re hearing from cash-strapped states nationwide asking for billions in federal dollars to pay for other previous unfunded federal Medicaid mandates. So, it makes no sense at all to create another a new unfunded mandate hitting the states in 2017. When would that one be addressed? 2018? 2019? Even later?”

“Extending the Nebraska provision with substantial additional federal Medicaid financing for all states is the right thing to do. Now, I would welcome working on a bipartisan basis with others in the House and Senate to stop Washington from passing these fiscal time bombs onto states in the future.”

**12. February 23, 2010: White House Affirms Nelson blew the whistle on unfunded mandate he was trying to address for all states**

[http://bennelson.senate.gov/press/press\\_releases/022310-01.cfm](http://bennelson.senate.gov/press/press_releases/022310-01.cfm)

In an interview, Linda Douglass, director of communications for the White House Office of Health Reform, affirmed Senator Nelson’s explanation about the much-discussed Nebraska provision.

Q: “Two things that are not in the legislation as it was put forward by the president—the so called “Corn husker” kick back, what was that and why was it taken out?”

Douglass: “Well, you know that was an agreement made with Senator Nelson of Nebraska to try to protect his state from additional costs of expanding Medicaid -- that is the government program for covering low income people. And what Senator Nelson was really trying to do was make sure that all states were protected from additional burdens as they try to cover low income people through the expansion of Medicaid in their states. That's really what he wanted.

“That is, in fact, what we wound up with in the new proposal from the president. You know, Nebraska will not be alone-- all states now will have tremendous relief from any additional burdens in expanding Medicaid to cover the low income people in their states.”

**13. March 15, 2010, Sen. Richard Durbin (D-Ill.) comment on the U.S. Senate floor:**

“Let me also say this: We cannot as a nation address the problems of health care with 50 million people uninsured and the numbers growing dramatically. Our proposal will put 30 million of those under the protection of Medicaid and health insurance through exchanges. We will provide, thanks to the leadership of Senator Nelson of Nebraska, up to 2 or 3 years with the Federal Government picking up every penny of the cost for the new Medicaid recipients; then, beyond that, high amounts--90, 95 percent--for several years. It is a reasonable transition for the States to absorb people who are now uninsured presenting themselves for care.

“We end up with 30 million people with coverage. The Republicans' best effort addressing the 50 million uninsured in America covered 3 million. We can do better. We need to do better as a nation.”