HEALTH INSURANCE REFORM/Specialty Care Mandate

SUBJECT: **Patients' Bill of Rights Act . . . S. 1344. Kennedy (for Bingaman) amendment No. 1245 to the Collins amendment No. 1243.**

ACTION: AMENDMENT REJECTED, 47-53

SYNOPSIS: As introduced, S. 1344, the Patients' Bill of Rights Act, contains the text of S. 6, a health insurance regulation bill proposed by Senator Kennedy and other Democrats. The bill: will regulate the structure and operation of all health insurance products at the Federal level; will impose extensive mandates on consumers, health insurers, and employers; and will create new rights to sue employers and insurers for unlimited compensatory and punitive damages. As estimated by the Congressional Budget Office (CBO), this Democratic plan will cause insurance premiums to rise by an average of 6.1 percent (which will be in addition to any increases from inflation or other causes). The 6.1-percent cost increase, which will total $72 billion over 5 years, will cause approximately 1.8 million Americans to lose their health insurance coverage.

The Collins amendment would expand the deductibility of long-term care to individuals, would expand direct access to obstetric and gynecological care, would provide timely access to specialists, and would expand patient access to emergency medical care (see vote No. 207 for details).

The Bingaman amendment would add mandates on specialty care that would differ in part from the mandates proposed in the Republican bill. Both proposals would only require a health plan to provide specialty care for a benefit that was covered by the plan. Neither proposal would require a health plan to provide specialty care using an out-of-network provider when an in-network provider was available. When an in-network provider was not available, both proposals would limit the patient's costs to the costs that would have been incurred had an in-network provider been available. The Bingaman amendment would define a "specialist" as a "health care practitioner, facility, or center (such as a center of excellence that has adequate expertise through appropriate training and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition." The Republican bill would define the term "specialty care" to mean "with respect to a condition, care and treatment provided by a health care practitioner, facility, or center (such as a center of excellence) that has adequate expertise (including age-appropriate

(See other side)

YEAS (47)			NAYS (53)			NOT VOTING (0)	
Republicans (2 or 4%)	**Democrats (45 or 100%)**		**Republicans (53 or 96%)**		**Democrats (0 or 0%)**	**Republicans (0)**	**Democrats (0)**
Chafee	Akaka	Kennedy	Abraham	Hutchinson			
Specter	Baucus	Kerrey	Allard	Hutchison			
	Bayh	Kerry	Ashcroft	Inhofe			
	Biden	Kohl	Bennett	Jeffords			
	Bingaman	Landrieu	Bond	Kyl			
	Boxer	Lautenberg	Brownback	Lott			
	Breaux	Leahy	Bunning	Lugar			
	Bryan	Levin	Burns	Mack			
	Byrd	Lieberman	Campbell	McCain			
	Cleland	Lincoln	Cochran	McConnell			
	Conrad	Mikulski	Collins	Murkowski			
	Daschle	Moynihan	Coverdell	Nickles			
	Dodd	Murray	Craig	Roberts			
	Dorgan	Reed	Crapo	Roth			
	Durbin	Reid	DeWine	Santorum			
	Edwards	Robb	Domenici	Sessions			
	Feingold	Rockefeller	Enzi	Shelby			
	Feinstein	Sarbanes	Fitzgerald	Smith, Bob (I)			
	Graham	Schumer	Frist	Smith, Gordon			
	Harkin	Torricelli	Gorton	Snowe			
	Hollings	Wellstone	Gramm	Stevens			
	Inouye	Wyden	Grams	Thomas			
	Johnson		Grassley	Thompson			
			Gregg	Thurmond			
			Hagel	Voinovich			
			Hatch	Warner			
			Helms				

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

expertise) through appropriate training and experience." The Republican bill would permit a health plan to require prior authorization from a case manager or primary care provider before specialty care was given, as long as the authorization was for an adequate number of referrals (for instance, an authorization could be given to see a specialist for a particular number of radiation treatments for cancer). The Bingaman amendment would require health plans to create procedures under which they would be required to designate a specialist as a care coordinator for a patient with an "ongoing special condition" if that patient's care would "most appropriately" be coordinated by a specialist. The amendment would define the term "ongoing special condition" to mean a condition or disease that was "life-threatening, degenerative, or disabling" and that required specialized care for a "prolonged period of time." The Bingaman amendment would then provide that the specialist would be permitted to provide any treatment without approval from the health plan, and to make additional referrals without approval, so long as the treatments and referrals were for care within the treatment plan (if such plan existed). Both the Republican proposal and the Bingaman proposal would permit the specialist and health plan to develop a treatment plan; the Republican proposal, but not the Bingaman proposal, would require the health plan to approve a treatment plan in a timely manner in accordance with the medical exigencies of the case. The Bingaman amendment would also provide that if a plan and a specialist determined that a standing referral would be appropriate, then a standing referral for specialist care could be approved. Other provisions of the Bingaman amendment that are not in the Republican bill include a provision to require taxpayer subsidization of the Social Security trust fund to offset any loss of revenue that the amendment causes for that trust fund and a provision to raise taxes to offset the costs of the amendment.

Those favoring the amendment contended:

The Bingaman amendment improves on the Republican proposal on speciality care in four ways. First, it would require that when specialty care was needed and an in-network provider was not available, an out-of-network provider would have to be used and the patient could not be charged any more than he or she would have been had an in-network specialist been available. Second, it would make certain that pediatric specialists would be available when needed. The Republican bill only says "age appropriate" specialists would have to be provided. Third, the Bingaman amendment would require a specialist to be designated as the care coordinator when most appropriate for a patient with a severe and lasting illness, and then that specialist would essentially act as the primary care doctor without any gatekeeping interference from the health plan. Fourth, for any patient at all, the Bingaman amendment would provide for the possibility of standing referrals, which would make it possible for a patient to go to a specialist for any number of visits without ever having to go back to a health plan for additional authorization for treatment. These protections are much more comprehensive than the protections provided in the Republican bill, and they are needed. We support this amendment.

Those opposing the amendment contended:

Supporters of the Bingaman amendment have given four reasons for supporting their amendment. The first two reasons are based on blatantly and demonstrably false readings of the Republican proposal, and the second two reasons, in our opinion, give us much more reason to vote against their amendment than for it. First, supporters of this amendment have stated that the Republican bill would allow patients to be charged more for out-of-network specialists when in-network specialists were not available. However, nothing in the bill would permit that practice, and the committee report specifically states the following: "When the plan covers a benefit or service that is appropriately provided by a particular type of specialist not in the network, the benefit will be provided using the in-network cost-sharing schedule." Earlier this week, on another issue, Democrats had fainting spells when they found unclear report language that appeared to conflict with the specific wording of the bill on that issue (to relieve their supposed concern, we reaffirmed the clear meaning of the bill language). Now, with remarkable inconsistency, they refuse to read the very clear report language. They pretend that it does not exist. Of course, if they admitted it existed it would expose the falsity of their charge that the Republican bill would allow higher patient charges for out-of-network specialists when in-network specialists were unavailable. The second false statement they have made is that their amendment is needed to ensure children access to specialists who are sub-specialists in treating children, such as pediatric oncologists. We note that the Republican proposal requires access to "age-appropriate" specialists. For children, such specialists obviously would be pediatric specialists, not geriatric specialists or specialists for any other age group. The next two reasons given for supporting the Bingaman amendment, are, in our opinion, really reasons for voting against it. First, our colleagues would like to require the designation of specialists as "care coordinators" for patients with serious illnesses who need treatment for a "prolonged" period of time. In effect, those specialists would become primary care physicians. Thus, a heart surgeon may be designated as the coordinator of all health care for a person with a heart condition. We simply do not believe that it would reflect good medical practice to require health insurance companies to put specialists who have specific expertise in one area of medicine in charge of overseeing general health care of their patients. Not only would doing so lower the quality of health care for patients, it would increase costs to provide general treatment through costly specialists rather than through general practitioners who were more qualified to give such care. The same problem, to a lesser extent, would come from the Bingaman amendment provision on standing referrals. Once a standing referral was given, the health plan would have no way of ever reviewing if additional treatment was really needed. The open-ended commitments required in the Bingaman amendment would raise health care costs without improving health care quality. For that reason, it should be rejected.