

preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

On page 165, between lines 14 and 15, insert the following:

“(D) EXCLUSION OF SMALL EMPLOYERS.—

“(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

“(ii) DEFINITION.—In clause (i), the term ‘small employer’ means an employer—

“(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 50 employees on business days; and

“(II) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

“(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and

“(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

“(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

“(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

“(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

SA 818. Mr. KYL (for himself, Mr. NELSON of Nebraska, and Mr. NICKLES) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

Beginning on page 35, strike line 20 and all that follows through line 8 on page 36, and insert the following:

(C) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require that a group health plan, or health insurance issuer offering health insurance coverage in connection with a group health plan, provide coverage for items or services that are specifically excluded or expressly limited under the plan or coverage and that are disclosed under subparagraphs (C) and (D) of section 121(b)(1) and that are not covered regardless of any determination relating to medical necessity and appro-

priateness, experimental or investigational nature of the treatment, or an evaluation of the medical facts in the case involved.

On page 37, line 16, strike “and”.

On page 37, line 25, strike the period and insert “; and”.

On page 37, after line 25, add the following:

“(iii) notwithstanding clause (ii), adhere to the definition used by the plan or issuer of ‘medically necessary and appropriate’, or ‘experimental or investigational’ if such definition is the same as either—

“(I) in the case of a plan or coverage that is offered in a State that requires the plan or coverage to use a definition of such term for purposes of health insurance coverage offered to participants, beneficiaries and enrollees in such State, the definition of such term that is required by that State;

“(II) a definition that determines whether the provision of services, drugs, supplies, or equipment—

“(aa) is appropriate to prevent, diagnose, or treat the condition, illness, or injury;

“(bb) is consistent with standards of good medical practice in the United States;

“(cc) is not primarily for the personal comfort or convenience of the patient, the family, or the provider;

“(dd) is not part of or associated with scholastic education or the vocational training of the patient; and

“(ee) in the case of inpatient care, cannot be provided safely on an outpatient basis; except that this subclause shall not apply beginning on the date that is 1 year after the date on which a definition is promulgated based on a report that is published under subsection (i)(6)(B); or

“(III) the definition of such term that is developed through a negotiated rulemaking process pursuant to subsection (i).

On page 66, between lines 10 and 11, insert the following:

“(i) ESTABLISHMENT OF NEGOTIATED RULEMAKING SAFE HARBOR.—

“(1) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code, standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of ‘medically necessary and appropriate’ or ‘experimental or investigational’) that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

“(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under paragraph (1), the Secretary shall, not later than November 30, 2002, publish a notice of the establishment of a negotiated rulemaking committee, as provided for under section 564(a) of title 5, United States Code, to develop the standards described in paragraph (1). Such notice shall include a solicitation for public comment on the committee and description of—

“(A) the scope of the committee;

“(B) the interests that may be impacted by the standards;

“(C) the proposed membership of the committee;

“(D) the proposed meeting schedule of the committee; and

“(E) the procedure under which an individual may apply for membership on the committee.

“(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice described in paragraph (2), and for purposes of this subsection, the term ‘target date for publication’ (as referred to in section 564(a)(5) of title 5, United States Code, means May 15, 2003.

“(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—Notwithstanding section 564(c) of title 5, United States Code, the Secretary shall provide for a period, beginning on the date on which the notice is published under paragraph (2) and ending on December 14, 2002, for the submission of public comments on the committee under this subsection.

“(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall carry out the following:

“(A) APPOINTMENT OF COMMITTEE.—Not later than January 10, 2003, appoint the members of the negotiated rulemaking committee under this subsection.

“(B) FACILITATOR.—Not later than January 21, 2002, provide for the nomination of a facilitator under section 566(c) of title 5, United States Code, to carry out the activities described in subsection (d) of such section.

“(C) MEMBERSHIP.—Ensure that the membership of the negotiated rulemaking committee includes at least one individual representing—

“(i) health care consumers;

“(ii) small employers;

“(iii) large employers;

“(iv) physicians;

“(v) hospitals;

“(vi) other health care providers;

“(vii) health insurance issuers;

“(viii) State insurance regulators;

“(ix) health maintenance organizations;

“(x) third-party administrators;

“(xi) the medicare program under title XVIII of the Social Security Act;

“(xii) the medicaid program under title XIX of the Social Security Act;

“(xiii) the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code;

“(xiv) the Department of Defense;

“(xv) the Department of Veterans’ Affairs; and

“(xvi) the Agency for Healthcare Research and Quality.

“(6) FINAL COMMITTEE REPORT.—

“(A) IN GENERAL.—Not later than 1 year after the general effective date referred to in section 401, the committee shall submit to the Secretary a report containing a proposed rule.

“(B) PUBLICATION OF RULE.—If the Secretary receives a report under subparagraph (A), the Secretary shall provide for the publication in the Federal Register, by not later than the date that is 30 days after the date on which such report is received, of the proposed rule.

“(7) FAILURE TO REPORT.—If the committee fails to submit a report as provided for in paragraph (6)(A), the Secretary may promulgate a rule to establish the standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of ‘medically necessary and appropriate’ or ‘experimental or investigational’) that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 26, 2001, to conduct a hearing on

the nomination of Donald E. Powell, of Texas, to be Chairman of the Board of Directors of the Federal Deposit Insurance Corporation.

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

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, June 26, 2001, at 9:30 am on the nominations of Sam Bodman (DOC), Allan Rutter (FRA), Kirk Van Tine (DOT), and Ellen Engleman (DOT).

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

COMMITTEE ON ENERGY AND NATURAL
RESOURCES

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 26 at 9:30 a.m. to conduct a hearing. The committee will receive testimony on proposed amendments to the Price-Anderson Act (Subtitle A of Title IV of S. 388; Subtitle A of Title I of S. 472; Title IX of S. 597) and nuclear energy production and efficiency incentives (Subtitle C of Title IV of S. 388; and Section 124 of S. 472).

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

COMMITTEE ON FINANCE

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, June 26, 2001 to hear testimony on the U.S. Vietnam Bilateral Trade Agreement.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 26, 2001 at 2:30 p.m. to hold a nomination hearing as follows:

NOMINEES

Panel 1: The Honorable Margaret DeBardeleben Tutwiler, of Alabama, to be Ambassador to the Kingdom of Morocco.

The Honorable C. David Welch, of Virginia, to be Ambassador to the Arab Republic of Egypt.

The Honorable Daniel C. Kurtzer, of Maryland, to be Ambassador to Israel.

Panel 2: The Honorable Robert D. Blackwill, of Kansas, to be Ambassador to India.

The Honorable Wendy Jean Chamberlin, of Virginia, to be Amba-

sador to the Islamic Republic of Pakistan.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on June 26, 2001, at 10:30 a.m. in room 485 Russell Senate Building to conduct a Hearing to receive testimony on the goals and priorities of the Great Plains Tribes for the 107th session of the Congress.

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

SUBCOMMITTEE ON THE ADMINISTRATIVE
OVERSIGHT AND THE COURTS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on the Constitution be authorized to meet to conduct a hearing on "Should Ideology Matter? Judicial Nominations 2001" on Tuesday, June 26, 2001 at 10:00 a.m. in SD226. No witness list is available yet.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, June 26, 2001, at 10:00 a.m. for a hearing entitled "Diabetes: Is Sufficient Funding Being Allocated To Fight This Disease?"

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

SUBCOMMITTEE ON STRATEGIC

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Subcommittee on Strategic of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, June 26, 2001, at 10:00 a.m., in open session to receive testimony on the Department of Energy's fiscal year 2002 budget request for the Office of Environmental Management, in review of the Defense authorization request for fiscal year 2002 and the future years defense program.

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

PRIVILEGE OF THE FLOOR

Mrs. CLINTON. Mr. President, I ask unanimous consent that Dr. Mary Catherine Beach, a legislative fellow in my office, be granted the privilege of the floor for the duration of the debate on S. 1052, the McCain-Edwards-Kennedy Patients' Bill of Rights.

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

ORDERS FOR WEDNESDAY, JUNE
27, 2001

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Wednesday, June 27. Further, I ask consent that on Wednesday, immediately following the prayer and the pledge, the Journal of Proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the Patients' Bill of Rights.

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

PROGRAM

Mr. REID. Mr. President, the Senate will convene at 9:30 a.m. and resume consideration of the Patients' Bill of Rights. There is 1 hour of debate on the Allard amendment regarding small employers, followed by a vote in relation to the amendment at approximately 10:30 a.m.

Following the Allard vote, there will be 1 hour of debate on the Nelson-Kyl amendment regarding contracts, followed by a vote in relation to the amendment. Following disposition of the Nelson-Kyl amendment, we expect Senator EDWARDS or his designee to be recognized to offer an amendment regarding medical necessity.

We are going to conclude consideration of Patients' Bill of Rights, I have been told on more than one occasion today by the majority leader, this week. We will also complete the supplemental appropriations bill and the good work that has been done preliminarily by Senators BYRD and STEVENS. This is something we will be able to do without requiring a lot of time. Then we wish to complete the organizational resolution that has been pending for several weeks.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate at 8:22 p.m., adjourned until Wednesday, June 27, 2001, at 9:30 a.m.