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*From the Congressional Record*

**Senator Gregg on McCain-Kennedy-Edwards’  
“Go-Straight-to-Court” Loophole**

Here’s what HELP Committee Ranking Member Judd Gregg (R-NH) had to say [as printed in the *Congressional Record* of June 19, 2001] about the “go-straight-to-court” provision in the McCain-Edwards-Kennedy bill (S. 1052):

. . . The McCain bill allows patients to go straight to court – for the purpose of collecting monetary damages – without exhausting administrative remedies first.

The independent medical review process is the best, most efficient remedy for the majority of patients. It ensures that patients get the medical care when they need it. In contrast, tort damages are only available to patients after they are injured.

The “go straight to court provision” creates a perverse incentive for patients, encouraged by their attorneys, to bypass the review process in order to seek the big damages awards in court.

Proponents of the exhaustion loophole argue that external review is “not enough.” They would have you believe that an exhaustion requirement somehow precludes the ability of an injured patient to seek recourse in court. But this is not the case. The external review process is merely a required and beneficial step before going to court.

The high standards that the medical reviewer is required to follow will help inform the court’s decisions in determining whether the plan decision was the right one. Just as a medical expert is not versed in the specifics of the law, the court is not well versed in medicine and will benefit from the finding of the independent, external review – as will the patient.

RPC Staff Contact: Michael F. Cannon, 224-2946