

**Interviews With Lawmakers
Senator Judd Gregg (R – N.H.)
and Rebecca Adams
January 22, 2003**

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REBECCA ADAMS: I'm here with Senator Judd Gregg, Republican of New Hampshire, who is the Committee Chairman of the Senate Health Education Labor and Pensions Committee. We're going to talk to him about the healthcare agenda in the 108th Congress. Senator, I'd like to talk at the beginning about an issue that you've expressed an interest in, medical malpractice. What do you envision happening this year and what should be done?

SENATOR JUDD GREGG: I think this is one of the most important issues we have to take up as a committee, there's no question but that people are not able to get access to doctors because doctors can't afford to practice because of the cost of their insurance which has been driven up by trial lawyers. You have states like West Virginia where doctors actually refuse to practice; refuse to see patients because they couldn't afford their premiums, their insurance coverage. You've got places like Nevada, where there are no OB/GYN doctors practicing in large sections of that state simply because of the cost of the premium is so high and that's true in a lot of states, especially in the OB/GYN area. The problem is that you've got an overzealous legal community that is decided to try to use doctors as their pension and annuity plans and the affect has been the doctors can no longer practice medicine and that has cut off access that people need to their medical providers. So, this is a big issue and an important issue. I fully expect

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that we as a committee are going to mark up a Bill, which will be a patient access Bill basically giving the doctors their ability to practice in their trade and giving patients access to those doctors by limiting the cost that the insurance that the doctors have to buy and the way you do that is by limiting the liability and making it reasonable. Setting up systems where people who are injured can get compensated and get reasonable compensation and get it within a reasonable timeframe, but will not be getting excessive awards and he won't have extensive trial lawyer costs. He won't have frivolous lawsuits.

REBECCA ADAMS: Since this is one of your priorities, how quickly do you envision the committee taking this up?

SENATOR JUDD GREGG: Well, we...

REBECCA ADAMS: How quickly would a markup occur?

SENATOR JUDD GREGG: Well, we are working on a Bill right now and there are a lot of people floating around with ideas. Senator McCall from Kentucky had a Bill last year; Senator Ensign from Nevada is very concerned about this. We intend to pull together a Bill that has strong support and I would hope that we could mark something up in February maybe, by the latest, March.

REBECCA ADAMS: What incentives do you think the Bill would have? Senator McCall last year had some trouble getting that through Congress. It was a more modest version of the Bill

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that passed through the House. What have you... have you reached any kind of consensus on what should be included in the Bill?

SENATOR JUDD GREGG: Well, first I think it should apply to healthcare providers and healthcare organizations and manufacturers and distributors of FDA approved medical products. Secondly, I think it should cap damages, especially non-economic damages, there should be a cap and there should be a cap on punitive damages. Currently, I think there is going to be procedural units and standards relative to punitive damages. You need to address the issue of attorney's fees. I think they should be limitations on the percentage that attorney's can recover depending on the size of the recovery. You need to address statute of limitation issues. You need to address information to the clients, so that the attorney's fully disclose what their fees will be to the client. And so I think you have to address all those elements in order to be a good law.

REBECCA ADAMS: What about the concerns about escalating health insurance premiums? What do you think Congress can or should do in this area this year?

SENATOR JUDD GREGG: Well, the issue goes beyond just health insurance benefits premiums; it goes to the issue of the uninsured. In fact, we have such an escalating number of uninsured in this country. Now I happen to think there is some cynical view. I have a fairly cynical view of this. I think to

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some degree, the number of uninsured are generated by the fact that we been passing legislation here in Washington that has a intended consequence in creating more uninsured, because there are some folks around this building who want to enlarge the number of people who are uninsured, in order to create momentum for nationalizing the healthcare industry of going back to proposals by Hillary Clinton back in the 1993 period and one way they see to create momentum for that is to create more uninsured and the way you create more uninsured is the way you drive up the cost of health insurance, so that companies can't afford to supply it to their employees and individuals can't afford to buy it and you drive up the individual market and the way you do that is you load down insurance policies of all sorts of mandated coverage which the individual may not want which is feel good coverage, but as a practical matter, either the individual doesn't want it or the individual can't afford it and probably doesn't need it and so the things we can do at the federal level to try and control the cost of health insurance is to stop mandating coverage on all sorts of different areas simple because it sounds good and it's a good press release. We can also, in my opinion, we can place more incentives to use the market place to control costs, so that consumers of healthcare don't have personal coverage, but have a situation where they have to think a little bit before they can access their healthcare for marginal or elective activity

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and that gets to issues like creating options for people, like for example, I think medical savings accounts make a lot of sense because basically in that situation, you are saying to the consumer, here's a pool of money, you can either use this for your healthcare or if you're an intelligent and thoughtful healthcare purchaser and you don't need to use it for healthcare as a result of being a thoughtful healthcare purchaser, you get to keep the revenue yourself and it becomes an asset that you have personally, so creating marketplace vehicles that allow individuals to become better consumers and create an incentives for individuals to become better consumers is important, but when you get first dollar coverage out there, then you end up with people over consuming and as a result, you end up with costs going up even more. Those are some of the ways we can move to try to adjust the healthcare cost issue, but and another way we can move is to try to make it more affordable for people to develop drugs which are, and reduce healthcare costs. The whole issue of how we created a drug industry which is able to bring to the market new products in a faster way that is more affordable is a very big issue. That gets into the generic issue and to the issue once again of litigation and the cost of litigation in the cost of healthcare.

REBECCA ADAMS: What do you see happening on the generic drug issue?

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SENATOR JUDD GREGG: I hope we can pass a Bill. Last year we were very close to language. Unfortunately, once again trial lawyers raised their ugly heads and put language in which was actually dramatically in litigation opportunities in the area of production of drugs well beyond what exists even today and they insisted in that language being included through Senator Edwards good offices and I wasn't going to allow that to happen because it would have driven up costs and it would have undermined the quality drugs coming to the market and if we can get around that issue and get the trial lawyers out of the equation, I think we could probably pass a good generic Bill. A generic Bill is very important. We need genetic drugs on the market because they reduce the costs. We also need an atmosphere where the brand-name companies are willing to research to produce the original drug because of course, that's a huge cost. You are talking over 1/2 a billion dollars today and 12 years to bring a drug into market. If you get people to invest in that kind of activity, you've got to give them reason to return, but once you get past the, once you set it up so that they get a reasonable return, then you should also set it up so you can develop generics because generics are also a much more less expensive and it would drive down the cost of healthcare, so it's a balancing act. I thought we were fairly close to reaching that balance last year until we, until the trial lawyers march out on the field and take control.

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REBECCA ADAMS: Another issue that trial lawyers might be interested, might be compensation for those that are harmed by smallpox. What do you think might help in concerning issues related to bioterrorism and in particular the small pox vaccine?

SENATOR JUDD GREGG: Well, that's going to be our first effort. The first effort of this committee, if I ever become Chairman, if the Democratic Party ever decides to give up, acknowledge it's in the minority and decide to allow me to become Chairman, which they haven't so far, will be hearings on where we stand in our public health area and in the smallpox area specifically. In our preparation for a potential terrorist attack, I think we need a policy that's National and gives people the opportunity to attain smallpox vaccination if they really want them. I think an individual should be able to make that decision after any consultation with their doctor. Really they should have a gatekeeper, which would be a doctor to decide whether or not, they are in that risk population, but if a doctor says they are not, and they want to have a smallpox vaccination, I think people should have it. AS the compensation side, that's a big issue, but it certainly shouldn't end up being a litigation issue. Set up something like we already have with the victim compensation fund and make a basically a no-fault recovery system, which unfortunately you do have a reaction to the smallpox, which causes you harm, you will get

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compensated under some sort of no-fault system, a much like if you get injuries at work, the Labor Law. So that's the system I hope we will set up. It's a big issue, but it's one we have to address, unfortunately and a secondary issue, which is equally important, is how you revise the vaccine industry in this country. Unfortunately, we only have one company now in the whole country that is producing vaccine. That's not acceptable. We have to revitalize our vaccine. You see the reason companies have gotten out of producing vaccines, is once again lawsuits. So we have to build a system where these companies who are producing the vaccine, are producing it, and address issues like botulism, the other threats that are out there, by developing vaccine and have a viable industry to do that.

REBECCA ADAMS: Have you already formulated specific ideas about how to address that problem and how to bring that vaccine manufacturer site.

SENATOR JUDD GREGG: I think Senator Frisk and the new majority leader had an excellent piece of legislation. We will pass on that information, so revitalize the vaccine industry.

REBECCA ADAMS: I'd also like to touch on the two big entitlement programs, Medicaid and Medicare. First, with Medicaid, a number of governors are coming to Congress complaining about their fiscal situations and the need for additional help from the federal government. I've heard you express so views on this and I'd like you to tell us a little

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bit about what you think about this particular issue.

SENATOR JUDD GREGG: Well, I think a mistake you make, a legitimate claim. That it's not getting an act of compensation under the Medicaid law and it should be supported in that. As governor, I used this system, in fact, I was one of the first governor's to use the Medicaid reimbursement system aggressively, however in the late 1990s, we changed the law and so that was not an opportunity for dates [Misspelled?] and we used the Medicaid as a basis for a general revenue source and now it's required, there's a requirement that the actual payments have a relationship to the actual Medicaid activity that the state is pursuing and I do feel that that's the way it should be. I don't feel it should be used as a revenue sharing vehicle.

REBECCA ADAMS: What do you think the prospects are for governor's to get some sort of relieve from Congress?

SENATOR JUDD GREGG: To a large degree, it's a state-by-state issue depending on their situation and some states are going to have more legitimate claims than other states to getting additional reimbursement in the pro-serve system, but now sure that you can argue that there's a, I don't think there's a broad brush approach here. It doesn't exist that every state is going to get an adequate increase in funding. You've got to remember that there was a huge amount of money put into the S-Chip program and a lot of it didn't get drawn

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down by the states.

REBECCA ADAMS: What will happen with those states that did not draw down their S-Chip money, will they be able to keep those. I know there was basically an agreement that.

SENATOR JUDD GREGG: That's fights been going on. To be honest, I'm not current to what the status of that money is. I really can't help you. Oh I feel very strongly and I think the White House does, although I can't speak for them. It would be foolish to walk down the road of a major new entitlement, which is what the prescription drugs, is and which is needed. That's not to say it's not needed. It's needed. A movement from invasive [Unintelligible] it would be foolish however to put that sort of a major new attachment onto the Medicare system without bringing the Medicare system into the 21st Century. The Medicare system, as been described by a lot of people is like a 1950's automobile. It has never been significantly overhauled, it's just had things added to it and it's trying to drive in the year 2003. We need to update the Medicare system and there needs to be some fairly substantial reforms to that system and it should be a package where you reform the system and you put in place drug benefits and I know that that's the position the White House is pursuing. That doesn't come to our committee of course, that's the finance committee issue.

REBECCA ADAMS: Right, right. But I know that you do have an interest in...

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SENATOR JUDD GREGG: I do, in fact I wrote the first choice care bill, Medicare choice and that worked fairly well for awhile until basically the HMOs found that it was too expensive for them and they started backing out of the industry, and there has to be another approach to give seniors more options, and to bring the marketplace into play in order to get the cost of Medicare leveled off. The fact is what we are facing in this country today is... what we are facing as our most significant fiscal issue is the fact that there is about to retire this massive generation and (the baby boom generation) and if this generation, and if we don't straighten out the Medicare system in the and the Social Security System before that generation retires, basically that generation is going to be a huge burden on it's children, because much of what, almost a very significant amount of what my children earn will have to go to support me in my Social Security Benefits, in my Medicare benefits, because basically we've set up a system that is not going to be able to handle the numbers that are about to fall in. So we need reform and the problem we have is that the two proposals and Medicare and Social Security proposals in this area to try to reform them are always met with this political demagoguery and these mailings that come out in the form of Social Security envelopes saying that if you open this envelope, you are going to lose your Social Security, I mean this very scare tactic approach that we are seeing from

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some folks in order to gain political advantage. We really can't afford that anymore. We've got to face public policy problem here that is that we've got a huge generation about to retire. That generation is going to demand so much of the earning capacity and the income of our children, that our children are not going to be able to live a decent life. They are not going to be able to send their kids to school. They are not going to be able to take care, have the type of lifestyle that we have because they are going to be spending all their money just to pay taxes to support us. And it's not right. We've got to do something to correct it before it happens.

REBECCA ADAMS: What do you think are some specific ideas that might find their way into the White House or into something that could become law this year? When you talk about reform, what exactly do you mean?

SENATOR JUDD GREGG: Well, I'm not writing a proposal, if I were, I would aggressively pursue marketplace options. I would say, put in systems, which encourage seniors to look around before they buy healthcare and say, am I getting the best deal? And give seniors financial incentives, which give them options when they drew options in healthcare and Medicare choice type of approaches. I also think that you cannot, not means just Medicare. When you've got the part B premium, 75% of it being paid by the general taxpayer and it's available to everybody. Bill Gates, when he retires will get Part B

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benefits. That's not right. I think there has to be some sort of means testing of the Medicare system that allows, that reflects the fact that the general taxpayer shouldn't be picking up the full cost of the system for people who can afford to pay a higher percentage.

REBECCA ADAMS: Do you think that something like the Bill Frist Proposal that came out, the Medicare commission could get through the Senate something based on that template?

SENATOR JUDD GREGG: I don't know, but certainly the Breaux-Frist Commission was a very constructive document to this date. I'm sorry that the President walked away from it. President Clinton did. It was very ironic, I think. The President set up the commission bipartisan, came to a conclusion, it was supposed to correct the problem, was substantive and then walked away from his own Commission and said, I don't want to have anything to do with it, for political reasons. I thought that that was really not a very courageous move political act.

REBECCA ADAMS: What about this White House, this is obviously a priority for the White House, but they have a lot of other demands on their time, certainly the foreign landscape is very treacherous right now. Do you think that the White House understands how much political capital it would have to invest in this initiative in order to get it through Congress?

SENATOR JUDD GREGG: Will, I think the President does

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and I also think that the President also appreciates the fact that he is about to, that it looks like we may also end up in a war within the next few months and that's right in the middle of a key legislative period and he's got to get the economy going. And there are just so many hot button issues you can, hot potatoes that you can carry around at one time. And there are other hot potato items out there besides Medicare. Social Security, education, though and of course, you've got your tax cut and the war. And so it's a very difficult situation, obviously if we didn't, it would be great if we didn't have the terrorists trying to kill us. It would be great for a lot of reasons and one of the reasons that we could best this policy issue and other policy issues, if we could choose a more benign time, but we don't have that luxury. I do believe this President is willing to invest dramatic amount of political capital in order to strengthen out the Medicare and Social Security system and I suspect the first one he'll take on will be Medicare.

REBECCA ADAMS: What about dollar, how much do you think he will be willing to invest in terms of dollar terms?

SENATOR JUDD GREGG: Well we've already, there's already in the budget \$300 billion set aside for purposes of prescription drugs and you can do a pretty good plan for that number and on reform, I see that as a, I think that would be savings on reform, so I don't see that as being a dollar fight,

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that's more of a policy fight and a politics fight.

REBECCA ADAMS: Senator Judd Gregg, I appreciate your talking to us today, what else is important that we haven't talked about?

SENATOR JUDD GREGG: Well, you've hit on the really big items, which is how we prepare for terrorism, the question about how we get doctors to practice medicine rather than having to defend law suits and Medicare and Medicaid. Those are the big ones and we talked a little bit about generics, which is a big issue. We've got a couple of other issues, which are important. I think the issue of genetics is a big issue. You know, we are going to have an anniversary coming up here with the Human Genome Project. We are on the verge of really dramatic changes in the whole way we approach healthcare in this country, because of the development of the human genome information and that has huge upsides, but the downside is that some point in the not-to-distant future you are going to be able to go to a doctor and he's going to be able to tell you what you are going to die of. He or she is going to be able to tell you what you're going to die of and that whole issue of genetics and the predictability of genetics and how it affects you. What impact it has in the work place, what impact it has on your ability to buy healthcare insurance. It's a very big issue and we are trying to work through a piece of legislation which will protect people's rights to keep that information

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confidential, not have an impact in the workplace or their ability to buy health insurance, but it's a very complicated issue and it's one that involves a lot of questions with public policy and questions which we as a culture have trouble dealing with.

REBECCA ADAMS: Well thank you Senator Gregg. We appreciate your talking to us and if we have any questions, I hope we can follow-up with you.

SENATOR JUDD GREGG: Anytime.

REBECCA ADAMS: Thanks so much.

SENATOR JUDD GREGG: Okay, bye.