ALBANY, NEW YORK

March 5, 1997

10:01 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their places, staff to find their places. Ask everybody to rise and join me in saying the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed. )

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 4th. The Senate met pursuant to adjournment. The Journal of Monday, March 3rd, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Skelos, please place a sponsor's star on Calendar Number 223.

ACTING PRESIDENT KUHL: Calendar Number 223, which is on the active list, is starred at the request of the sponsor.

Any other motions or resolutions?

Hearing none, Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we recognize Senator Farley for an announcement, please.

ACTING PRESIDENT KUHL: Chair recognizes Senator Farley for an announcement.

SENATOR FARLEY: There will be an immediate meeting of the Banks Committee in Room 332. The Banks Committee will be meeting immediately in 332.

ACTING PRESIDENT KUHL: There

will be an immediate meeting of the Banks Committee, immediate meeting of the Banks Committee in the Majority Conference Room, Room 332.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the non-controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 123, by Senator LaValle, Senate Print 559, an act to amend the Education Law, in relation to community service opportunities.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 181, by Senator Kuhl, Senate Print 2060, an act to amend the General Business Law, in relation to automobile auctioneers.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 187, by Senator Levy, Senate Print 929, an act to amend the Vehicle and Traffic Law, in relation to leaving the scene of injury to certain animals without reporting.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 191, by Senator Maltese, Senate Print 2440, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalty for obstructing access.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 192, by Senator Stafford, Senate Print 799, an act to amend the Labor Law, in relation to licenses to possess and use explosives.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Levy, Senate Print 72, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 213, by Senator Velella, Senate Print 1189, an act to amend the Criminal Procedure Law, in relation to the use of electronically transmitted documents.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 215, by Senator Saland, Senate Print 1292, an act to amend the Criminal Procedure Law, in relation to expanding the offenses concerning which a child witness may testify.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 225, by Senator Cook, Senate Print 786, an act

to amend the Facilities Development Corporation Act, in relation to definitional provisions.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 234, by Senator LaValle, Senate Print 761-A, an act to amend the Insurance Law, in relation to coverage for breast reconstruction.

SENATOR LaVALLE: Lay that aside.

ACTING PRESIDENT KUHL: Lay the bill aside for the day, Senator LaValle?

SENATOR LAVALLE: No, no.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily. And 236 also? 236 also is laid aside temporarily.

Senator LaValle, that completes

the reading of the non-controversial calendar.

SENATOR LAVALLE: Mr. President, would you read the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar beginning with Senator Levy's Bill Number 208, Senate Print 72.

Secretary will read.

THE SECRETARY: On page 10, Calendar Number 208, by Senator Levy, Senate Print 72, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR LaVALLE: Last section.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 45, nays 1, Senator Mendez recorded in the negative.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 234, by Senator LaValle, Senate Print 761-A, an act to amend the Insurance Law, in relation to coverage for breast reconstruction.

SENATOR LAVALLE: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator LaValle.

SENATOR LAVALLE: I would like to make some brief remarks on both Calendar 234 and 236. These are both very, very important bills that are before us, and let me just indicate the problem and the reason why these bills are here.

I think, as many of you know and as has received much publicity, that some health maintenance organizations had adopted a policy that following a mastectomy operation that the hospital stay period was 24 hours. There's also a policy on breast reconstruction following such a procedure that women were denied insurance for such reconstructive surgery; and so once again -- and I think we saw this last year with what we called "drive-through maternities" -- this Legislature last year responded very, very

quickly. Senator Velella was the sponsor in this house, bills passed both houses and Governor Pataki signed that bill.

Once again, it seemed that we had this year coined a phrase, "drive-through mastectomies", and so this legislation is before you.

Before I explain a few provisions of this bill, I must say that this bill and companion in the Assembly that were passed and will be before the Governor for his signature could really not have been before us with the speed and with the kind of provisions that are in this bill had it not been for the leadership of Senator Alphonse D'Amato who many, many weeks ago brought the Majority Leader, the Speaker and those individuals who would be the sponsors of this legislation together at Sloan-Kettering in New York City for a major conference and what really turned out to be a hearing, because it had many people who participated in the physician community, from the advocacy community, that talked about the need for this kind of legislation and the kinds of provisions that should be in this legislation.

Senator D'Amato has played once again a major, major role in bringing legislation that affects breast cancer victims. Last year, you will recall he played a very major role in bringing before us the pesticide registry bill that had been around for a long time and he used his negotiating skills and brokering skills to bring closure on that issue, and again he's done that again on this issue.

Senate 761-A requires insurance companies to provide coverage for in-patient hospital care for a period of time as is determined by the physician in consultation with the patient to be medically appropriate, and I think it's a very key feature and that's something that we want not only here but in each and every medical procedure, determina... determination should be made by the physician and the patient.

In Senate Bill 11-A, coverage is provided for breast reconstructive surgery following a mastectomy including surgical reconstruction of the other breast to produce a symmetry in appearance. Senate Bill 11-A requires that insurance pay full coverage for

second medical opinions whenever a positive or a negative diagnosis of cancer has been made, or for reoccurrence of cancer or recommendation of a course of treatment for cancer.

Second opinion may be performed by a clinical specialist, including a cancer specialty care center. The insurance company must also provide coverage for a second medical opinion from a physician or cancer specialty care center not participating in the insurer's network.

Both Senate Bill 11-A and 761-A prohibit insurers from denying women insurance coverage solely for the purpose of avoiding the requirements of this legislation. It prohibits -- and this is very, very important - prohibits incentives to encourage women to accept less coverage than the legislation provides, and it prohibits insurers from penalizing -- from penalizing physicians who recommend and provide care in accordance with this legislation.

Those provisions, I know, after we had some initial drafts, Senator D'Amato had some very specific interest and we ensured that

we provided this, and so with the leadership of our Majority Leader, who has been absolutely fantastic in getting the staff focused, that we have these bills before us and before the Governor at the earliest possible time. I really salute our Majority Leader, Senator Velella, Senator Hannon and the other sponsors on this legislation.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. It's my pleasure to rise in support of these two bills. I think they're landmark pieces of legislation.

Certainly Senator LaValle deserves commendation for his hard work. Senator D'Amato for using his good offices to bring this issue to the floor and before us for public debate should be congratulated, and our Majority Leader, Joe Bruno, certainly should be congratulated for bringing this to the floor with such expeditiousness and speed.

The HMOs seem to be somewhat out

of control. This Legislature has had to take up bills dealing with term limits, time limits for women who are pregnant could only stay in the hospital for 24 hours while the HMOs really had to correct that problem. The HMOs are trying to tell women who have been the victims of breast cancer that they have certain limitations of a kind of treatment they can be -- they can receive, and that they can receive reimbursement for.

This is not acceptable behavior. It's actually being out of control. Everybody wants to control costs. Everybody wants in expensive medical care, but we also want quality medical care, and we're not willing to sacrifice quality for price.

There's no way you can put a price on good health. There's no way you can put a price on quality medical care if it saves the life of yourself or a loved one or anyone for that matter, and it's time we send a strong and stern message to the HMOs and those who would try to limit quality medical care in this state and this nation, that this is unacceptable and we will not tolerate it here, and Senator

LaValle's efforts go a long way in sending that stern message. Senator D'Amato's efforts, on a national level, go a long way in sending that message and the passage of these bills today will be historic and go a long way toward sending a message to these people and these institutions that their behavior is unacceptable.

We want to save money but not at the cost of human life and human health. This cannot be tolerated. So, ladies and gentlemen, I urge all my colleagues to join on these bills and vote for them. I know you will. I certainly intend to.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Mendez, on the bill.

SENATOR MENDEZ: Mr. Chairman, I rise in support of these two very important bills and also to congratulate Senator LaValle for making it possible for women who suffer from breast cancer to at least be a little bit more at ease while they deal with the psychological problems that such a disease or causes for many, many women and to have women who have to go

through a mastectomy to give them the true option, the real option of reconstruction to me is one of the very great things that anybody could do here in this chamber for a public policy, that it will ensure that women that are thus unfortunate at a specific moment in their time are able to breathe more easily through the conditions and policies taken in both bills.

So as a breast cancer survivor myself and as a person who underwent reconstruction, I appreciate enormously - enormously -- the significance of these two bills that we are voting on today, thanks to Senator LaValle and others and thanks to the intervention of Senator D'Amato, as was stated here earlier by Senator LaValle.

So it is with great joy that I support these two very important bills.

Thank you, Mr. Chairman.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a couple questions?

ACTING PRESIDENT KUHL: Senator

LaValle, will you yield to Senator Dollinger for a couple questions?

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Mr. President, since the sponsor has included both the calendar numbers, these questions may dovetail on both the bills.

The first question through you, Mr. President, is that the concept, as I understand it, Senator, involves the notion of any time there's a detection of cancer or a cancer opinion, either one of positive or negative, that under this bill all insurance policies in the state, all health insurance policies, will permit the insurer to seek a second opinion; is that correct?

SENATOR LAVALLE: That is correct. That's exactly what I stated.

SENATOR DOLLINGER: And that's for all forms of cancer.

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: Would that involve also forms of skin cancer?

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: O.K.

SENATOR LAVALLE: Any cancer.

SENATOR DOLLINGER: My question is, through you, Mr. President, I understand why given the nature of our science and technology cancer is of enormous concern in our population, but why would we provide a second opinion for cancer and not for other diseases as well? Why do we differentiate? Why doesn't this bill say that if you have -

SENATOR LAVALLE: Well, Senator -

SENATOR DOLLINGER: -- an adverse diagnosis of a potentially life-threatening diagnosis, that you're entitled to a second opinion?

SENATOR LAVALLE: We get into these discussions many times on other legislation. This legislation narrowly deals with a specific area. We have actually broadened it beyond the breast cancer to include all cancers, but the topic that, or the issue that we were dealing with was specifically cancer, so that's why we direct, in terms of insurers to address some of the issues

concerning this particular topic.

SENATOR DOLLINGER: Again through you, Mr. President. I agree, Senator LaValle, you're absolutely correct, we can focus the legislative power at a particular problem, a particular narrow problem. We don't have to, as a matter of course, address the broader issue.

My question is, doesn't this bill really set precedents that from now on whenever there's a life-threatening opinion rendered by any physician in the state, that we're going to start down a path that says everybody is entitled to a second opinion and, mind you, through the President, I'm not necessarily convinced that's such a bad idea. I'm just concerned, are we walking down -- starting down a path that suggests that everybody, when diagnosed either with or without a life threatening illness now has the right to a second opinion?

SENATOR LAVALLE: Whenever we pass legislation, we establish precedents. We open Pandora's box for exploration, and certainly others may, if they feel they have a grievance, come before this Legislature and ask

for a redress through the legislative process, and, therefore, there would be a debate and discussion about specific kinds of procedures, but obviously every time we pass a bill, we establish a precedent.

Senator, just to -- you know, in general, as I explained in my opening remarks, that the need for this legislation was precipitated by what many felt was a harsh policy on the part of the HMOs to require a very narrow, limited period for a hospital stay and also by turning away from, as Senator Mendez said, the trauma and the psychological effect and the need for reconstructive surgery, that that also be part of the inclusionary provisions for the insured.

SENATOR DOLLINGER: Again through you, Mr. President, I -- again, Senator LaValle, you -

ACTING PRESIDENT KUHL: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: I'm not

suggesting that this isn't the right thing to do. I just want to make sure that I fully understand it and fully understand where this starts us or finishes us on the line of moving away from a managed care model that many of us have applauded, that many of us think holds the opportunity to significantly reduce utilization and health care costs in this state, and I understand that, as we did with the "drive-through delivery" bill, that we have the power and the obligation in many cases to protect the health of the people in this state and to make sure that the HMOs are not sacrificing that on the altar of simply controlling costs.

But, again, through you, Mr. President, what is the anticipated cost, if you know, of requiring the insurers to provide a second opinion, and I would just add as a corollary, Mr. President, through you, could you give me some statistics as to how many times the insurers have refused to grant a second opinion or refused to pay the cost of -

SENATOR LAVALLE: I can't. You know, obviously, it would be misleading; but

what I can give to you is something that may - may be helpful as a statistic. 1995 in New York State for all in-patient mastectomies where the mastectomy was the principal procedure, the average length of stay was 4.2 days. Now, I can't do the math, but what I would say is that the HMOs were providing a 24-hour period when the average stay was 4.2 days, so you have approximately a 3.2-day difference in terms of what they were willing to provide for and what will probably be the average -- the average stay.

SENATOR DOLLINGER: Again through you, Mr. President. Senator, do you know any specific HMOs that have 24-hour provisions in their policies in New York State?

SENATOR LAVALLE: No.

SENATOR DOLLINGER: So we don't know whether the -- there were any limitations on hospital stays in this state for mastectomies?

SENATOR LAVALLE: Senator, I'm just -- just as one other piece of information, and I can't answer the second question, but in terms of a number that I have for 1995 as

out-patient mastectomies, we have a total of 124; for Medicare, 72; Medicare HMOs 2; Medicaid 3; Medicaid HMOs 2; HMOs 15; Blue Cross 15; commercial insurers 10; self-paid 3 and Other, 2. Now, I -

SENATOR DOLLINGER: Mr. President, if I could just ask the sponsor to clarify.

ACTING PRESIDENT KUHL: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Senator, I apologize, I'm confused.

SENATOR LAVALLE: Those were the out-patient mastectomies for the year 1995, and I gave you a breakthrough -- breakout of what were out-patient.

SENATOR DOLLINGER: I missed the term "out-patient". I missed the introduction that said that those were just -- that those were out-patient. So at least at this point, again through you, Mr. President, we don't know what the cost of either the second opinion would

be or what the cost of transforming out-patient mastectomies into in-patient mastectomies would be?

SENATOR LAVALLE: No, and I indicated that.

SENATOR DOLLINGER: Again through you, Mr. President, dealing with the second opinion requirement, which I think is a very good idea, my question is, is it the intention of this bill that the second opinion would involve not only the opinion about diagnosis but an opinion about proposed treatment as well?

For example, Senator, I go in and I'm diagnosed as having cancer and then I'm entitled to a second opinion as to whether or not I have it or if I get a recommendation from my oncologist of a prescribed course of treatment, do I get the opportunity to go get a second opinion simply on the question of whether the treatment is appropriate?

SENATOR LAVALLE: We're talking about both, the diagnosis and treatment.

SENATOR DOLLINGER: So that the -- I think -

SENATOR LAVALLE: I want to make

this, because we could go down this path which I know you want to go down, but the provisions in this bill were very, very carefully put together as we did a year ago for the maternity, because policymakers, both in the Assembly, in the Senate, and I remember very vividly being at the bill signing Governor Pataki, who said very firmly while we in the state want to save money, and so forth, we will not compromise patient care; and so what this body and from the people that have put this bill together in both houses and the second floor -- it's been mentioned several times, Senator D'Amato's involvement - is certainly not to try and micromanage the system, the HMO system. We want to give that an opportunity, but advocates, physicians, people who deal with this on a daily basis, say these provisions, second opinion provisions, the length of stay provisions, the reconstructive surgery provisions, are important in the fact that we not compromise patient care.

So I -- I mean we're not here throwing to the wind the issue of trying to save money. We all want to do that.

SENATOR DOLLINGER: I -- again

through you, Mr. President. I don't mean to suggest that this isn't the right thing to do, Senator, but I do believe and, frankly, I've learned in my experience here when I've gotten up on the floor and I think answered questions from all kinds of people when -- who say, you know what the cost is of what you're doing, and I'm just suggesting that that's something that we should at least know in making a public policy choice about quality of care.

I had this discussion with the chairman of the Health Committee innumerable times about trying to raise the bar. He made a very eloquent presentation to the Health Committee that says we're raising the bar, and he said what this is going to require for those people who have cancer, that the HMOs in the guise of cost cutting can't take away.

But I still think it's important to try to draw some sense of what this cost is because I think, as we go down this path and I think it's probably a proper path in determining when we're going to intervene in the HMO marketplace to set higher standards, we should at least know what the cost is.

I just have one other question and then I'll speak on the bill.

ACTING PRESIDENT KUHL: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: This also raises the question of clinical trials which I believe you also know is an issue we're going to have to deal with in this budget, which is the issue of clinical trials, because it seems to me if we allow a second opinion in a cancer case and that second opinion can relate to a form of treatment, the question becomes are we going to allow the HMOs, after a patient gets a second opinion and the opinion is to try an experimental treatment, to try clinical trial - to try a method of cancer treatments that may be experimental.

It seems to me that this bill requires us -- requires us to move down to that next level and say we're going to support the notion of both state dollars through the Medicaid system and other dollars in HMOs to contribute, to fund the kinds of treatments that may be recommended in the second opinion.

My question is, do you see it moving in that same direction and doesn't this commit us to do that? Again, I think it's a good thing to do.

SENATOR LAVALLE: I think you probably know the answer having read the bill, that there is nothing in the bill that suggests, because this is not a clinical trial bill, nor is there any language in here that would suggest that.

SENATOR DOLLINGER: O.K. Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I thank Senator LaValle for answering my somewhat technical questions about this bill, but it seems to me that this bill does a good thing. It does raise the bar in health care. It is a statement by this Legislature, by the Senate, that we're required to provide additional protections in the name of improving the quality of public health, regardless of the cost to the HMOs.

I would prefer, quite frankly,

that as we legislate bills like this, we have some sense of what that costs so that we can at least evaluate the consequence of raising public standards, of improving health care for both women and for the general population that are afflicted with cancer.

I also think, and I know Senator LaValle talked about moving down the road, I see this bill as moving down a road. I see it moving down a road that we should move down, that we should examine our health care system and realize that there are savings available in managed care but that they should not come at the cost of the public health, and I believe that this bill, by providing access to second opinions, by providing access to treatment opinions, commits us to do things like funding clinical trials which I think is a good idea, by committing our resources to make sure that quality health care is available for every New Yorker.

(Senator D'Amato entered the chamber.)

I'm not in the habit of commending, necessarily, Senator D'Amato, but I

recognize he has had leadership on this issue. I think he has brought and perhaps focused our attention on this. I think it's a good thing that we've done this bill in a timely fashion. I still think that there are issues about what this leads to, what the road symbolizes, that we ought to look at, which ought to evaluate the cost of, but at least at this point, this step is at least well warranted.

ACTING PRESIDENT KUHL: Chair recognizes Senator Rath, on the bill.

SENATOR RATH: Thank you, Mr. President.

I rise, as many of my colleagues have, to congratulate Senator LaValle, Senator Bruno, Senator D'Amato as they've brought up the consciousness on what is one of the pressing health issues of the day. The bills that are being passed today will move forward with what at one time was considered a, quote, women's health issue. It is, but it's bigger than a women's health issue. It's a family health issue. I don't need to expand on why it's a family health issue, because women are single heads of household, traditional mothers,

someone's sister, someone's daughter, someone's aunt. It's a family issue.

It's a psychological issue, as Senator Mendez pointed out, but a larger issue was raised, and I don't know if Senator Dollinger realized that he raised a larger issue and at that point I knew I needed to speak on what I think is a larger issue, and Senator Dollinger raised it in relation to the second opinion, diagnosis, appropriate treatment.

In discussions of women's health issues, a larger area has come to the fore as we've discovered that much of the women's health issues, many of the women's health issues that we discuss and that we evaluate are predicated on research that was done on men. Certainly not breast cancer, that's a different issue, but take a look at heart disease and how that has started to increase in women.

When you talk about life style, when you talk about genetic make-up, you talk about hormonal make-up and you talk about the interaction of those, there is not much research. It's just becoming a cause that people are getting interested in, and I would

like to suggest that, when drug levels are prescribed, I would certainly want us to have a second opinion before I allowed anyone to prescribe a drug level that was most likely predicated on research that had been done on men.

We have a whole other discussion that is about to develop, and today is the beginning of a new role. Senator Dollinger again characterized it as both the raising of the bar in the discussion and beginning down the road, and I would suggest that any road as we are going from here to there in legislation and in government is not a straight road. It zigs and zags, and we must start down the road though.

And as we start down the road, is it a straight road? No, it's straight at the start. And will we find some places where there are some glitches? Yes, and then that will be a zig or a zag depending on which side of the road you're on; and so, in this new day of cost containment and quality health care, I would suggest that the balance that we are trying to achieve in both of those is started today.

We're on our way down the road, and we have a whole lot of other stops to make in our lifetime. I don't know if we'll see the end of the road, but we certainly are on it and I welcome this bill and congratulate the sponsors.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, I would like to ask the chamber to receive with our hospitality our very distinguished United States Senator, Al D'Amato, who has joined us here for just a few moments and, as has been commented on in the chamber by Senator LaValle and others, Senator D'Amato has been the catalyst, the leader in getting this legislation where it is on the floor of the Senate, and soon on the floor of the Assembly and then on the Governor's desk to become the law of this state.

So we are indebted to Senator D'Amato, and I want to just express, Mr. President, a welcome from all of our colleagues here in the chamber, to the good Senator.

(Applause)

ACTING PRESIDENT KUHL: Senator Lachman, on the bill.

SENATOR LACHMAN: Yes, very briefly on the bill. I do not share some of the positive aspects of the evaluation of HMOs and managed care as one of my colleagues does, but I do share with him the positive virtues of this bill.

Very briefly, I do think it sets a major precedent for the good, not only in terms of -- and I think it's gender-free because what can be done in terms of aiding patients of breast cancer can be done with aiding patients with prostate cancer and other forms of life-threatening disease.

I think that the leadership of this chamber should be amended and this is a non-partisan bill, and I also think that Senator D'Amato, who is with us today, should be commended in terms of his input into the development and fruition of this legislation today.

I proudly support this bill and bills that I assume will follow from this precedent.

Thank you.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes, very briefly on the bill.

I commend Senator LaValle and other leaders in making sure this legislation is introduced and hopefully passed today, but I look to the leadership of Senator LaValle, Senator Kemp Hannon, Senator Stafford, to amend this bill maybe not today but at a later point in time, so it talks about a fair right of appeal when health care is denied, particularly for experimental trials, for clinical trials. It's very important that the HMOs not be judge and jury in deciding about these very important programs and drugs and devices be utilized.

Many of the doctors I've spoken with, many of the patients remind us all that today's experiment may become tomorrow's cure, and it's very important that there be built into this legislation and other HMO legislation a fair right of appeal, so not only will there be a second opinion, but there will be an oppor tunity for an independent panel of medical ex

perts to make a decision whether an experimental trial is warranted or not.

So I look forward to the leadership. I know Senator Stafford has been a leader on this issue. I'm hoping to look forward to the passage of either an amendment of this bill or another bill in the future that would address this issue.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on Calendar Number 234?

Senator Nanula.

SENATOR NANULA: Thank you, Mr. President.

I, too, would like to rise in support of this bill and also to commend Senator LaValle not only in regards to moving forward on this issue but allowing both sides of the aisle to participate in regard to the bill in an environment where this legislative body has had to intervene regarding procedures not provided or inadequately provided by HMOs.

It's appropriate we address the issue of reconstructive surgery for those women suffering from breast cancer. We've seen this

in the past. Today there's another bill regarding the, quote/unquote, "drive-through mastectomies" and also in regard to the managed care bill of rights which I think this legislative body as well as the Assembly was very progressive in bringing to New York State. It's quite unique to this country.

As many of us know, this bill is now or this law is now going to begin to go into effect and already we're beginning to hear some concerns and issues from the industry in regard to the quality and accessibility and afford ability as well as accountability, and I think it's really going to be incumbent upon us as a Legislature to ensure that this HMO industry ensure -- it does ensure that quality and accessibility and affordability are provided as well as accountability.

Senator Abate just mentioned an appeal process. I think that certainly that is an issue that we may have to look at moving forward in regard to the issue of managed care and that is not to say that I'm not a supporter of managed care and HMOs. Certainly the approach to, quote/unquote, "managing care" is

something that it certainly makes a lot of sense from a lot of perspectives, but as long as that approach to, quote/unquote, "managing care" is done in an environment of quality and accessibility, really we'll be in good shape in regards to this approach and again, it's unfortunate that this legislative body has to be reactive in regards to moving forward initiatives like this one today.

It would certainly be more pleasing to me at least if the industry itself would be proactive in regards to addressing these issues, but until and unless they do, we're going to have to continue to look at issues like this and others and, again, I want to commend Senator LaValle and others involved in this in addressing this issue today.

Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect January 1st, 1998.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 236, by Senator LaValle, Senate Print 11-A, an act to amend the Insurance Law and the Public Health Law, in relation to establishing mandatory care.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect January 1st, 1998.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

Mr. President, I was at a committee meeting off the floor when the house acted on 208. I respectfully ask unanimous consent to be recorded in the negative on that

bill.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Waldon will be recorded in the negative on Calendar Number 208.

Senator Johnson.

SENATOR JOHNSON: Mr. President, without objection, I'd like to be recorded in the negative on Calendar Number 123.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Johnson will be recorded in the negative on Calendar Number 123.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe -- if you could return to reports of standing committees, I believe there is a report of the Banks Committee at the desk. I ask it be read.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. The Secretary will read a report of the Banking Committee.

THE SECRETARY: Senator Farley, from the Committee on Banks, reports the

following bills:

Senate Print 2144, by Senator Farley, an act to amend the Banking Law and the Criminal Procedure Law;

2145, by Senator Farley, an act to amend the Banking Law, in relation to money transmitters.

Both bills reported directly to third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Without objection, the bills are ordered directly to third reading.

There is no housekeeping.

SENATOR SKELOS: Then, Mr. President, there being no further business, I move we adjourn until Monday, March 10th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, the Senate stands adjourned until Monday, March 10th, at

3:00 p.m., intervening days to be legislative days.

Senate stands adjourned.

(Whereupon at 10:46, a.m., the Senate adjourned.)