

had no previous experience in private health insurance.

As of July, 1998, HCFA has authorized 40 full-time staff members to work on all HIPAA-related issues. HCFA officials acknowledge that these new staffers will likely focus on responding to consumer inquiries and complaints. Officials also have said that they will need additional staff to conduct any further enforcement activities. They are unable to state their precise staff needs, because they are inexperienced in the regulation of private health insurance and are uncertain of their long-term responsibility. At a Labor Committee oversight hearing in March, HCFA Commissioner Nancy-Ann Min DeParle testified that HCFA may require an additional range of enforcement tools, beyond the already-established civil monetary penalties.

Without formal notification of non-compliance from Massachusetts and Michigan, HCFA must undertake a determination process to establish the States' nonconformance, officially providing the authority for HCFA to become involved. HCFA officials have not yet undertaken this effort, which they characterize as cumbersome.

The GAO has found that HCFA's review of carriers' product literature and policy compliance would be restricted by the Paperwork Reduction Act. The Act establishes a process for approval of any collection information, defined as collecting information from 10 or more persons. HCFA would need to obtain approval from the Office of Management and Budget for anything other than obtaining information in response to specific consumer complaints. To fulfill its regulatory duties, HCFA would need OMB approval to collect information from all carriers on a regular basis, which most State insurance commissioners already do.

In California, Missouri, and Rhode Island, oversight of health benefits is divided between State insurance regulators and the Department of Labor. The addition of HCFA to the array of regulatory bodies may further fragment and complicate the regulation of private health insurance. This framework may lead to duplication, yet none of these agencies will have complete authority for regulating health insurance products. Ms. DeParle herself has stated that this would be a challenging "patchwork quilt of Federal and State enforcement."

One example is in Missouri, where the State's present small-group, guaranteed-issue requirement is applicable to groups of 3 to 25 individuals. HIPAA's small-group guaranteed-issue standard applies to policies sold to groups of 2 to 50 individuals. Therefore, in Missouri, HCFA has the responsibility for ensuring that carriers guarantee products to groups the size of 2 individuals, and groups the size of 26 to 50 individuals.

The legislative history of HIPAA makes clear that the Congress intended that the effect of this legislation would

be that all States would come quickly into compliance with the stated Federal standards, eliminating the need for active regulation by HCFA. We are now confronted by the fact that in at least five States HCFA must initiate enforcement with respect to group to individual market coverage.

At a March 19, 1998, Labor Committee HIPAA oversight hearing, Don Moran of the Lewin Group testified: "The lesson I take from HIPAA is that, in the complex world of health benefits regulation, the Federal government cannot tidily insert itself as a policy-setter in a predominantly State-administered regulatory regime." In establishing minimum Federal standards for health insurance, we may have to develop alternative approaches to the HIPAA framework so as to encourage States to meet Federal standards and retain enforcement responsibilities.

Mr. President, the GAO report concludes that HCFA's regulatory role is likely to expand as it assumes enforcement responsibilities to ensure States' compliance with HIPAA. It is clear that HCFA's new regulatory responsibilities will increase the burden faced by health carriers and regulators, and will add to the confusion faced by consumers, who try to navigate through the intricate system of overlapping and duplicative regulatory jurisdiction. ●

FEDERAL ACTIVITIES INVENTORY REFORM (FAIR) ACT

● Mr. THOMAS. Mr. President, I rise today to express my deep appreciation to the members of the Senate Governmental Affairs Committee, and the Committee's staff, for the time and effort they have dedicated to developing a consensus on my legislation to codify the 40+ year Federal policy on reliance on the private sector.

At the beginning of this Congress, I introduced S. 314, the "Freedom from Government Competition Act." This legislation was an attempt to establish in statute a workable process by which Federal agencies utilize the private sector for commercially available products and services. As we have learned from our research and from House and Senate hearings, as early as 1932 Congress first became aware of the fact that the Federal government was starting and carrying out activities that are commercial in nature, and that government performance of these activities resulted in unfair competition with the private sector. In 1954, a bill to address this issue passed the House and was reported by the Committee on Governmental Affairs of the Senate. At that time, the Eisenhower Administration indicated that it could resolve the issue administratively. Bureau of the Budget Bulletin 55-4 was issued and the Senate suspended action on the legislation. The budget document established a federal policy of reliance on the private sector. It noted that the free enterprise system was the strength of our economy and that the government

should not compete with private business. Rather, the Bulletin said, the government should rely on the private sector for those good and services that could be obtained through ordinary business channels.

That policy is now found in OMB Circular A-76 and has been endorsed by every Administration, of both parties, since 1955. However, the degree of enthusiasm for implementation of the Circular has varied from one Administration to another. In fact, the issue of government competition has become so pervasive that all three sessions of the White House Conference on Small Business, held in 1980, 1986, and 1995, ranked this as one of the top problems facing America's small businesses. According to testimony we received, it is estimated that more than half a million Federal employees are engaged in activities that are commercial in nature.

However, the purpose of my legislation is not to bash Federal employees. I believe most are motivated by public service and are dedicated individuals. However, from a policy standpoint, I believe we have gone too far in defining the role of government and the private sector in our economy. Because A-76 is non-binding and discretionary on the part of agencies, too many commercial activities have been started and carried out in Federal agencies. Because A-76 is not statutory, Congress has failed to exercise its oversight responsibilities. Further, by leaving "make or buy" decisions to agency managers, there has been no means to assure that agencies "govern" or restrict themselves to inherently governmental activities, rather than produce goods and services that can otherwise be performed in and obtained from the private sector.

Among the problems we have seen with Circular A-76 is (1) agencies do not develop accurate inventories of activities (2) they do not conduct the reviews outlined in the Circular, (3) when reviews are conducted they drag out over extended periods of time and (4) the criteria for the reviews are not fair and equitable. These are complaints we heard from the private sector, government employees, and in some cases from both.

In the 1980's our former colleague Senator Warren Rudman first introduced the "Freedom from Government Competition Act" in the Senate. Later, Representative John J. Duncan, Jr. (R-TN) introduced similar legislation the House. I was a cosponsor of that bill when I served in the other body. Upon my election to the Senate in the 104th Congress, I introduced the companion to Rep. Duncan's bill in the Senate.

On Wednesday, July 15, 1998 the Senate Governmental Affairs Committee unanimously reported a version of S. 314 that is a result of many months of discussion among both the majority and minority on the committee, OMB, Federal employee unions and private sector organizations. The amendment in the nature of a substitute offered by

Chairman Fred Thompson and approved by the Committee is a consensus and a compromise.

It is important to point out that the bill that I introduced in the 104th Congress was an attempt to codify the original 1955 policy that the government should rely on the private sector. After a hearing on that bill was convened by Senator STEVENS, during his tenure as Chairman of the Committee on Governmental Affairs, it became clear to me that it was necessary to add to the bill the concept of competition to determine whether government performance or private sector performance resulted in the best value to the American taxpayer. While S. 314 as introduced, and H.R. 716 introduced in the House, was still entitled the "Freedom from Government Competition Act", it in fact not only did not prevent government competition, but it mandated it. This was not a change that private sector organizations came to comfortably support. However, inasmuch as OMB Circular A-76 changed through the years from its original 1955 philosophical statement to its more recent iterations that required public-private competition, I revised my bill when introducing it last year to include such competitions, provided they in fact are conducted and that when conducted, they are fair and equitable comparisons carried out on a level playing field.

I would also hasten to add that the measure reported by the Senate Governmental Affairs Committee, which I hope will be promptly approved by the full Senate, is significantly different than S. 314 as introduced. While S. 314 as introduced was opposed by the Administration and by the Federal employee unions, the compromise measure reported from the committee is not opposed by these groups.

Mr. President, this is important legislation that I believe will truly result in a government that works better and costs less. Certainly government agency officials should have the ability to contract with the private sector for goods and services needed for the conduct of government activities. This bill will not inhibit ability. However, it should not be the practice of the government to carry on commercial activities for months, years, even decades without reviewing whether such activities can be carried out in a more cost effective or efficient manner by the private sector. I believe that the drive to reduce the size and scope of the federal government will be successful only when we force the government to do less and allow the private sector to do more.

During the course of our hearings, it became abundantly clear that there are certain activities that the Federal government has performed in-house which can and should be converted to the private sector. Areas such as architecture an engineering, surveying and mapping, laboratory testing, information technology, and laundry services have

no place in government. These activities should be promptly transitioned to the private sector.

There are other activities in which a public-private competition should be conducted to determine which provider can deliver the best value to the taxpayer. This includes base and facility operation, campgrounds an auctioning.

There are several key provisions in the bill upon which I would like to comment. In particular, section 2(d) requires the head of an agency to review the activities on his or her list of commercial activities "within a reasonable time". OMB strongly opposed a legislative timetable for conducting these reviews. As a result of the compromise language on this matter, it will be incumbent on OMB to make certain these reviews are indeed conducted in a reasonable time frame. These reviews should be scheduled and completed within months, not years. I will personally monitor progress on this matter, as will the Governmental Affairs Committee. I urge OMB to exercise strong oversight to assure timely implementation of this requirement by the agencies.

This provision also requires that agencies use a "competitive process" to select the source of goods or services. In my view, this term has the same meaning as "competitive procedures" as defined in Federal law (10 U.S.C. 2302(2) and 41 U.S.C. 259 (b)). To the extent that a government agency competes for work under this section of the bill, the government agency will be treated as any other contractor or offeror in order to assure that the competition is conducted on a level playing field.

Another issue that I have been concerned about is the proliferation of Interservice Support Agreement's (ISSA's). Under the "FAIR" Act, consistent with the Economy Act (31 U.S.C. 1535), items on the commercial inventory that have not been reviewed may not be performed for another federal agency. In addition, any item on the inventory cannot be provided to state or local governments unless there is a certification, pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505(a)).

Enactment of the "FAIR" Act is a major achievement because it codifies a process to assure government reliance on the private sector to the maximum extent feasible. Further, it will put some teeth into Executive Order 12615 by President Reagan, which is still on the books today.

Again, I thank the members of the Senate Government Affairs Committee and the Committee's staff, for all of the hard work necessary to forge this compromise. I look forward to working with them on thorough Congressional oversight on the implementation of this bill.●

A TRIBUTE TO THOMAS ESTES

● Mr. SMITH, of New Hampshire. Mr. President, I rise today to pay tribute to the life and accomplishments of Thomas Clifford Estes of New Ipswich, New Hampshire, who recently passed away at the age of 66.

The family of Tom Estes can take comfort and pride in the way that he lived his life. Born on November 28, 1931 to the late Bedford and Emily Estes of New York, Tom graduated from Erasmus Hall High School and later studied at RCA Institute.

Following his father's distinguished example in serving this country in the armed forces, Tom joined the United States Navy in 1951, shortly after the outbreak of the Korean War. For three of his four years of active duty, Tom served on the U.S.S. Tarawa, a Navy aircraft carrier that entered the Asian war zone. He earned a number of Navy awards, including the Korean Service Medal, the United Nations Service Medal, the China Service Medal, the National Defense Service Medal, the Good Conduct Medal and the Navy Occupation Service Medal.

Tom's service to the nation was commendable, not just during the Korean War, but throughout his thirty-two years of Federal civil service. He began his career as a quality assurance engineer for the United States military in Florida and later moved to Dallas, Texas, before settling in New Hampshire in 1967. Upon his retirement, Tom was recognized by the Defense Logistics Agency for his contributions.

Tom was admired for his integrity, dedication to his community and positive demeanor. He remained a devoted husband to his wife, Mary, throughout almost thirty-five years of marriage and helped care for his disabled sister for many years. An accomplished chess player, Tom also enjoyed baseball and studied the law. He and his wife ran a small, twenty-acre farm in New Ipswich for many years. He was a man who cared about the needs of others and his community, whose sense of humor, cheery smile and knack for storytelling will be missed by all who knew him.

Tom will be buried with military honors at Arlington National Cemetery on Monday, August 3, 1998. I extend my deepest sympathies to his wife, Mary, his daughter, Evelyn, his sons Thomas and Peter, and his sister, Nancy. It is my great pleasure to pay tribute to this special American in the official RECORD of the annals of Congress.●

THE EFFORTS OF THE WOMEN'S MOTORCYCLIST FOUNDATION, INC., TOWARDS THE CURE FOR BREAST CANCER

● Mr. D'AMATO. Mr. President, I rise today to commemorate The Women's Motorcyclist Foundation, Inc. for their continued efforts in the battle against breast cancer. The fight against breast cancer is one that everyone must join