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THE FEDERAL GOVERNMENT AND INSURANCE INDUSTRY

I am glad to have the opportunity to speak to you here in Durham today.

As most of you know, I have a reputation for very strong convictions on the subject of States' rights. While this is a subject I can speak on at length--and frequently do to the occasional irritation of some of my colleagues--the importance of States' rights was well stated by Governor Aycock during a campaign speech in 1910. He said, and I quote: "A Democrat believes in order to be responsive to the quick demands of the people the government should be as close to the people as it is possible to bring it. A Democrat believes that when you have centralized your government and made it strong and put it far away from the people, that the great mass of the people can't put their hands upon that government and enforce the will of the multitude."

To put it another way, if a public policy decision can be made in Raleigh rather than in Washington, then that is where it should be made, for the government that is closest to the people is most likely to be government of the people. That is what most North Carolinians want, and that is what I have been fighting for in the Senate.

This is a principle that, in my opinion, should be strongly supported by the insurance industry, as the regulation of insurance is still one of the areas where State governments still have a stronger role than the national government.

But, it is a principle that you will have to work to keep. The number of Washington-based interest groups and bureaucrats that want to bring ever more power to the national government is astounding.

To fight for this principle is sometimes difficult because it can require one to oppose a measure that, on a purely substantive basis, one agrees with. For example, last year, an amendment was offered in the Senate which would have required each State, as a condition of getting any money for education programs from the Federal government, to adopt a right-to-work policy with regard to teachers. This is something our State has already done for all workers.

Now, I have always supported North Carolina's right-to-work law and I certainly do not believe that teachers should be required to join a union. But, I had to vote against this amendment and did so for two reasons. First, one of the basic doctrines of our system of government is that public education policy should be controlled by State and local governments and that the Federal government should not interfere. It was this concern with federal interference that led me to oppose the creation of the Education Department so strongly.

Secondly, current law says that each State can decide for itself whether it wants a right-to-work law. The same logic that says that Congress can require a right-to-work law for teachers can be used to get Congress to eliminate all State right-to-work laws completely, including North Carolina's. This is because the amendment implies right-to-work is a policy issue best dealt with by the Congress. I disagree with that.

As most of you know, under the McCarran-Ferguson Act, the regulation of the insurance industry has been left to the States. I have always supported this policy and have regularly opposed efforts to have the Federal government move into this area.

That happened most recently when the staff of the Federal Trade Commission decided, with little supporting evidence, that the States were not doing enough to protect the consumers. So they started an investigation with an eye towards imposing national regulations governing the conduct of insurance companies.

The Senate, with my support, responded quickly and added a provision to the FTC bill that blocked the investigation and any regulations that might have been proposed down the road. This has now become law.

In a similar vein, representatives of the insurance industry have expressed their opposition to a national no-fault auto insurance bill for years, arguing that the matter is best left to the States. And again, I agree with that.

But, two months ago, these same representatives testified before the Senate Banking Committee, on which I serve, that the Congress should pre-empt State laws which have allowed in effect banks to get into the business of selling insurance. There is some question here whether this is an insurance issue or a banking matter, and the latter falls somewhat more within the realm of the Federal government. However, I do think that the insurance industry should think long and hard before it comes to the Congress asking for the pre-emption of State laws.

I made a comment during that hearing which I feel bears repeating. The Congress, because of time constraints alone, simply cannot do everything. In practical terms, all power will not reside in the Congress; it will either be left with or delegated to elected State officials, or it will be delegated to non-elected, and frequently unrepresentative, bureaucrats. Both elected officials and bureaucrats are sometimes guilty of making incorrect decisions. But, when elected officials make mistakes, the people have much greater recourse in terms of either getting the decision changed or, for that matter, getting the officials changed.

Working for Blue Cross/Blue Shield, which is both a private insurer and one of the Medicare carriers for North Carolina, you ought to be quite familiar with the problems caused by overzealous federal regulators. I have been discussing the Federal Trade Commission but, if it is possible, the Health Care Financing Administration has been worse.

For the last three years, two members of my staff have been spending countless hours dealing with the problems caused by HCFA (PRONOUNCED hic-va) officials, both in Washington and the Region IV office in Atlanta.

There is hardly a single aspect of either Medicaid or Medicare reimbursement that HCFA has not been issuing new regulations for. Most of these new regulations have caused many more problems than they have solved.

The thrust of these regulations appears to be to reduce reimbursement rates on the one hand, while increasing the regulatory burden on medical providers on the other. And, for many of these regulations there appears to be little or no statutory authority. These regulations include the regulations dealing with reimbursement for hospital-based physicians and for durable medical equipment suppliers, the Annual Hospital Reporting requirements, and the new requirements for free care for the poor under the old Hill-Burton Act, just to name a few.

While I am always appreciative of efforts to hold down the cost of government programs, it seems clear that the Federal government has an obligation to provide full payment for the services given by health care providers under the Medicare and Medicaid programs.

The problem caused by under-reimbursement for Medicare and Medicaid services is one that affects all private parties that pay for medical care, whether it is an individual or an insurance company

paying the bill. According to material I have received from the hospitals in our State, which I believe to be accurate, this problem with under-reimbursement is adding 10 to 20 percent onto each privately paid for medical bill.

Yet, partly because of the obstinance of the Federal bureaucracy and partly because of the budgetary problems facing the Congress, there has been great difficulty in getting the regulations modified. Quite frankly, the whole process has been somewhat discouraging, or as Senator Pryor said in another context, "it is like wrestling with an 800 pound marshmallow."

The unresponsiveness of HCFA does appear to indicate that it would not be appropriate to allow them to administer a national health insurance program, which some have proposed, and more immediately, that the decision by the Congress not to approve the proposed hospital cost containment bill was the right one.

I had stated many times, over the last couple of years, that the threat of hospital cost containment legislation was going to be more effective in terms of controlling hospital costs than actually passing a bill. While there certainly was a serious problem with sky-rocketing hospital costs, the actions of the medical profession, the hospitals and the insurance industry over the last couple of years has been commendable.

Working together, you have managed to bring cost increases within the hospital industry down to a level that is virtually identical to the general inflation rate. This is no small achievement considering the degree to which hospitals are dependent on energy and the continual improvements in the quality of care, a large part of which is due to improved, but expensive, technology.

Actually, the record of those of you working with North Carolina's hospitals has always been good, even before threats were being made about federal cost controls on hospitals. And, one of my major concerns with the proposed legislation was that I thought its impact in North Carolina would be especially damaging.

But, unfortunately, this good record did not exist in every State, and it was this that led to the 47-42 vote in the Senate in favor of the hospital cost containment bill back in 1978. But it was not enacted at that time, and now that record of other States has improved the likelihood of any bill being enacted, in this Congress or the next, is minimal.

The problems that have arisen with the administration of the Medicaid and Medicare programs has been part of the reason for a re-evaluation of policy in relation to national health insurance. As a topic, national health insurance has been around for over 40 years,

and I suspect that it will be discussed for more years before the Congress takes any comprehensive action.

For much of these 40 years, the discussion has revolved around the question of whether there should be a federally administered program or none at all.

But, in the last couple of years, a new and encouraging element has been added to the debate--namely, that if there is to be a health insurance program, maybe the best solution would be to increase private sector competition rather than government regulation and that individual Americans should be given a greater opportunity to choose between various health insurance policies.

Under these proposals, and there are several that follow this thrust but vary in detail, the role of the government would be to insure that people have the means to choose between competing policies and even approaches to health insurance and to encourage greater competition in the industry. It would not be the role of the Federal government to administer and regulate and generally restrict choice.

This theory has not been completely worked out, but if there is to be a national health insurance program, I feel that it is clearly the way to go. However, my feeling is also that we simply cannot



afford a massive new Federal domestic program at the present time and that rapid enactment of such a proposal is unlikely.

Whatever happens, this new way of thinking about an old issue is highly encouraging, especially as it builds upon our health care system rather than trying to start from scratch.

And that is all the more appropriate since our health care system, while not so simple on paper and for all its problems, is clearly the best in the world.