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Health

L-2 The Health Care Compact (2014 HB 2553)

The Health Care Compact (2014 HB 2553) was signed by Governor Brownback on April 22, 2014, thereby allowing Kansas to join the Interstate Health Care Compact. The stated purpose of the Compact is to secure the right of Compact member states to regulate health care within their boundaries, and to secure federal funding for member states that choose to invoke their authority under the funding provisions of the Compact. The U.S. Congress would have to consent to the Compact in order for it to be effective. If approved by Congress, the Compact would become effective on its adoption by at least two member states. As of May 31, 2014, a total of 26 states have considered the Interstate Health Care Compact legislation, and nine states have enacted and signed statutes. Pursuant to the bill, the Compact could be amended, and a state would be able to withdraw from the Compact. The Compact also would allow a member state to suspend operation of any federal laws, rules, regulations, or orders that conflicted with the laws of the respective state. The February 2014 fiscal note for HB 2553, prepared by the Division of the Budget, indicated the Kansas Department of Health and Environment did not respond to the Division of Budget's request for fiscal information, and the Division of Budget stated an estimate of the fiscal effect had not been determined.

The bill contains a preamble that includes statements on the importance of the separation of powers, including between federal and state authority, and the preservation of individual liberty and personal control over health care decisions. The Compact contains nine articles and is organized, as follows.

Summary

Article I – Definitions

Article I defines a number of terms including the following:

- **Health Care:** Care, services, supplies, or plans related to an individual's health. The definition excludes any care, services, supplies, or plans provided by the U.S. Department of Defense and the U.S. Department of Veterans Affairs, as well as those provided to Native Americans.
- **Member State Base Funding Level:** A number equal to the total federal spending on health care in the member state

during federal fiscal year 2010. For Kansas, the preliminary estimate would be set at \$6.985 billion. A number of other terms also use the 2010 federal fiscal year as a base. (See Article V, below, for the application of several of the defined terms.)

Article II – Pledge

This Compact provision requires member states (those states who sign and adopt the Compact) to take action to secure the consent of the U.S. Congress to return the authority to regulate health care to the member states, consistent with the Compact's provisions. Article II also would require member states to improve health care policy within their respective jurisdictions, according to each state's discretion.

Article III – Legislative Power

This provision would grant member states' legislatures the primary responsibility to regulate health care in their respective states.

Article IV – State Control

Article IV would grant each member state the authority to suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with those adopted by the member state based on the Compact. Those federal provisions that are not suspended would remain in effect, and the member state would be responsible for the associated funding obligations.

Article V – Funding

Each member state would be granted the right to federal monies each federal fiscal year up to an amount equal to its "Member State Current Year Funding Level" (defined in Article I as the "Member State Base Funding Level" multiplied by the "Member State Current Year Population Adjustment Factor" and further multiplied by the "Current Year Inflation Adjustment Factor"). This

funding would come from Congress as mandatory spending and would not be subject to annual appropriation. It would not be conditional on any action of or regulation, policy, law, or rule being adopted by the member state.

Congress would be required to establish, by the start of each federal fiscal year, an initial "Member State Current Year Funding Level" based upon reasonable estimates. The final "Member State Current Year Funding Level" must be calculated, and funding is required to be reconciled by Congress based on information provided by the member state and audited by the U.S. Government Accountability Office.

Article VI – Interstate Advisory Health Care Commission

This article would establish the Interstate Advisory Health Care Commission, set its membership to include not more than two members from each member state in a process to be determined by the member state, authorize it to elect a chairperson from its membership and adopt bylaws and policies, and require this commission to meet at least once a year.

Further, the Commission would be:

- Authorized to study health care regulation issues that are of concern to the member states and make non-binding recommendations to the member state; and
- Required to gather information to assist the member states in their regulation of health care, with some detail further specified in the Compact legislation, and make this information available to the member states' legislatures. Member states would be prohibited from disclosing health information of any individual to the Commission, and the Commission likewise would be prohibited from disclosing an individual's health information.

The bill would require the Commission to be funded by the member states, and it would prohibit

the Commission from taking any action within a member state that contravenes any state law in that state.

Article VII – Congressional Consent

This article deems the Compact effective upon its adoption by at least two member states and consent of Congress. The article also would set forth the purposes of the Compact and state the Compact is effective unless the Congress, in consenting to the Compact, alters its fundamental purposes. Those stated purposes are:

- To secure the right of the Member States to regulate health care within their boundaries pursuant to the Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their states; and
- To secure federal funding for Member States that choose to invoke their authority under Article V of the Compact.

Articles VIII and IX

These articles would provide for mechanisms to amend the Compact and for a state to withdraw from the Compact. For withdrawal, the bill would allow a state to adopt a law to this effect; however, the law would not take effect until six months after the Governor has given notice of the withdrawal to the other member states.

Background

Hearings were held on HB 2553 in the House Committee on Federal and State Affairs and the Senate Committee on Federal and State Affairs during the 2014 Session. At the hearings, Representative Hildabrand and Senator Pilcher-Cook appeared in support of the bill, along with Secretary of State Kobach. Written testimony in support of the bill was provided by a representative of the Kansas Chamber. Testimony in opposition of the bill was provided by a representatives of AARP and the Kansas Health Consumer Coalition. Written testimony in opposition to the bill was

submitted by Kansas Advocates for Better Care. There was no neutral testimony on the bill.

History – 2012 Legislative Session

The Health Care Compact was considered during the 2012 Legislative Session in three different bills, HB 2520, SB 373, and SB 250. Hearings were held on HB 2520 and SB 373 and both bills died in the Senate Committee on Federal and State Affairs. The Health Care Compact was not the original language in SB 250. The House Committee of the Whole amended the bill to include the Compact; however, it was removed during a conference committee.

HB 2520

At the hearing before the House Committee on Health and Human Services, the proponents indicated the bill was for the purpose of health care governance and not policy reform. Opponents noted concerns that passage of the bill might put a number of Kansas citizens at risk, and that governors in other states, such as Arizona and Montana, had vetoed their Compact bills.

SB 373

The bill was introduced at the request of the Health Care Compact Alliance whose representatives indicated the bill is about governance reform, not policy reform, and joining with other states to petition Congress to consent to an interstate health care compact. The Compact would allow member states the opportunity to bring health care decisions closer to home by allowing state legislatures to set health care policy that is best suited to their individual states, as it relates to non-military health care goods and services. Proponents stated health care is too large and complex to manage at a federal level. Opponents of the bill stated the bill would jeopardize security and the choice and benefits for seniors and people with disabilities in Kansas who rely on the Medicare program for their health care coverage and the requirements of Medicare and Medicaid that ensure adequate health care and protections

are attached to federal funding and if Kansas opts out of these programs and oversight, this choice also would result in opting out of reasonable health care standards and protections.

SB 250

The original language of SB 250 addressed a requirement of municipalities to pay premiums

for continuation of coverage under COBRA for the surviving spouse and dependent children of a firefighter who dies in the line of duty. The House Committee of the Whole inserted provisions from HB 2520 that would have allowed Kansas to adopt the Interstate Health Care Compact. SB 250 was subsequently discussed in a Conference Committee and the Committee agreed to amend the bill by deleting the Compact provisions.

Type of State Legislation	Total states	States with Filed Legislation (Bold indicates signed laws = 9)
<p>Interstate Health Care Compacts</p>	<p>16 (2011-12) + 10 (2012) 26</p>	<p><i>Filed in 2011:</i> AZ, CO, GA, IN, LA, MI, MO, MT, NM, ND, OH, OK, SC, TN, TX, WA</p> <p><i>New for 2012:</i> AL, FL, IN, KS, MN, NH, SD, UT, VA, WV</p> <p><i>New for 2013:</i> AL, AZ, OH, TN, (UT=future repeal)</p> <p><i>New for 2014:</i> KS</p>

On April 22, 2014, Governor Brownback signed HB 2553 into law and issued the following statement:

House Bill 2553, which I have signed today, approves the “Health Care Compact.” Under the Compact, member states would have authority to “suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding health care,” thereby preserving individual liberty and personal control over health care decisions. The Compact would only become effective upon the federal consent required by Article 1, Section 10, of the United States Constitution.

Significantly, Kansas already has experience with a successful state level reform of a federal health care program. In January 2013, Kansas launched a major reform of its Medicaid system by covering nearly 400,000 Kansans under KanCare. KanCare has provided many new services that were unavailable under Medicaid, including adult dental care, incentive programs to encourage healthy and preventative behaviors, and life saving operations such as heart/lung transplant. I am proud of the achievements of KanCare - a pro-patient and pro-taxpayer solution.

Similar to the KanCare reforms to Medicaid, the Compact could play an important role in preserving and enhancing Medicare for Kansas seniors. Under the Compact, I would support reversal of the unfortunate Medicare cuts initiated by the federal Affordable Care Act.

Furthermore, I would strongly oppose any effort at the state level to reduce Medicare benefits or coverage for Kansas seniors. I have signed House Bill 2553 with this understanding, and I will work to make it a reality when the Compact becomes effective.

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