Ohio Legislative Service Commission

Bill Analysis

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H.B. 34*

131st General Assembly
(As Reported by H. State Government)

Reps. Retherford and Boose, Romanchuk, Blessing, Roegner, Butler, Maag, Becker, Brenner, Buchy, Thompson, Kraus, Hood, Conditt

BILL SUMMARY

- Ratifies the Health Care Compact, which, with the permission of the United States Congress, allows Ohio to suspend the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with Ohio laws adopted pursuant to the Compact.
- Requires, under the Compact, that Ohio receive each federal fiscal year the estimated current federal funding for health care in Ohio, updated for population and inflation, to be used to support health coverage.
- Requires Ohio to take actions to secure Congress's consent to the Compact.
- Establishes, in the Compact, the Interstate Advisory Health Care Commission and requires the Commission to collect information to assist the member states in regulating health care.
- Requires the member states to fund the Commission as agreed to by them.
- Requires the Governor to appoint one member to the Commission.

* This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

The Health Care Compact

The bill enacts and ratifies the Health Care Compact which, with the permission of the United States Congress, allows Ohio, as a member state, to regulate health care within the state (particularly, health insurance), and to enter into the Compact with any other state that has legally joined in the Compact (see **COMMENT**, below). The Compact provides that the legislatures of the member states have the primary responsibility to regulate health care in their respective states.[1]

Declarations in the Compact

The Compact declares its principles as follows:

➢ The separation of powers, both between the branches of the federal government and between federal and state authority, is essential to the preservation of individual liberty.

➢ The Constitution creates a federal government of limited and enumerated powers, and reserves to the states or to the people those powers not granted to the federal government.

➢ The federal government has enacted many laws that have preempted state laws with respect to health care, and placed increasing strain on state budgets, impairing other responsibilities such as education, infrastructure, and public safety.

➢ The member states seek to protect individual liberty and personal control over health care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over health care in the states.

➢ By acting in concert, the member states may express and inspire confidence in the ability of each member state to govern health care effectively.

➢ The member states recognize that consent of Congress may be more easily secured if the member states collectively seek consent through an interstate compact.[2]

[1] R.C. 190.01; Sec. 3 of the Compact.

[2] R.C. 190.01.

Suspension of the operation of all federal health care laws, rules, orders, and regulations

The Compact allows each "member state" (a state that is signatory to the Compact and has adopted it into law) to suspend within its state, by legislation, the operation of all federal laws, rules, regulations, and orders regarding health care (including the federal Patient Protection and Affordable Care Act) that are inconsistent with the laws and regulations adopted by the member state pursuant to the Compact. Federal and state laws, rules, regulations, and orders regarding health care will remain in effect unless a member state expressly suspends them pursuant to its authority under the Compact. For any federal law, rule, regulation, or order that remains in effect in a member state after the Compact's effective date, that member state is responsible for the associated funding obligations in the state.[3]

For purposes of the Compact, "health care" means care, services, supplies, or plans related to the health of an individual, and includes, but is not limited to, (1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual, or that affects the structure or function of the body, (2) the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and (3) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, *except* any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veteran Affairs, or provided to Native Americans.[4]

Adoption and Congressional approval; fundamental purposes

The Compact takes effect on its adoption by at least two member states and with the consent of the United States Congress. The Compact remains in effect unless Congress, in consenting to it, alters its fundamental purposes, which are to secure (1) the right of the member states to regulate health care in their respective states pursuant to the Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their states, and (2) federal funding for member states that choose to invoke their authority under the Compact, as prescribed by the Compact (see "**Federal funding**," below).[5]

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[3] R.C. 190.01; Secs. 1 and 4 of the Compact.

[4] R.C. 190.01; Sec. 1 of the Compact.

[5] R.C. 190.01; Sec. 7 of the Compact.

Under the Compact, the effective date is the date on which the Compact becomes effective for purposes of the operation of state and federal law in a member state, which is the *later* of (1) the date on which the Compact is adopted under the laws of the member state, or (2) the date on which the Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two member states adopt the Compact.[6] (That constitutional provision recognizes that states may enter into agreements with other states for their common benefit. Compacts have historically been used to address common problems, such as border disputes, or to create governmental commissions. In general, courts have required congressional consent when a compact increases the political power of the states and diminishes the power of the federal government.)

Federal funding

The Compact requires that for each federal fiscal year, each member state has the "right to federal monies (sic) up to an amount equal to its member state current year funding level" for that federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of member state authority under the Compact.[7] This funding cannot be conditional on any action of, or regulation, policy, law, or rule being adopted by, the member state. The Compact requires Congress, by the start of each federal fiscal year, to establish an initial member state current year funding level for each member state, based upon reasonable estimates. The final member state current year funding level is to be calculated, and funding must be reconciled by Congress, based upon information provided by each member state and audited by the United States Government Accountability Office.[8]

The Compact defines the "member state current year funding level" (CYFL) as the "member state base funding level" multiplied by the "member state current year population adjustment factor" multiplied by the "current year inflation adjustment factor." "Member state base funding level" (BFL) means a number equal to the total federal spending on health care in the member state during federal fiscal year 2010. On or before the Compact's effective date, each member state must determine its BFL, and that number is binding upon that member state. The preliminary estimate of BFL for Ohio is $35,043,000,000.[9]

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[6] R.C. 190.01; Sec. 1 of the Compact.

[7] States cannot require the United States Congress to give federal funds to them. Perhaps, by approving the Compact, it is implied that Congress agrees to fund member states in this manner.

[8] R.C. 190.01; Sec. 5 of the Compact.

[9] R.C. 190.01; Sec. 1 of the Compact.

The "member state current year population adjustment factor" means the average population of the member state (determined by the United States Census Bureau) in the current year less the average population of the member state in federal fiscal year 2010, divided by the average population of the member state in federal fiscal year 2010, plus 1.

The "current year inflation adjustment factor" is the total gross domestic product deflator (GDPD) in the current year divided by the total GDPD in federal fiscal year 2010. Total GDPD must be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

The formula for federal funding under the Compact therefore would be the following:

CYFL = BFL x ([av. pop. in current year - av. pop. in FY 2010] ÷ [av. pop. in FY 2010 + 1]) x (GDPD in current year ÷ GDPD in FY 2010)

Pledge to improve health care policy

The member states pledge and are required to take joint and separate action to secure the consent of Congress to the Compact in order to return the authority to regulate health care to the member states, consistent with the goals and principles articulated in the Compact. The member states must improve health care policy within their respective jurisdictions and according to the judgment and discretion of each member state.[10]

Interstate Advisory Health Care Commission

The Health Care Compact establishes the Interstate Advisory Health Care Commission. The Commission may study issues of health care regulation that are of particular concern to the member states, and may make nonbinding recommendations to the member states. The legislatures of the member states may consider these recommendations in determining the appropriate health care policies in their respective states. The Commission must collect information and data to assist the member states in their regulation of health care, including assessing the performance of various state health care programs and compiling information on the prices of health care. The Commission must make this information and data available to the member states' legislatures.

[10] R.C. 190.01; Sec. 2 of the Compact.

Notwithstanding any other provision in the Compact, member states are prohibited from disclosing to the Commission, and the Commission is prohibited from disclosing, the health information of any individual.

The Commission cannot take any action within a member state that contravenes any state law of that member state.

The Commission consists of members appointed by each member state through a process to be determined by each member state. A member state may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission cannot act unless a majority of the members are present, and no action is binding unless approved by a majority of the Commission's total membership.

The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with the Compact. The Commission must meet at least once a year, and may meet more frequently.

The Commission must be funded by the member states as agreed to by them. The Commission has the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the member states in accordance with the Compact's terms.[11]

Governor's appointment of a Commission member

Not later than 30 days after the Compact is entered into under the bill (and under the terms of the Compact) and is ratified by Congress, the Governor must appoint a member to the Interstate Advisory Health Care Commission. The Governor must fill a vacancy not later than 30 days after the vacancy occurs.[12]

Amendments to the Compact

The Compact authorizes the member states, by unanimous agreement, to amend the Compact from time to time without the prior consent or approval of Congress. Any amendment is effective unless, within one year, Congress disapproves that amendment. Any state may join the Compact after the date on which Congress consents to the Compact by adoption into law under its state constitution.[13]

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[11] R.C. 190.01; Sec. 6 of the Compact.

[12] R.C. 190.02.

[13] R.C. 190.01; Sec. 8 of the Compact.

Withdrawal from or dissolution of the Compact

Any member state may withdraw from the Compact by adopting a law to that effect, but the withdrawal does not take effect until six months after the Governor of the withdrawing member state has given notice of the withdrawal to the other member states. A withdrawing state is liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. The Compact must be dissolved upon the withdrawal of all but one of the member states.[14]

COMMENT

As of May 31, 2014, a total of 26 states have considered legislation enacting the Health Care Compact and 9 have signed it into law (Alabama, Georgia, Indiana, Kansas, Missouri, Oklahoma, South Carolina, Texas, and Utah). Utah, however, repealed the Compact in July 2014. Arizona and Montana enacted the Compact, but it was subsequently vetoed by their governors.[15]

HISTORY

ACTION	DATE
Introduced	02-03-15
Reported, H. Health & Aging	02-25-15
Re-referred to H. State Gov't	03-04-15
Reported, H. State Gov't	---

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[14] R.C. 190.01; Sec. 9 of the Compact.

[15] "*26 States Consider Health Compacts to Challenge Federal PPACA*," National Conference of State Legislatures (May 2014). *See also* Utah Code Ann. § 63M-1-2507 (2014).