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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Herrell LAST UPDATED _____ HB 323

SHORT TITLE “Interstate Health Care Freedom Compact” SB _____

ANALYST Earnest

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Fiscal Implications Section				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
Public Regulation Commission (PRC)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 323 would enact the Interstate Health Care Freedom Compact, which would authorize the Governor to enter into a compact agreement with other states that have enacted or anticipate enacting laws that make it a crime in their state for anyone to interfere with their residents’ enjoyment of rights and freedoms guaranteed by their respective health care freedom laws. The agreement and compact would prohibit any governmental agent from depriving any resident of any party state of the rights and freedoms guaranteed by their respective health care freedom laws.

FISCAL IMPLICATIONS

The creation of the compact would carry some administrative expense. For example, under the compact, the “governor or governor’s designee as the compact administrator” shall do the following:

- Maintain an accurate list of all party states and their health care freedom and criminal laws;
- Keep all party states current on the state’s health care freedom and criminal laws, and provide to each party state any information or documents reasonably necessary to facilitate the administration of this Compact; and
- Formulate all necessary and proper procedures to effectuate this Compact, and delegate needed tasks to other state agencies.

Interstate compacts vary substantially and estimating potential costs is difficult without additional information regarding implementation. According to the Council of State Governments, cost of interstate compacts “depend largely upon the desired timelines, the level of external stakeholder involvement and the level of education desired within each state.”

SIGNIFICANT ISSUES

According to the Council of State Governments, “Interstate compacts are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters.... General purposes for creating an interstate compact include:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact’s member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.”

According to the Health Policy Commission, the Interstate Health Care Freedom Compact would provide the legal framework to oppose the Patient Protection and Affordable Care Act (PPACA) – the federal health care reform law. Citing a Texas Public Policy Foundation report, HPC notes that interstate compacts “can carry the weight of federal law (and preempt existing federal and state laws) if the agreements gain congressional approval.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB323 relates to the following bills:

- HB33 (New Mexico Health Insurance Exchange Act),
- HB245 (Health Insurance Purchasing Cooperative),
- HB257 (LFC Perform FIR on Health Care Reform Designs),
- SB5 (Health Security Act),
- SB38 (New Mexico Health Insurance Exchange Act),
- SB89 (Private Health Insurance Purchasing Co-Op Act),
- SB370 (Enact “NM Health Insurance Exchange Act”), and
- SJR5 (State Health Care System, CA).

OTHER SUBSTANTIVE ISSUES

HSD provided the following synopsis:

Article I of the proposed Compact cites to 4 USC 112 as authority to create interstate compacts for mutual assistance in crime prevention and crime law enforcement.

Article I declares that “pursuant to their police powers to protect public health, welfare and morals, the party states have enacted or anticipate enacting laws or constitutional provisions to protect and guarantee their residents’ rights and freedom to pay or not to pay directly for health care services and to participate or not to participate in health plans and health systems.”

Article I invokes criminal law, with the anticipation that the states in the compact will have, or anticipate, making it a crime in their state to interfere with “their residents’ enjoyment of the rights and freedoms guaranteed by their respective health care freedom laws.” The current or anticipated criminal laws would prohibit a governmental agent from depriving any resident of, or penalize any resident from exercising, the rights and freedoms guaranteed by their respective health care freedom laws.

Article II of the proposed Compact includes definitions as used in the Compact. In particular, the bill defines a “health care freedom law” as one that “protects and guarantees resident’s freedom to pay or not to pay directly for lawful health care services and to participate or not to participate in health care plans and health care systems.”

Article III of the proposed Compact requires the states signing the contract to contravene state and federal law, if necessary, to give full faith and credit to the health care freedom criminal laws of every other state that is party to the compact.

Article IV requires the chief law enforcement officer of each state that is party to the Compact to enforce the Compact; and gives standing to any taxpaying resident of a party state to require the chief law enforcement officer of any party state to enforce the Compact.

Article V charges the governor or governor’s designee as the Compact administrator, who must do the following:

- Maintain an accurate list of all party states and their health care freedom and criminal laws;
- Keep all party states current on the state’s health care freedom and criminal laws, and provide to each party state any information or documents reasonably necessary to facilitate the administration of this Compact; and
- Formulate all necessary and proper procedures to effectuate this Compact, and delegate needed tasks to other state agencies.

Article V also provides a timeline and process for contract administrators to provide information to other party states of their relevant laws and those laws which they object to inclusion in the Compact.

Article VI states that the Compact is deemed accepted when at least two states deliver a notice of confirmation to various state and federal officials. Any state that wishes to be a party to the Compact must follow a notice of confirmation process. A party state must remain a party to the Compact for a minimum of four (4) years.

Article VII includes severability provisions.

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