AS PASSED BY THE SENATE

April 11, 2012

**S. 836**

Introduced by Senators Grooms, Verdin, Knotts, Bright, Bryant, Courson, Campsen, McConnell, Cleary, Rose, Hayes, Shoopman, Massey, Campbell, Fair and Gregory

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Read the first time April 20, 2011.

**A** **BILL**

TO AMEND TITLE 44 OF THE 1976 CODE, RELATING TO HEALTH, BY ADDING CHAPTER 10 TO ENACT THE INTERSTATE HEALTHCARE COMPACT, TO PROVIDE THAT COMPACT MEMBERS MUST TAKE ACTION TO OBTAIN CONGRESSIONAL CONSENT TO THE COMPACT, TO PROVIDE THAT THE LEGISLATURE IS VESTED WITH THE RESPONSIBILITY TO REGULATE HEALTHCARE DELIVERED IN THEIR STATE, TO PROVIDE FOR HEALTHCARE FUNDING, TO ESTABLISH THE INTERSTATE ADVISORY HEALTH CARE COMMISSION AND TO PROVIDE ITS COMPOSITION, POWERS, DUTIES, AND AUTHORITY, TO PROVIDE THE EFFECTIVE DATE OF THE COMPACT, TO PROVIDE FOR AMENDING THE COMPACT, TO PROVIDE FOR THE MANNER OF WITHDRAWAL FROM THE COMPACT, AND TO PROVIDE NECESSARY DEFINITIONS.

Amend Title To Conform

Whereas, the separation of powers, both between the branches of the federal government and between federal and state governments, is essential to the preservation of individual liberty; and

Whereas, the United States 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; and

Whereas, 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; and

Whereas, 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 with the states; and

Whereas, by acting in concert, the member states may express and inspire confidence in the ability of each member state to govern health care effectively; and

Whereas, the member states recognize that congressional consent may be more easily secured if the member states collectively seek consent through an interstate compact. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 44 of the 1976 Code is amended by adding:

“Chapter 10

Interstate Healthcare Compact

Section 44‑10‑10. This chapter may be referred to and cited as the ‘Interstate Healthcare Compact’.

Section 44‑10‑20. The Interstate Healthcare Compact is hereby enacted into law and entered into by this State with any other states legally joining the compact in a form substantially similar to the form contained in this chapter.

Section 44‑10‑30. As used in this chapter:

(1) ‘Commission’ means the Interstate Advisory Health Care Commission.

(2) ‘Effective date’ means the date upon which this compact shall become effective for purposes of the operation of state and federal law in a member state, which shall be the later of:

(a) the date upon which this compact shall be adopted under the laws of the member state; and

(b) the date upon which this compact receives the consent of the United States Congress pursuant to Article I, Section 10 of the United States Constitution, after it is adopted by at least two member states.

(3) ‘Health care’ means care, services, supplies, or plans related to the health of an individual and includes, but is not limited to:

(a) 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; and

(b) sale or dispensing of a drug, device, equipment, or other item pursuant to a prescription; and

(c) 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) ‘Member state’ means a state that is a signatory to this compact and has adopted it under the laws of that state.

(5) ‘Member state base funding level’ 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 effective date, each member state shall determine the member state base funding level for its state, and that number shall be binding upon that member state. The preliminary estimate of member state base funding level for the State of South Carolina is $11,144,000,000.

(6) ‘Member state current year funding level’ means the member state base funding level multiplied by the member state current year population adjustment factor multiplied by the current year inflation adjustment factor.

(7) ‘Member state current year population adjustment factor’ means the average population of the member state 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 one. Average population in a member state shall be determined by the United States Census Bureau.

(8) ‘Current year inflation adjustment factor’ means the total gross domestic product deflator in the current year divided by the total gross domestic product deflator in federal fiscal year 2010. The total gross domestic product deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Section 44‑10‑40. Member states shall take joint and separate action to secure congressional consent to this compact in order to return the authority to regulate health care to the member states consistent with the goals and principles articulated in this compact. Member states shall improve health care policy within their respective jurisdictions and according to the judgment and discretion of each member state.

Section 44‑10‑50. The legislature of each member state has the primary responsibility to regulate health care in their state.

Section 44‑10‑60. Each member state, within its jurisdiction, may enact legislation to suspend the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with the laws, rules, regulations, and orders adopted by the member state pursuant to this 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 this compact. For any federal law, rule, regulation, or order that remains in effect in a member state after the effective date, that member state shall be responsible for the associated funding obligations in its State.

Section 44‑10‑70. (A) Each federal fiscal year, each member state shall have the right to federal monies 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 this compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the member state.

(B) By the start of each federal fiscal year, Congress shall 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 shall be calculated, and funding shall be reconciled by the Congress based upon information provided by each member state and audited by the United States Government Accountability Office.

Section 44‑10‑80. (A) The Interstate Advisory Health Care Commission is established. 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 shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the commission’s total membership.

(B) The commission may elect from among its membership a chairman. The commission may adopt and publish bylaws and policies that are not inconsistent with this compact. The commission shall meet at least once a year and may meet more frequently.

(C) The commission may study issues of health care regulation that are of particular concern to the member states. The commission 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.

(D) The commission shall 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 shall make this information and data available to the legislatures of the member states. Notwithstanding any other provision in this compact, no member state shall disclose to the commission the health information of any individual, nor shall the commission disclose the health information of any individual.

(E) The commission shall be funded by the member states as agreed to by the member states. The commission shall have 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 terms of this compact.

(F) The commission shall not take any action within a member state that contravenes any state law of that member state.

Section 44‑10‑90. This compact shall be effective on its adoption by at least two member states and congressional consent. This compact shall be effective unless the United States Congress, in consenting to it, alters its fundamental purposes, which are to:

(1) secure the right of the member states to regulate health care in their respective states pursuant to this compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their states; and

(2) secure federal funding for member states that choose to invoke their authority under this compact.

Section 44‑10‑100. Member states, by unanimous agreement, may amend this compact from time to time without prior congressional consent or approval and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any state may join this compact after the date by adoption into law under its state constitution.

Section 44‑10‑110. A member state may withdraw from this compact by adopting a law to that effect, but no such withdrawal shall 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 shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This compact shall be dissolved upon the withdrawal of all but one of the member states.

Section 44‑10‑120. South Carolina’s participation in the compact does not include the administration of Medicare (42 U.S.C. 1395 et seq.) unless the General Assembly takes action that specifically authorizes inclusion of the Medicare program in the compact.”

SECTION 2. This act takes effect upon approval by the Governor.

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