February 24, 2012

ENGROSSED
HOUSE BILL No. 1269

DIGEST OF HB 1269 (Updated February 23, 2012 12:46 pm - DI 73)

Citations Affected: IC 12-16.5.

Synopsis: Health care compact. Establishes the health care compact. Requires the securing of the consent of the United States Congress. Specifies that the state legislature of each member state has the primary responsibility to regulate health care in the member state's jurisdiction.
(Continued next page)

Effective: July 1, 2012.

Neese, Koch, Cherry, Bacon, Borders, Culver, Davisson, Dermody, Dodge, Eberhart, Ellspermann, Frizzell, Frye R, Heaton, Hinkle, Lehe, Lutz, McClain, Saunders, Steuerwald, Thompson, VanNatter, Wolkins, Behning, Richardson, Clere
(SENATE SPONSOR — MILLER)

January 9, 2012, read first time and referred to Committee on Public Health.
January 25, 2012, reported — Do Pass.
January 27, 2012, read second time, ordered engrossed. Engrossed.
January 31, 2012, read third time, passed. Yeas 61, nays 35.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Health and Provider Services.
February 16, 2012, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.
February 23, 2012, amended, reported favorably — Do Pass.

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Digest Continued

Allows the governor, after review of the compact by the budget committee, to enter into the compact on behalf of the state. Specifies that the compact does not apply to the federal Medicare program, and that for purposes of the compact, "health care" does not include care, services, supplies, or plans provided under the federal Medicare program. Allows member states of the compact to suspend all federal laws, regulations, and orders concerning health care that are inconsistent with the laws and regulations adopted by the member state under the compact, to the extent allowed under the Constitution of the United States and the constitution of the member state. Creates the interstate advisory health care commission consisting of individuals from member states.

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February 24, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1269

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Whereas, 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;

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;

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;

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 in the states;

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 consent of Congress may be more easily secured if the member states collectively seek consent through an interstate compact: Therefore,

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

ARTICLE 16.5. THE HEALTH CARE COMPACT

Chapter 1. Definitions

Sec. 1. As used in this article, "commission" refers to the interstate advisory health care commission established by IC 12-16.5-4-1.

Sec. 2. As used in this article, "compact" refers to the health care compact entered into under this article.

Sec. 3. As used in this article, "current year inflation adjustment factor" means the total gross domestic product deflator, as determined by the United States Department of Commerce's Bureau of Economic Analysis, in the current year divided by the total gross domestic product deflator in federal fiscal year 2010.

Sec. 4. (a) As used in this article, "health care" means care, services, supplies, or plans related to the health of an individual, including the following:

(1) Preventative, diagnostic, therapeutic, rehabilitative, maintenance, and palliative care, including counseling, service, assessment, or procedure concerning the physical or mental condition or functional status of an individual or that affects the structure or function of the body.

(2) Sale or dispensing of a drug, device, equipment, or other item under a prescription.

(3) An individual or group health plan that provides or pays the costs of care, services, or supplies related to the health of an individual.

(b) The term does not include care, services, supplies, or plans provided:

(1) by the United States Department of Defense;

(2) by the United States Department of Veterans Affairs;

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(3) to Native Americans; or

(4) under the federal Medicare program (42 U.S.C. 1395 et seq.).

Sec. 5. As used in this article, "member state" means a state that has adopted the health care compact law.

Sec. 6. As used in this article, "member state base funding level" means a number determined by the member state to be equal to the total federal spending on health care in the member state during federal fiscal year 2010 and is set forth in IC 12-16.5-3-4.

Sec. 7. As used in this article, "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.

Sec. 8. As used in this article, "member state current year population adjustment factor" means the average population of the member state in the current year, as determined by the United States Census Bureau, 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 (1).

Chapter 2. Applicability

Sec. 1. This article is effective upon the following:

(1) The adoption of the compact by at least two (2) member states.

(2) The consent of the federal United States Congress without changes by Congress to the following fundamental purposes of the compact:

(A) To secure the right of the member states to regulate health care in the member state's jurisdiction under the compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within the member state.

(B) To secure federal funding for member states that choose to invoke the member state's authority under the compact, as set forth in IC 12-16.5-3.

Sec. 2. The compact created under this article does not apply to the federal Medicare program (42 U.S.C. 1395 et seq.).

Chapter 3. Health Care Compact

Sec. 1. (a) The governor may, after review of the compact by the budget committee, enter into the compact on behalf of the state with any other state.

(b) The member states shall take joint and separate action to

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secure the consent of the United States Congress for the compact in order to return the authority to regulate health care to the member states that is consistent with the goals and principles articulated in the compact.

(c) The member states shall improve health care policy within the states' jurisdictions and according to the judgment and discretion of each member state.

Sec. 2. The state legislature of each member state has the primary responsibility to regulate health care in the member state's jurisdiction.

Sec. 3. (a) Each member state, for the member state's jurisdiction, may, to the extent allowed under the Constitution of the United States and the constitution of the member state, suspend by legislation federal laws, regulations, and orders concerning health care that are inconsistent with the laws and regulations adopted by the member state under the compact.

(b) Any federal or state law, regulation, or order concerning health care will remain in effect unless a member state expressly suspends the law, regulation, or order under the member state's authority under the compact.

(c) The member state shall be responsible for implementing any federal law, rule, regulation, or order described in this section that remains in effect in the member state.

Sec. 4. (a) Each member state for each federal fiscal year shall have the right to federal monies in an amount up to the member state current year funding level for the current year, funded by the federal government as mandatory spending and that is not subject to annual appropriation, to support the exercise of the member state authority under the compact. The funding may not be conditional on any action of or regulation, policy, law, or rule that is being adopted by the member state and that is allowed under the Constitution of the United States and the constitution of the member state.

(b) By the start of each federal fiscal year, the federal United States Congress shall establish an initial member state current year funding level for each member state. The initial member state current year funding level must be based on a reasonable estimate. The final member state current year funding level shall be calculated and funding shall be reconciled by the federal United States Congress based on information provided by each member state and audited by the United States Government Accountability Office.

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Sec. 5. The member states may fund the commission in a manner agreed upon by the member states.

Sec. 6. The member states may, by unanimous agreement, amend the compact without the prior consent or approval of the federal United States Congress, to the extent the amendment is allowed under the Constitution of the United States and the constitutions of the member states. Any amendment shall be effective unless, not later than one (1) year from the approval of the amendment, the federal United States Congress disapproves of the amendment.

Sec. 7. Any state may join the compact after the date of consent of the compact by the federal United States Congress if the state adopts the compact into law.

Sec. 8. (a) A member state may withdraw from the compact by doing the following:

(1) The member state's governor notifies other member states of the intent to withdraw from the compact at least six (6) months before the withdrawal may occur.

(2) The member state's legislature adopts legislation to withdraw from the compact.

(b) A member state withdrawing from the compact is liable for any obligations that the withdrawing state may have incurred prior to the date of which the withdrawal is effective.

Sec. 9. The compact shall be dissolved upon the withdrawal from the compact of all but one (1) member state.

Chapter 4. Interstate Advisory Health Care Commission

Sec. 1. (a) The interstate advisory health care commission is established.

(b) The commission consists of members appointed by each member state in a manner determined by each member state. A member state may not appoint more than two (2) members to the commission and may withdraw membership from the commission at any time.

(c) Each commission member is entitled to one (1) vote. The commission may not act unless a majority of the members are present, and an action is not binding unless approved by a majority of the commission's total membership.

Sec. 2. (a) The commission may do the following:

(1) Elect a chairperson from the commission's membership.

(2) Adopt and publish bylaws and policies that are consistent with the compact.

(3) Study issues of health care regulation that are of concern

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to the member states.

(4) Make non-binding recommendations to the member states, of which the state legislatures of the member states may consider in determining appropriate health care policies for the member state.

(b) The commission shall do the following:

(1) Meet at least one (1) time per calendar year.

(2) Collect information and data to assist member states in the regulation of health care, including assessing the performance of state health care programs and compiling information on the prices of health care.

(c) The commission shall make the information collected under this section available to the legislatures of member states.

(d) Legislatures of the member states may confer additional responsibilities and duties on the commission through legislative action in accordance with the terms of the compact.

(e) The commission may not take any action within a member state.

Sec. 3. A member state may not disclose personal health information of an individual to the commission. The commission may not disclose the personal health information of an individual.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1269, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BROWN T, Chair

Committee Vote: yeas 7, nays 2.

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1269, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 35, delete "shall" and insert "**may**".

and when so amended that said bill be reassigned to the Senate Committee on Appropriations.

(Reference is to HB 1269 as printed January 25, 2012.)

MILLER, Chairperson

Committee Vote: Yeas 7, Nays 3.

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred House Bill No. 1269, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 32, delete "or".

Page 4, line 1, after "Americans" delete "." and insert "**; or**

(4) under the federal Medicare program (42 U.S.C. 1395 et seq.).".

Page 4, between lines 33 and 34, begin a new paragraph and insert:

"**Sec. 2. The compact created under this article does not apply to the federal Medicare program (42 U.S.C. 1395 et seq.).**".

Page 4, line 35, after "may" insert "**, after review of the compact**

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by the budget committee,".

Page 5, line 7, delete "by legislation, suspend all" and insert "**to the extent allowed under the Constitution of the United States and the constitution of the member state, suspend by legislation**".

Page 5, line 15, delete "the funding for" and insert "**implementing**".

Page 5, line 24, after "rule" insert "**that is**".

Page 5, line 25, after "state" delete "." and insert "**and that is allowed under the Constitution of the United States and the constitution of the member state.**".

Page 5, line 39, after "Congress" delete "." and insert "**, to the extent the amendment is allowed under the Constitution of the United States and the constitutions of the member states.**".

Page 7, line 8, delete "that violates the member state's state law." and insert "**.**".

and when so amended that said bill do pass.

(Reference is to EHB 1269 as printed February 17, 2012.)

KENLEY, Chairperson

Committee Vote: Yeas 8, Nays 4.

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