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Senate Joint Resolution K (as introduced 8-27-09)
Sponsor: Senator Wayne Kuipers
Committee: Health Policy

Date Completed: 2-1-10

CONTENT

Senate Joint Resolution K would add Section 28 to Article I of the State Constitution to do the following:

- Provide that everyone would have a right to provide for his or her own health care.**
- Prohibit a Federal law or rule from compelling any person, employer, or health care provider to participate in any health care system.**
- Provide that a person or employer could not be penalized for paying directly for health care services, and a health care provider could not be penalized for accepting direct payment for those services.**
- Provide that the purchase or sale of health insurance or coverage in private health care systems could not be prohibited by Federal law or rule.**

Under the joint resolution, a Federal law or rule could not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

("Compel" would include penalties or fines. "Penalties or fines" would mean any criminal or civil penalty, fine, tax, salary or wage withholding, surcharge, or any named fee with a similar effect established by law or rule by a government-established, -created, or -controlled agency, that was used to punish or discourage the exercise of rights protected under proposed Section 28. "Health care system" would mean any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services, health care data, or health care information for its participants.)

A person or employer could pay directly for lawful health care services and could not be required to pay penalties or fines for doing so. A health care provider could accept direct payment for lawful health care services provided and could not be required to pay penalties or fines for accepting payment from a person or employer for such services.

("Lawful health care services" would mean any health-related service or treatment, to the extent that it is permitted or not prohibited by law, rule, or regulation, that may be provided by people or businesses otherwise permitted to offer those services or treatments. "Pay directly" and "direct payment" would mean payment for lawful health care services without a public or private third party, excluding an employer, paying for any portion of the service.)

Subject to reasonable and necessary rules and laws that did not substantially limit a person's or employer's options, the purchase or sale of health insurance or coverage in private health care systems could not be prohibited by Federal law or rule.

The joint resolution provides that it would not do any of the following:

- Affect which health care services were permitted by law.
- Prohibit care provided pursuant to, or prohibit participation under, workers' compensation law or automobile no-fault law.
- Affect laws or rules in effect as of January 1, 2009.
- Affect the terms or conditions of any health care system to the extent that they did not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for such services.

The joint resolution would have to be submitted to the voters at the next general election, if two-thirds of the members elected to and serving in each house of the Legislature approved it.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The joint resolution would prohibit any Federal mandate on participation in a health care system, permit individuals to pay directly for health care service, and bar any Federal prohibition on the purchase or sale of private health insurance. The joint resolution would contravene major provisions of the U.S. House and U.S. Senate health reform proposals, in particular the individual mandate to purchase health insurance. As no such Federal legislation has yet been enacted, the joint resolution at this point would preserve the status quo on these fronts and would have no fiscal impact. If such Federal legislation were enacted and if the joint resolution were approved and implemented, the end result would appear to resemble the status quo, so, again, there would be no fiscal impact from the joint resolution's ban on an individual mandate. One could note that there is the potential for secondary effects from the other provisions, but the statement that Section 28 would have no impact on laws or rules in effect as of January 1, 2009, would seem to offset that.

Fiscal Analyst: Steve Angelotti

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