

BILL ANALYSIS

C.S.H.B. 5
By: Kolkhorst
State Sovereignty, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the current economic climate, the State of Texas is encountering difficulties paying for and administering the Medicaid program and other state health care priorities. Texas also is one of the states challenging the constitutionality of the federal Patient Protection and Affordable Care Act in court. Considering all of these factors, Texas needs to use all legal tools available to the state to protect the health care interests of the people of Texas.

Interested parties cite a growing body of research regarding interstate compacts and their potential uses in the public policy arena. Those parties assert that interstate compacts are a way to move control from the federal government to the states, but interstate compacts can only do so with the approval of the United States Congress. The U.S. Constitution addresses the use of interstate compacts directly in its compact clause and, according to some interested parties, the U.S. Supreme Court, over time, has interpreted this clause more broadly than its plain reading. Interested parties argue that states are free to form a compact so long as the compact does not infringe upon the supremacy of Congress. Finally, interested parties submit that, if states do form a compact, they must obtain congressional approval of the compact.

C.S.H.B. 5 establishes the legal framework for Texas to join other states in an Interstate Health Care Compact.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 5 amends the Insurance Code to enact the Interstate Health Care Compact and to enter the state into the compact with all other states legally joining in the compact. The bill sets out the form of and findings related to the compact.

C.S.H.B. 5 includes in the compact a requirement for member states to take joint and separate action to secure the consent of the United States 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, which requires member states to improve health care policy within their respective jurisdictions and according to the judgment and discretion of each member state. The bill, through this compact provision, establishes that a member state's legislature has the primary responsibility to regulate health care in its respective state.

C.S.H.B. 5 includes in the compact a provision regarding state control that authorizes each member state, within its state, to suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with the laws and regulations adopted by the member states under the compact. The bill, through this compact provision, provides for the continuing effect of a federal or state law, rule, regulation, or order regarding health care unless a member state expressly suspends the law, rule, regulation, or order under the

authority provided by the compact and makes a member state responsible for the associated funding obligations in its state for any federal law, rule, regulation, or order that remains in effect in that member state after the compact's effective date.

C.S.H.B. 5 includes in the compact a funding provision that entitles by right each member state, each federal fiscal year, to federal monies up to an amount equal to its member state current 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. The bill, through this compact provision, prohibits such funding from being conditional on any action of or regulation, policy, law, or rule being adopted by the member state. The bill includes in this compact provision a requirement that Congress, by the start of each federal fiscal year, establish an initial member state current year funding level for each member state, based on reasonable estimates, and requires that the final member state current year funding level be calculated, and that funding be reconciled, by Congress based on information provided by each member state and audited by the United States Government Accountability Office.

C.S.H.B. 5 includes in the compact a provision establishing the Interstate Advisory Health Care Commission, consisting of members appointed by each member state through a process to be determined by each member state, which provision prohibits a member state from appointing more than two members to the commission and authorizes a member state to withdraw membership from the commission at any time. The bill, through this compact provision, entitles each commission member to one vote, prohibits the commission from acting unless a majority of the members are present, and provides that action is not binding unless approved by a majority of the commission's total membership. The bill, through this compact provision, authorizes the commission to elect a chairperson from among its membership and to adopt and publish bylaws and policies that are not inconsistent with the compact and requires the commission to meet at least once a year. The bill, through this compact provision, authorizes the commission to study issues of health care regulation that are of particular concern to member states and make non-binding recommendations to member states and authorizes a member state's legislature to consider these recommendations in determining the appropriate health care policies in its respective state. The bill, through this compact provision, requires the commission to collect information and data to assist member states in the regulation of health care and make this information and data available to the legislatures of the member states, prohibits a member state from disclosing to the commission the health information of any individual, and prohibits the commission from disclosing such information. The bill, through this compact provision, requires that the commission be funded by member states as agreed to by the member states, grants the commission the responsibilities and duties conferred on it by subsequent action of the respective legislatures of the member states under the terms of the compact, and prohibits the commission from taking any action within a member state that contravenes any state law of that member state.

C.S.H.B. 5 includes in the compact a provision regarding congressional consent that makes the compact effective on its adoption by at least two member states and consent of the United States Congress unless Congress, in consenting to the compact, alters the fundamental purposes of the compact, which are: to secure the right of member states to regulate health care in their respective states under the compact; to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their respective jurisdictions; and to secure federal funding for member states that choose to invoke the authority as prescribed.

C.S.H.B. 5 includes in the compact a provision that authorizes member states, by unanimous agreement, to amend the compact from time to time without the prior consent or approval of Congress and makes any amendment effective unless, within one year, Congress disapproves that amendment. The bill, through this compact provision, authorizes a state to join the compact after the date on which Congress consents to the compact by adoption into law under its state constitution.

C.S.H.B. 5 includes in the compact a withdrawal and dissolution provision that authorizes any member state to withdraw from the compact by adopting a law to that effect under the condition that no such withdrawal takes effect until six months after the governor of the withdrawing state has given notice of the withdrawal to the other member states. The bill, through this compact provision, makes a withdrawing state liable for any obligations that the state may have incurred before the date on which its withdrawal becomes effective and requires that the compact be dissolved on the withdrawal of all but one of the member states.

C.S.H.B. 5, in the compact, defines "commission," "effective date," "health care," "member state," "member state base funding level," "member state current year funding level," "member state current year population adjustment factor," and "current year inflation adjustment factor."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 5 omits a provision included in the original establishing a preliminary estimate of the member state base funding level for Texas at \$60,434,000,000 following the definition of "member state base funding level."