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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/09

SPONSOR Gardner LAST UPDATED _____ HJR 10

SHORT TITLE Right to Decide on Health Care, C.A. SB _____

ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		(\$0.1) Significant	Recurring	General Fund and Federal

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Health Policy Commission (HPC)
 Department of Health deferred to HSD
 Human Services Department (HSD)
 Attorney General's Office (AG)
 Department of Finance and Administration (DFA)
 Retiree Health Care Authority (RHCA)
 General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Joint Resolution 10 proposes to amend Article 2 of the Constitution of the New Mexico by adopting a new section (section 25) to provide the people of the state the right to make decisions about their health care.

The language in the new section would prohibit new laws that restrict a person's freedom of choice of a private health care system or plan; interfere with a person's right to pay directly for lawful medical services; impose a penalty or fine on a person for choosing to obtain or decline health care coverage or for participation in a particular health care system or plan.

The amendment to the Constitution would be submitted to the voters at the next general election or at a special election called for that purpose.

FISCAL IMPLICATIONS

DFA reports that this bill could jeopardize HSD Child Support Enforcement Division's (CSED) capability to establish and enforce medical support orders as required by Federal law and regulation. This would subject the Department to potential sanctions of the TANF grant (up to 5%) as well as reduce amounts available for Federal incentive payments based on pending regulations to the child support enforcement program.

HSD further notes that New Mexico has a high rate of uninsurance at 21.1% or an estimated 401,000 individuals. In 2002, the estimated cost of providing health care to New Mexicans was \$7.9 billion. Approximately 75 percent of health care expenditures were publicly financed (\$5.9 billion). Of the \$6 billion that comes from public sources, the federal government pays for 64 percent (\$5 billion) compared to 10 percent contributed by state government (\$820 million). Counties cover about one percent of health care costs (\$94 million) and only \$3.4 million comes from out-of-state sources.

SIGNIFICANT ISSUES

The AG reports that the bill is intended to protect people's free choice in their healthcare decisions and to ensure people can seek alternative medicine professionals and to make patient's freedom a top priority in health care reform.

HSD notes that HJR10 supports the concept that the people of New Mexico should be able to choose to be uninsured. HSD believes this directly impacts the costs of health care for both the public and private sector and is unsustainable in the long term.

PERFORMANCE IMPLICATIONS

HSD reports that HJR 10, if passed, will put the state constitution in conflict with requirements of the federal Deficit Reduction Act of 2005, P.L. 109-171.

Current New Mexico law (NMSA 1978, §40-4C-1 et seq) mandates coverage for minor children by either or both parents. The proposed legislation would prevent Child Support Enforcement Division (CSED) from complying with federal mandates to establish and enforce medical support on behalf of minor children.

ADMINISTRATIVE IMPLICATIONS

HSD reports that if implemented, HJR10 may require CSED to cease generation of the federally-mandated National Medical Support Notice (NMSN) to obligors who are court ordered to provide medical support, and to cease follow-up enforcement actions related to the NMSN. The Child Support Enforcement System (IT system) would have to be examined to identify all of the flows that affect Medical Support Enforcement including the National Medical Support Notice.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR10 conflicts with SB 57- Child Support Arrears Medical Coverage.

TECHNICAL ISSUES

HJR10 conflicts with Federal medical support regulations which were amended by a Final Rule published in the *Federal Register* on July 21, 2008 (73 FR 42416).

HJR10 conflicts with the 40-4C Mandatory Medical Support Act.

OTHER SUBSTANTIVE ISSUES

HPC notes that states which have implemented health coverage mandates include provisions to allow individuals the right to choose. DFA reports that Massachusetts law mandates that nearly every resident of Massachusetts obtain health insurance coverage. Through the law, Massachusetts provides subsidized health care for residents earning up to 100% of the Federal Poverty Level (FPL) and partially subsidized health care for those earning up to 300% of the FPL, depending on an income-based sliding scale. Massachusetts tax filers who failed to enroll in a health insurance plan that was deemed affordable for them lost the \$219 personal exemption on their income tax and other financial penalties based on half of the cost of a health insurance plan.

HPC further notes that Massachusetts requires minimum creditable coverage (MCC), which is the “floor” of benefits that adult tax filers need to be considered insured and avoid tax penalties in Massachusetts. Individuals may be exempt from the tax penalty if they can validate that they have a firmly held religious belief that prevents them from enrolling in a health insurance plan. Individuals meet MCC if they are enrolled in:

- Medicare Part A or B;
- Any Commonwealth Care plan;
- Any Commonwealth Choice plan (including Young Adult Plans);
- MassHealth (except MassHealth Limited);
- A federally-qualified high deductible health plan (HDHP);
- A Student Health Insurance Plan (SHIP);
- A tribal or Indian Health Service plan;
- TRICARE;
- The U.S. Veterans Administration Health System; or
- Peace Corps, VISTA or AmeriCorps or National Civilian Community Corps coverage.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Constitution will not prohibit the enactment of laws mandating health insurance or participation in health care plans.

AHO/svb