

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 15 (Delegate Smigiel)
Health and Government Operations

Health Insurance - Participation in Health Insurance Systems and Plans -
Freedom of Choice

This bill establishes that a person has the right to choose to participate in a private health insurance system or plan and that, except as required by a court, a person has the right to pay for lawful medical services without interference. The bill prohibits imposition of any penalty, tax, fee, or fine on a person that declines to contract for health insurance coverage or participate in a particular insurance system or plan.

The bill may not be construed to expand, limit, or modify any legal determination of what constitutes lawful medical services in the State.

Fiscal Summary

State Effect: The bill does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Maryland law does not require State residents to obtain health care coverage.

In January 2006, the Maryland General Assembly adopted the *Fair Share Health Care Fund Act*, which imposed an assessment on certain employers based on the provision of health insurance coverage. In effect, it would have required large employers to spend a

certain amount of their payroll on employee health care or pay a fine. However, in *Retail Industry Leaders Association v. James D. Fielder, Jr.*, the U.S. Court of Appeals for the Fourth Circuit ultimately ruled that the bill was preempted by the federal Employee Retirement Income Security Act.

Background: In March 2010, major federal health care reform legislation (the Patient Protection and Affordable Care Act or PPACA) was enacted to expand health care coverage, control health care costs, and improve the health care delivery system. Two key provisions of the Act are individual and employer health insurance mandates.

Under the individual mandate, beginning in 2014 most U.S. citizens and legal residents will be required to have qualifying health coverage or face a tax penalty of the greater of \$695 per year up to a maximum of three times that amount (\$2,085) per family or 2.5% of household income. Exemptions will be granted for financial hardship, religious objections, American Indians, those without coverage for less than three months, undocumented immigrants, incarcerated individuals, those for whom the lowest cost plan option exceeds 8% of an individual's income, and those with incomes below the tax filing threshold.

Under the employer mandate, employers with more than 50 employees that do not offer insurance or do not offer insurance that is affordable to their lower-income employees will pay a penalty (the lesser of \$3,000 for each employee receiving a premium credit or \$2,000 for each full-time employee) or provide vouchers (equal to what the employer would have paid to provide coverage to the employee under the employer's plan) to lower-income employees to purchase coverage through a state health insurance exchange.

In response to passage of PPACA, legislation has been introduced in at least 40 state legislatures to limit, alter, or oppose selected state or federal actions, including single-payer provisions and the individual mandate. As of November 2010, seven states have signed or enacted such legislation (Arizona, Georgia, Idaho, Louisiana, Missouri, Utah, and Virginia).

In addition, at least 24 legal challenges have been filed in response to PPACA. The cases involve at least 26 states, as well as public interest groups, educational institutions, and numerous individuals. The most challenged provisions of the law are the individual mandate and the related penalty. Those provisions have been most often challenged on the grounds that they violate the Commerce Clause of the U.S. Constitution. Three major cases are summarized below.

In *Thomas More Center v. Obama*, which challenged the constitutionality of the individual mandate and the related penalty, Judge George Steeh of the U.S. District Court for the Eastern District of Michigan dismissed the case, ruling that the individual mandate

is constitutional because choosing not to obtain health insurance qualifies as an example of “activities that substantially affect interstate commerce,” and Congress may regulate interstate commerce under the Commerce Clause. Judge Steeh also found that the individual mandate penalty was not an improperly apportioned direct tax, but a sanction that is allowed under the Commerce Clause. The plaintiffs have filed an appeal to the U.S. Court of Appeals for the Sixth Circuit.

In *State of Florida v. U.S. Department of Health and Human Services*, Judge Roger Vinson of the U.S. District Court for the Northern District of Florida ruled that the plaintiffs (attorneys general or governors in 26 states, a nonprofit corporation, and two individuals) have standing to challenge the individual mandate and penalty and the expansion of Medicaid under the Act. He also ruled that the individual mandate penalty was a penalty and not a tax. Oral arguments regarding the constitutionality of the individual mandate and penalty and the expansion of Medicaid were heard on December 16, 2010; however, Judge Vinson has not yet issued a ruling on those issues.

In *Commonwealth of Virginia v. Sebelius*, Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia ruled that the individual mandate and penalty are unconstitutional and exceed the regulatory authority granted to Congress under the Commerce Clause. The ruling does not enjoin any part of the federal law, pending rulings by higher courts. An appeal has not yet been filed in this case.

Additional Comments: SB 397/HB 603 of 2010 were proposed constitutional amendments that would have prohibited any law requiring an individual, employer, or health care provider to participate in any health care system or pay penalties or fines for nonparticipation. Any restrictions on an individual’s ability to pay for health care directly or a provider’s ability to accept direct payment for health care services would likewise have been prohibited. SB 397 was heard by the Senate Finance Committee, but no further action was taken on the bill. HB 603 received an unfavorable report from the House Health and Government Operations Committee.

Additional Information

Prior Introductions: Nearly identical legislation, HB 1563 of 2010, was introduced, but no action was taken on the bill.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Comptroller’s Office, Henry J. Kaiser Family Foundation, National Conference of State Legislatures, Department of Legislative Services

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