

Health Care Compact Working Group Recommendations November 1, 2012

The Health Care Compact, S.B. 208, was adopted in the 2012 General Session. This bill instructed the Health System Reform Task Force to answer specific questions regarding the Health Care Compact. The Health System Reform Task Force asked Senator J. Stuart Adams, Representative Bradley M. Daw, Representative Merlyn Newbold, and Representative Rebecca Chavez-Houck to meet with the public to discuss the questions listed in S.B. 208. The legislative participants and the members of the public who participated in working group meetings reached consensus on most of the issues. The legislators who participated in the working group join together in the following recommendations to the Health System Reform Task Force.

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"(b)(i) The Legislature shall, before reauthorizing the Health Care Compact:

(A) direct the Health System Reform Task Force to evaluate the issues listed in Subsection (10)(b)(ii), and by January 1, 2013 develop and recommend criteria for the Legislature to use to negotiate the terms of the Health Care Compact; ..." (S.B. 208)

"(b)(ii) The Health System Reform Task Force shall evaluate and develop criteria for the Legislature regarding:

(A) the impact of the Supreme Court ruling on the Affordable Care Act;" (S.B. 208)

Recommendation:

The U. S. Supreme Court (SCOTUS) decision on the Affordable Care Act leaves in place the authority of Congress to offer an expanded Medicaid program to the states. The ruling struck down Congress's authority to penalize a state that does not expand Medicaid coverage. The uncertainty of Medicaid expansion created by the Supreme Court decision provides an opportunity for the states to negotiate with the United States Department of Health and Human Services (HHS) concerning the state's current Medicaid program and any expansion program. The Health Care Compact could be one vehicle for negotiating Medicaid terms with HHS.

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"(B) whether Utah is likely to be required to implement any part of the Affordable Care Act prior to negotiating the compact with the federal government, such as Medicaid expansion in 2014;" (S.B. 208)

Recommendation:

There is no requirement to implement parts of Medicaid expansion prior to negotiating the terms of the Health Care Compact. This may change as HHS continues to respond to the SCOTUS decision, but for now, the state should proceed with negotiations with HHS regarding Medicaid flexibility in any forum available to the state.

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"(C) whether the compact's current funding formula, based on adjusted 2010 state expenditures, is the best formula for Utah and other state compact members to use for establishing the block grants from the federal government;" (S.B. 208)

"(D) whether the compact's calculation of current year inflation adjustment factor, without consideration of the regional medical inflation rate in the current year, is adequate to protect the state from increased costs associated with administering a state based Medicaid and a state based Medicare program;" (S.B. 208)

Recommendation (combined for C & D):

We are not convinced that the funding formula and the inflation adjustment factor included in the Health Care Compact are in the best interest of the state. However, we believe that there will be significant negotiations with Congress and the final formula or terms of the final agreements will most likely be different from those that exist in the current compact. The funding formula and the inflation adjustment factor should be modified as part of the Compact's negotiations with Congress. In determining the monetary value of the formula and the inflation adjustment factor, reductions in federal regulations and increased state control should be included in the negotiations and final evaluation. If the funding formula and inflationary adjustment factor do not benefit the state, the state can withdraw from the compact.

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"(E) whether the state has the flexibility it needs under the compact to implement and fund state based initiatives, or whether the compact requires uniformity across member states that does not benefit Utah;" (S.B. 208)

Recommendation:

We recommend that any agreements among the compact states and with Congress must allow for state based solutions and state based flexibility in the Medicaid program. If the Health Care Compact principles, recommendations made by the Interstate Advisory Health Commission, or negotiations result in a loss of state-based initiatives or state flexibility for Utah solutions, we recommend that the state consider withdrawing from the compact.

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"(F) whether the state has the option under the compact to refuse to take over the federal Medicare program;

(G) whether a state based Medicare program would provide better benefits to the elderly and disabled citizens of the state than a federally run Medicare program;

(H) whether the state has the infrastructure necessary to implement and administer a better state based Medicare program;" (S.B. 208)

Recommendation (combined for F-H):

At this time, we cannot recommend that the state assume the responsibility of running the Medicare program in the state. We recommend that compact member states either amend the terms of the compact to separate the Medicare issues from the Medicaid issues, or separate Medicare from Medicaid when negotiating with Congress. In the event the terms of the compact are not in the state's best interest, we recommend that we assert provisions within the compact which allow the state to withdraw from the compact.

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"(I) whether the compact appropriately delegates policy decisions between the legislative and executive branches of government regarding the development and implementation of the compact with other states and the federal government;" (S.B. 208)

Recommendation:

The compact establishes the Interstate Advisory Health Care Commission which is to consist of no more than two members from each member state. The commission will study issues of health care regulation, make non-binding recommendations to member states, and collect information and data to assist member states in their regulation of health care. As the compact indicates that the legislatures of member states hold the primary responsibility to regulate health care, we recommend the Speaker of the House of Representatives appoint one individual and the President of the Senate appoint one individual to serve as the representatives of the state for the commission. Those appointed as representatives will make regular annual reports to the Health and Human Services Interim Committee.

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"(J) the impact on public health activities, including communicable disease surveillance and epidemiology." (S.B. 208)

Recommendation:

Public health activities, in particular epidemiology, involve cross-jurisdictional issues which are dependent on: 1) federal funding targeted to specific nationwide public health concerns and 2) significant cooperation between local, state, federal, and even international governments that facilitate public health readiness. Out of deference to the concerns unique to public health, we recommend that the compact consider the impact the compact may have on public health activities and preserve the current public health funding and regulatory mechanisms and multijurisdictional cooperation.

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