

HEALTHCARE COMPACT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill enacts a Health Care Compact.

Highlighted Provisions:

This bill:

- ▶ adopts the Health Care Compact;
- ▶ defines terms;
- ▶ joins an interstate Advisory Health Care Commission;
- ▶ pledges 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;
- ▶ sunsets the compact on July 1, 2014; and
- ▶ requires the study of certain issues before reauthorizing the Health Care Compact.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-263, as last amended by Laws of Utah 2011, Chapters 199, 370, 408, and 411

ENACTS:

63M-1-2507, Utah Code Annotated 1953

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **63I-1-263** is amended to read:

32 **63I-1-263. Repeal dates, Titles 63A to 63M.**

33 (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to
34 any public school district which chooses to participate, is repealed July 1, 2016.

35 (2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

36 (3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

37 (4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is
38 repealed July 1, 2014.

39 (5) Subsection 63G-6-502(5)(b)(ii) authorizing certain transportation agencies to award
40 a contract for a design-build transportation project in certain circumstances, is repealed July 1,
41 2015.

42 (6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
43 2020.

44 (7) The Resource Development Coordinating Committee, created in Section
45 63J-4-501, is repealed July 1, 2015.

46 (8) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

47 (9) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is
48 repealed January 1, 2021.

49 (b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax
50 credits for certain persons in recycling market development zones, are repealed for taxable
51 years beginning on or after January 1, 2012.

52 (c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

53 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
54 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2012; or

55 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
56 the expenditure is made on or after January 1, 2012.

57 (d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit

58 in accordance with Section 59-7-610 or 59-10-1007 if:

59 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

60 (ii) (A) for the purchase price of machinery or equipment described in Section
61 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
62 2011; or

63 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
64 expenditure is made on or before December 31, 2011.

65 (10) (a) Section 63M-1-2507, Health Care Compact is repealed on July 1, 2014.

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

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

70 (B) prior to July 1, 2014, seek amendments to the Health Care Compact among the
71 member states that the Legislature determines are appropriate after considering the
72 recommendations of the Health System Reform Task Force.

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

75 (A) the impact of the Supreme Court ruling on the Affordable Care Act;

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

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

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

86 (E) whether the state has the flexibility it needs under the compact to implement and
87 fund state based initiatives, or whether the compact requires uniformity across member states
88 that does not benefit Utah;

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

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

93 (H) whether the state has the infrastructure necessary to implement and administer a
94 better state based Medicare program;

95 (I) whether the compact appropriately delegates policy decisions between the
96 legislative and executive branches of government regarding the development and
97 implementation of the compact with other states and the federal government; and

98 (J) the impact on public health activities, including communicable disease surveillance
99 and epidemiology.

100 [~~(10)~~] (11) The Crime Victim Reparations Board, created in Section 63M-7-504, is
101 repealed July 1, 2017.

102 [~~(11)~~] (12) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is
103 repealed July 1, 2011.

104 [~~(12)~~] (13) Title 63M, Chapter 9, Families, Agencies, and Communities Together for
105 Children and Youth At Risk Act, is repealed July 1, 2016.

106 [~~(13)~~] (14) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,
107 2012.

108 Section 2. Section **63M-1-2507** is enacted to read:

109 **63M-1-2507. The Health Care Compact.**

110 The Health Care Compact is hereby enacted and entered into with all other jurisdictions
111 that legally join in the compact, which is, in form, substantially as follows:

112 **Health Care Compact**

113 Whereas, the separation of powers, both between the branches of the federal

114 government and between federal and state authority, is essential to the preservation of
115 individual liberty;

116 Whereas, the Constitution creates a federal government of limited and enumerated
117 powers, and reserves to the states or to the people those powers not granted to the federal
118 government;

119 Whereas, the federal government has enacted many laws that have preempted state laws
120 with respect to health care, and placed increasing strain on state budgets, impairing other
121 responsibilities such as education, infrastructure, and public safety;

122 Whereas, the member states seek to protect individual liberty and personal control over
123 health care decisions, and believe the best method to achieve these ends is by vesting
124 regulatory authority over health care in the states;

125 Whereas, by acting in concert, the member states may express and inspire confidence in
126 the ability of each member state to govern health care effectively; and

127 Whereas, the member states recognize that consent of Congress may be more easily
128 secured if the member states collectively seek consent through an interstate compact;

129 NOW THEREFORE, the member states hereto resolve, and by the adoption into law
130 under their respective state constitutions of this health care compact, agree, as follows:

131 **Sec. 1. Definitions.**

132 As used in this compact, unless the context clearly indicates otherwise:

133 (1) "Commission" means the Interstate Advisory Health Care Commission.

134 (2) "Effective date" means the date upon which this compact shall become effective for
135 purposes of the operation of state and federal law in a member state, which shall be the later of:

136 (a) the date upon which this compact shall be adopted under the laws of the member
137 state, and

138 (b) the date upon which this compact receives the consent of Congress pursuant to
139 Article I, Section 10, of the United States Constitution, after at least two member states adopt
140 this compact.

141 (3) "Health care" means care, services, supplies, or plans related to the health of an

142 individual and includes but is not limited to:

143 (a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care
144 and counseling, service, assessment, or procedure with respect to the physical or mental
145 condition or functional status of an individual or that affects the structure or function of the
146 body, and

147 (b) sale or dispensing of a drug, device, equipment, or other item in accordance with a
148 prescription, and

149 (c) an individual or group plan that provides, or pays the cost of, care, services, or
150 supplies related to the health of an individual, except any care, services, supplies, or plans
151 provided by the United States Department of Defense and United States Department of Veteran
152 Affairs, or provided to Native Americans.

153 (4) "Member state" means a state that is signatory to this compact and has adopted it
154 under the laws of that state.

155 (5) "Member state base funding level" means a number equal to the total federal
156 spending on health care in the member state during federal fiscal year 2010. On or before the
157 effective date, each member state shall determine the member state base funding level for its
158 state, and that number shall be binding upon that member state. The preliminary estimate of
159 member state base funding level for the state of Utah is \$4,102,000,000.

160 (6) "Member state current year funding level" means the member state base funding
161 level multiplied by the member state current year population adjustment factor multiplied by
162 the current year inflation adjustment factor.

163 (7) "Member state current year population adjustment factor" means the average
164 population of the member state in the current year less the average population of the member
165 state in federal fiscal year 2010, divided by the average population of the member state in
166 federal fiscal year 2010, plus 1. Average population in a member state shall be determined by
167 the United States Census Bureau.

168 (8) "Current year inflation adjustment factor" means the total gross domestic product
169 deflator in the current year divided by the total gross domestic product deflator in federal fiscal

170 year 2010. Total gross domestic product deflator shall be determined by the Bureau of
171 Economic Analysis of the United States Department of Commerce.

172 **Sec. 2. Pledge.**

173 The member states shall take joint and separate action to secure the consent of the
174 United States Congress to this compact in order to return the authority to regulate health care to
175 the member states consistent with the goals and principles articulated in this compact. The
176 member states shall improve health care policy within their respective jurisdictions and
177 according to the judgment and discretion of each member state.

178 **Sec. 3. Legislative Power.**

179 The legislatures of the member states have the primary responsibility to regulate health
180 care in their respective states.

181 **Sec. 4. State Control.**

182 Each member state, within its state, may suspend by legislation the operation of all
183 federal laws, rules, regulations, and orders regarding health care that are inconsistent with the
184 laws and regulations adopted by the member state pursuant to this compact. Federal and state
185 laws, rules, regulations, and orders regarding health care will remain in effect unless a member
186 state expressly suspends them pursuant to its authority under this compact. For any federal
187 law, rule, regulation, or order that remains in effect in a member state after the effective date,
188 that member state shall be responsible for the associated funding obligations in its state.

189 **Sec. 5. Funding.**

190 (a) Each federal fiscal year, each member state shall have the right to federal monies up
191 to an amount equal to its member state current year funding level for that federal fiscal year,
192 funded by Congress as mandatory spending and not subject to annual appropriation, to support
193 the exercise of member state authority under this compact. This funding shall not be
194 conditional on any action of or regulation, policy, law, or rule being adopted by the member
195 state.

196 (b) By the start of each federal fiscal year, Congress shall establish an initial member
197 state current year funding level for each member state, based upon reasonable estimates. The

198 final member state current year funding level shall be calculated, and funding shall be
199 reconciled by the United States Congress based upon information provided by each member
200 state and audited by the United States Government Accountability Office.

201 **Sec. 6. Interstate Advisory Health Care Commission.**

202 (a) The Interstate Advisory Health Care Commission is established. The commission
203 consists of members appointed by each member state through a process to be determined by
204 each member state. A member state may not appoint more than two members to the
205 commission and may withdraw membership from the commission at any time. Each
206 commission member is entitled to one vote. The commission shall not act unless a majority of
207 the members are present, and no action shall be binding unless approved by a majority of the
208 commission's total membership.

209 (b) The commission may elect from among its membership a chairperson. The
210 commission may adopt and publish bylaws and policies that are not inconsistent with this
211 compact. The commission shall meet at least once a year, and may meet more frequently.

212 (c) The commission may study issues of health care regulation that are of particular
213 concern to the member states. The commission may make non-binding recommendations to
214 the member states. The legislatures of the member states may consider these recommendations
215 in determining the appropriate health care policies in their respective states.

216 (d) The commission shall collect information and data to assist the member states in
217 their regulation of health care, including assessing the performance of various state health care
218 programs and compiling information on the prices of health care. The commission shall make
219 this information and data available to the legislatures of the member states. Notwithstanding
220 any other provision in this compact, no member state shall disclose to the commission the
221 health information of any individual, nor shall the commission disclose the health information
222 of any individual.

223 (e) The commission shall be funded by the member states as agreed to by the member
224 states. The commission shall have the responsibilities and duties as may be conferred upon it
225 by subsequent action of the respective legislatures of the member states in accordance with the

226 terms of this compact.

227 (f) The commission shall not take any action within a member state that contravenes
228 any state law of that member state.

229 **Sec. 7. Congressional Consent.**

230 This compact shall be effective on its adoption by at least two member states and
231 consent of the United States Congress. This compact shall be effective unless the United States
232 Congress, in consenting to this compact, alters the fundamental purposes of this compact,
233 which are:

234 (a) to secure the right of the member states to regulate health care in their respective
235 states pursuant to this compact and to suspend the operation of any conflicting federal laws,
236 rules, regulations, and orders within their states; and

237 (b) to secure federal funding for member states that choose to invoke their authority
238 under this compact, as prescribed by Section 5 of this compact.

239 **Sec. 8. Amendments.**

240 The member states, by unanimous agreement, may amend this compact from time to
241 time without the prior consent or approval of Congress and any amendment shall be effective
242 unless, within one year, the Congress disapproves that amendment. Any state may join this
243 compact after the date on which Congress consents to the compact by adoption into law under
244 its state constitution.

245 **Sec. 9. Withdrawal; Dissolution.**

246 Any member state may withdraw from this compact by adopting a law to that effect, but
247 no such withdrawal shall take effect until six months after the governor of the withdrawing
248 member state has given notice of the withdrawal to the other member states. A withdrawing
249 state shall be liable for any obligations that it may have incurred prior to the date on which its
250 withdrawal becomes effective. This compact shall be dissolved upon the withdrawal of all but
251 one of the member states.

252 **Sec. 10. Sunset.**

253 This compact sunsets on July 1, 2014.

