

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 26, 2011
Date

Committee on Health and Environment.

After consideration on the merits, the Committee recommends the following:

HB11-1273 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. Article 60 of title 24, Colorado Revised Statutes,
4 is amended BY THE ADDITION OF A NEW PART to read:

5 PART 35
6 HEALTH CARE INTERSTATE COMPACT
7 **24-60-3501. Short title.** THIS PART 35 SHALL BE KNOWN AND
8 MAY BE CITED AS THE "HEALTH CARE OPPORTUNITY AND PATIENT
9 EMPOWERMENT ACT".

10 **24-60-3502. Execution of compact.** THE GENERAL ASSEMBLY
11 HEREBY APPROVES AND THE GOVERNOR IS AUTHORIZED TO ENTER INTO A
12 COMPACT ON BEHALF OF THIS STATE WITH ANY OTHER STATE OR STATES
13 LEGALLY JOINING THEREIN IN THE FORM SUBSTANTIALLY AS FOLLOWS:

14 **ARTICLE I**
15 **PURPOSE**

- 16 (a) THE MEMBER STATES FIND THAT:
17 (1) THE SEPARATION OF POWERS, BOTH AMONG THE BRANCHES OF
18 THE FEDERAL GOVERNMENT AND BETWEEN FEDERAL AND STATE
19 AUTHORITY, IS ESSENTIAL TO THE PRESERVATION OF INDIVIDUAL LIBERTY;
20 (2) THE UNITED STATES CONSTITUTION CREATES A FEDERAL
21 GOVERNMENT OF LIMITED AND ENUMERATED POWERS AND RESERVES TO
22 THE STATES OR TO THE PEOPLE THOSE POWERS NOT GRANTED TO THE
23 FEDERAL GOVERNMENT;

1 (3) THE FEDERAL GOVERNMENT HAS ENACTED MANY LAWS THAT
2 HAVE PREEMPTED STATE LAWS WITH RESPECT TO HEALTH CARE AND HAVE
3 PLACED INCREASING STRAIN ON STATE BUDGETS, IMPAIRING OTHER
4 RESPONSIBILITIES SUCH AS EDUCATION, INFRASTRUCTURE, AND PUBLIC
5 SAFETY;

6 (4) THE MEMBER STATES SEEK TO PROTECT INDIVIDUAL LIBERTY
7 AND PERSONAL CONTROL OVER HEALTH CARE DECISIONS AND BELIEVE THE
8 BEST METHOD TO ACHIEVE THESE ENDS IS TO VEST REGULATORY
9 AUTHORITY OVER HEALTH CARE IN THE STATES;

10 (5) BY ACTING IN CONCERT, THE MEMBER STATES MAY EXPRESS
11 AND INSPIRE CONFIDENCE IN THE ABILITY OF EACH MEMBER STATE TO
12 GOVERN HEALTH CARE EFFECTIVELY; AND

13 (6) THE MEMBER STATES RECOGNIZE THAT CONSENT OF THE
14 UNITED STATES CONGRESS MAY BE MORE EASILY SECURED IF THE MEMBER
15 STATES COLLECTIVELY SEEK CONSENT THROUGH AN INTERSTATE COMPACT
16 AS SET FORTH IN THIS PART 35.

17 **ARTICLE II**
18 **DEFINITIONS**

19 AS USED IN THIS COMPACT, UNLESS THE CONTEXT CLEARLY
20 INDICATES OTHERWISE:

21 (a) "COMMISSION" MEANS THE INTERSTATE ADVISORY HEALTH
22 CARE COMMISSION ESTABLISHED IN ARTICLE VII OF THIS COMPACT.

23 (b) "CURRENT YEAR INFLATION ADJUSTMENT FACTOR" MEANS THE
24 TOTAL GROSS DOMESTIC PRODUCT DEFLATOR IN THE CURRENT YEAR
25 DIVIDED BY THE TOTAL GROSS DOMESTIC PRODUCT DEFLATOR IN FEDERAL
26 FISCAL YEAR 2010. TOTAL GROSS DOMESTIC PRODUCT DEFLATOR SHALL
27 BE DETERMINED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED
28 STATES DEPARTMENT OF COMMERCE.

29 (c) "EFFECTIVE DATE" MEANS THE DATE UPON WHICH THIS
30 COMPACT BECOMES EFFECTIVE FOR PURPOSES OF THE OPERATION OF STATE
31 AND FEDERAL LAW IN A MEMBER STATE, WHICH SHALL BE THE LATER OF:

32 (1) THE DATE UPON WHICH THIS COMPACT IS ADOPTED UNDER THE
33 LAWS OF THE MEMBER STATE; AND

34 (2) THE DATE UPON WHICH THE UNITED STATES CONGRESS
35 CONSENTS TO THIS COMPACT PURSUANT TO ARTICLE I, SECTION 10 OF THE
36 UNITED STATES CONSTITUTION, AFTER AT LEAST TWO MEMBER STATES
37 ADOPT THE COMPACT.

38 (d) (1) "HEALTH CARE" MEANS CARE, SERVICES, SUPPLIES, OR
39 PLANS RELATED TO THE HEALTH OF AN INDIVIDUAL AND INCLUDES THE
40 FOLLOWING:

41 (i) PREVENTIVE, DIAGNOSTIC, THERAPEUTIC, REHABILITATIVE,

1 MAINTENANCE, OR PALLIATIVE CARE AND COUNSELING, SERVICE,
2 ASSESSMENT, OR PROCEDURE WITH RESPECT TO THE PHYSICAL OR MENTAL
3 CONDITION OR FUNCTIONAL STATUS OF AN INDIVIDUAL OR THAT AFFECTS
4 THE STRUCTURE OR FUNCTION OF THE BODY;

5 (ii) THE SALE OR DISPENSING OF A DRUG, DEVICE, EQUIPMENT, OR
6 OTHER ITEM IN ACCORDANCE WITH A PRESCRIPTION; AND

7 (iii) AN INDIVIDUAL OR GROUP PLAN THAT PROVIDES, OR PAYS THE
8 COST OF, CARE, SERVICES, OR SUPPLIES RELATED TO THE HEALTH OF AN
9 INDIVIDUAL.

10 (2) "HEALTH CARE" DOES NOT INCLUDE ANY CARE, SERVICES,
11 SUPPLIES, OR PLANS PROVIDED BY THE UNITED STATES DEPARTMENTS OF
12 DEFENSE AND VETERANS AFFAIRS OR PROVIDED TO NATIVE AMERICANS.

13 (e) "MEMBER STATE" MEANS A STATE THAT IS A SIGNATORY TO
14 THIS COMPACT AND HAS ADOPTED IT UNDER THE LAWS OF THAT STATE.

15 (f) "MEMBER STATE BASE FUNDING LEVEL" MEANS A NUMBER
16 EQUAL TO THE TOTAL FEDERAL SPENDING ON HEALTH CARE IN THE
17 MEMBER STATE DURING FEDERAL FISCAL YEAR 2010. ON OR BEFORE THE
18 EFFECTIVE DATE, EACH MEMBER STATE SHALL DETERMINE THE MEMBER
19 STATE BASE FUNDING LEVEL FOR ITS STATE, AND THAT NUMBER SHALL BE
20 BINDING ON THE MEMBER STATE. THE PRELIMINARY ESTIMATE OF THE
21 MEMBER STATE BASE FUNDING LEVEL FOR THE STATE OF COLORADO IS
22 EIGHT BILLION NINE HUNDRED SEVEN MILLION DOLLARS.

23 (g) "MEMBER STATE CURRENT YEAR FUNDING LEVEL" MEANS THE
24 MEMBER STATE BASE FUNDING LEVEL MULTIPLIED BY THE MEMBER STATE
25 CURRENT YEAR POPULATION ADJUSTMENT FACTOR MULTIPLIED BY THE
26 CURRENT YEAR INFLATION ADJUSTMENT FACTOR.

27 (h) "MEMBER STATE CURRENT YEAR POPULATION ADJUSTMENT
28 FACTOR" MEANS THE AVERAGE POPULATION OF THE MEMBER STATE IN THE
29 CURRENT YEAR LESS THE AVERAGE POPULATION OF THE MEMBER STATE IN
30 FEDERAL FISCAL YEAR 2010, DIVIDED BY THE AVERAGE POPULATION OF
31 THE MEMBER STATE IN FEDERAL FISCAL YEAR 2010, PLUS ONE. AVERAGE
32 POPULATION IN A MEMBER STATE SHALL BE DETERMINED BY THE UNITED
33 STATES BUREAU OF THE CENSUS.

34 **ARTICLE III**
35 **PLEDGE**

36 THE MEMBER STATES SHALL TAKE JOINT AND SEPARATE ACTION TO
37 SECURE THE CONSENT OF THE UNITED STATES CONGRESS TO THIS
38 COMPACT IN ORDER TO RETURN THE AUTHORITY TO REGULATE HEALTH
39 CARE TO THE MEMBER STATES CONSISTENT WITH THE GOALS AND
40 PRINCIPLES ARTICULATED IN THIS COMPACT. THE MEMBER STATES SHALL
41 IMPROVE HEALTH CARE POLICY WITHIN THEIR RESPECTIVE JURISDICTIONS

1 AND ACCORDING TO THE JUDGMENT AND DISCRETION OF EACH MEMBER
2 STATE.

3 **ARTICLE IV**
4 **LEGISLATIVE POWER**

5 THE LEGISLATURES OF THE MEMBER STATES HAVE THE PRIMARY
6 RESPONSIBILITY TO REGULATE HEALTH CARE IN THEIR RESPECTIVE STATES.

7 **ARTICLE V**
8 **STATE CONTROL**

9 EACH MEMBER STATE, WITHIN ITS STATE, MAY SUSPEND BY
10 LEGISLATION THE OPERATION OF ALL FEDERAL LAWS, RULES,
11 REGULATIONS, AND ORDERS REGARDING HEALTH CARE THAT ARE
12 INCONSISTENT WITH THE LAWS AND REGULATIONS ADOPTED BY THE
13 MEMBER STATE PURSUANT TO THIS COMPACT. FEDERAL AND STATE LAWS,
14 RULES, REGULATIONS, AND ORDERS REGARDING HEALTH CARE WILL
15 REMAIN IN EFFECT UNLESS A MEMBER STATE EXPRESSLY SUSPENDS THEM
16 PURSUANT TO ITS AUTHORITY UNDER THIS COMPACT. FOR ANY FEDERAL
17 LAW, RULE, REGULATION, OR ORDER THAT REMAINS IN EFFECT IN A
18 MEMBER STATE AFTER THE EFFECTIVE DATE, THAT MEMBER STATE SHALL
19 BE RESPONSIBLE FOR THE ASSOCIATED FUNDING OBLIGATIONS IN ITS
20 STATE.

21 **ARTICLE VI**
22 **FUNDING**

23 (a) EACH FEDERAL FISCAL YEAR, EACH MEMBER STATE SHALL
24 HAVE THE RIGHT TO FEDERAL MONEYS UP TO AN AMOUNT EQUAL TO ITS
25 MEMBER STATE CURRENT YEAR FUNDING LEVEL FOR THAT FEDERAL FISCAL
26 YEAR, FUNDED BY CONGRESS AS MANDATORY SPENDING AND NOT SUBJECT
27 TO ANNUAL APPROPRIATION, TO SUPPORT THE EXERCISE OF MEMBER STATE
28 AUTHORITY UNDER THIS COMPACT. THIS FUNDING SHALL NOT BE
29 CONDITIONAL ON ANY ACTION OF OR REGULATION, POLICY, LAW, OR RULE
30 BEING ADOPTED BY THE MEMBER STATE.

31 (b) BY THE START OF EACH FEDERAL FISCAL YEAR, CONGRESS
32 SHALL ESTABLISH AN INITIAL MEMBER STATE CURRENT YEAR FUNDING
33 LEVEL FOR EACH MEMBER STATE, BASED UPON REASONABLE ESTIMATES.
34 THE FINAL MEMBER STATE CURRENT YEAR FUNDING LEVEL SHALL BE
35 CALCULATED, AND FUNDING SHALL BE RECONCILED BY THE UNITED
36 STATES CONGRESS BASED UPON INFORMATION PROVIDED BY EACH
37 MEMBER STATE AND AUDITED BY THE UNITED STATES GOVERNMENT
38 ACCOUNTABILITY OFFICE.

39 **ARTICLE VII**
40 **INTERSTATE ADVISORY HEALTH**
41 **CARE COMMISSION**

1 (a) THE INTERSTATE ADVISORY HEALTH CARE COMMISSION IS
2 ESTABLISHED. THE COMMISSION CONSISTS OF MEMBERS APPOINTED BY
3 EACH MEMBER STATE THROUGH A PROCESS TO BE DETERMINED BY EACH
4 MEMBER STATE. A MEMBER STATE MAY NOT APPOINT MORE THAN TWO
5 MEMBERS TO THE COMMISSION AND MAY WITHDRAW MEMBERSHIP FROM
6 THE COMMISSION AT ANY TIME. EACH COMMISSION MEMBER IS ENTITLED
7 TO ONE VOTE. THE COMMISSION SHALL NOT ACT UNLESS A MAJORITY OF
8 THE MEMBERS ARE PRESENT, AND NO ACTION SHALL BE BINDING UNLESS
9 APPROVED BY A MAJORITY OF THE COMMISSION’S TOTAL MEMBERSHIP.

10 (b) THE COMMISSION MAY ELECT FROM AMONG ITS MEMBERSHIP
11 A CHAIRPERSON. THE COMMISSION MAY ADOPT AND PUBLISH BYLAWS AND
12 POLICIES THAT DO NOT CONFLICT WITH THIS COMPACT. THE COMMISSION
13 SHALL MEET AT LEAST ONCE A YEAR AND MAY MEET MORE FREQUENTLY.

14 (c) THE COMMISSION MAY STUDY ISSUES OF HEALTH CARE
15 REGULATION THAT ARE OF PARTICULAR CONCERN TO THE MEMBER STATES.
16 THE COMMISSION MAY MAKE NONBINDING RECOMMENDATIONS TO THE
17 MEMBER STATES. THE LEGISLATURES OF THE MEMBER STATES MAY
18 CONSIDER THESE RECOMMENDATIONS IN DETERMINING THE APPROPRIATE
19 HEALTH CARE POLICIES IN THEIR RESPECTIVE STATES.

20 (d) THE COMMISSION SHALL COLLECT INFORMATION AND DATA TO
21 ASSIST THE MEMBER STATES IN THEIR REGULATION OF HEALTH CARE,
22 INCLUDING ASSESSING THE PERFORMANCE OF VARIOUS STATE HEALTH
23 CARE PROGRAMS AND COMPILING INFORMATION ON THE PRICES OF HEALTH
24 CARE. THE COMMISSION SHALL MAKE THIS INFORMATION AND DATA
25 AVAILABLE TO THE LEGISLATURES OF THE MEMBER STATES.
26 NOTWITHSTANDING ANY OTHER PROVISION IN THIS COMPACT, NO MEMBER
27 STATE SHALL DISCLOSE TO THE COMMISSION THE HEALTH INFORMATION OF
28 ANY INDIVIDUAL, NOR SHALL THE COMMISSION DISCLOSE THE HEALTH
29 INFORMATION OF ANY INDIVIDUAL.

30 (e) THE COMMISSION SHALL BE FUNDED BY THE MEMBER STATES
31 AS AGREED TO BY THE MEMBER STATES. THE COMMISSION SHALL HAVE
32 THE RESPONSIBILITIES AND DUTIES AS MAY BE CONFERRED UPON IT BY
33 SUBSEQUENT ACTION OF THE RESPECTIVE LEGISLATURES OF THE MEMBER
34 STATES IN ACCORDANCE WITH THE TERMS OF THIS COMPACT.

35 (f) THE COMMISSION SHALL NOT TAKE ANY ACTION WITHIN A
36 MEMBER STATE THAT CONTRAVENES ANY STATE LAW OF THAT MEMBER
37 STATE.

38 **ARTICLE VIII**
39 **CONGRESSIONAL CONSENT**

40 THIS COMPACT SHALL BE EFFECTIVE ON ITS ADOPTION BY AT LEAST
41 TWO MEMBER STATES AND CONSENT OF THE UNITED STATES CONGRESS.

1 THIS COMPACT SHALL BE EFFECTIVE UNLESS THE UNITED STATES
2 CONGRESS, IN CONSENTING TO THIS COMPACT, ALTERS THE FUNDAMENTAL
3 PURPOSES OF THIS COMPACT, WHICH ARE:

4 (a) TO SECURE THE RIGHT OF THE MEMBER STATES TO REGULATE
5 HEALTH CARE IN THEIR RESPECTIVE STATES PURSUANT TO THIS COMPACT
6 AND TO SUSPEND THE OPERATION OF ANY CONFLICTING FEDERAL LAWS,
7 RULES, REGULATIONS, AND ORDERS WITHIN THEIR STATES; AND

8 (b) TO SECURE FEDERAL FUNDING FOR MEMBER STATES THAT
9 CHOOSE TO INVOKE THEIR AUTHORITY UNDER THIS COMPACT, AS
10 PRESCRIBED BY ARTICLE 6 OF THIS COMPACT.

11 **ARTICLE IX**
12 **AMENDMENTS**

13 THE MEMBER STATES, BY UNANIMOUS AGREEMENT, MAY AMEND
14 THIS COMPACT FROM TIME TO TIME WITHOUT THE PRIOR CONSENT OR
15 APPROVAL OF CONGRESS, AND ANY AMENDMENT SHALL BE EFFECTIVE
16 UNLESS, WITHIN ONE YEAR, CONGRESS DISAPPROVES THAT AMENDMENT.
17 ANY STATE MAY JOIN THIS COMPACT AFTER THE DATE ON WHICH
18 CONGRESS CONSENTS TO THE COMPACT BY ADOPTION INTO LAW UNDER ITS
19 STATE CONSTITUTION.

20 **ARTICLE X**
21 **WITHDRAWAL; DISSOLUTION**

22 ANY MEMBER STATE MAY WITHDRAW FROM THIS COMPACT BY
23 ADOPTING A LAW TO THAT EFFECT, BUT NO SUCH WITHDRAWAL SHALL
24 TAKE EFFECT UNTIL SIX MONTHS AFTER THE GOVERNOR OF THE
25 WITHDRAWING MEMBER STATE HAS GIVEN NOTICE OF THE WITHDRAWAL
26 TO THE OTHER MEMBER STATES. A WITHDRAWING STATE SHALL BE LIABLE
27 FOR ANY OBLIGATIONS THAT IT MAY HAVE INCURRED PRIOR TO THE DATE
28 ON WHICH ITS WITHDRAWAL BECOMES EFFECTIVE. THIS COMPACT SHALL
29 BE DISSOLVED UPON THE WITHDRAWAL OF ALL BUT ONE OF THE MEMBER
30 STATES.

31 **SECTION 2. Safety clause.** The general assembly hereby finds,
32 determines, and declares that this act is necessary for the immediate
33 preservation of the public peace, health, and safety."

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