

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0779.01 Christy Chase

HOUSE BILL 11-1273

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House Committees

Health and Environment

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A BILL FOR AN ACT

101 **CONCERNING THE ENACTMENT OF THE "HEALTH CARE OPPORTUNITY**
102 **AND PATIENT EMPOWERMENT ACT" TO AUTHORIZE THE STATE**
103 **TO NEGOTIATE WITH OTHER STATES TO DEVELOP AN**
104 **INTERSTATE COMPACT FOR PURPOSES OF ALLOWING THE**
105 **SIGNATORY STATES TO OPT OUT OF FEDERAL LAW SO AS TO**
106 **REGULATE HEALTH CARE AT THE STATE LEVEL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill enacts the "Health Care Opportunity and Patient Empowerment Act", which requires the executive directors of the departments of health care policy and financing, public health and environment, and labor and employment and the commissioner of insurance, in consultation with other state agencies and stakeholders they deem appropriate, to develop a health care interstate compact that would allow signatory states to opt out of federal health care reform legislation as well as any other federal law regulating health care and instead regulate health care in each signatory state in the manner determined appropriate for that state by its legislature. The executive directors and commissioner are to keep the general assembly apprised of its progress through periodic reports to specified committees of reference of the senate and house of representatives.

1 *Be it enacted by the General Assembly of the State of Colorado:*

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

4 **PART 35**

5 **HEALTH CARE INTERSTATE COMPACT**

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

9 **24-60-3502. Legislative declaration.** (1) THE GENERAL
10 ASSEMBLY HEREBY FINDS THAT:

11 (a) THE SEPARATION OF POWERS, BOTH AMONG THE BRANCHES OF
12 THE FEDERAL GOVERNMENT AND BETWEEN FEDERAL AND STATE
13 AUTHORITY, IS ESSENTIAL TO THE PRESERVATION OF INDIVIDUAL LIBERTY;

14 (b) THE UNITED STATES CONSTITUTION CREATES A FEDERAL
15 GOVERNMENT OF LIMITED AND ENUMERATED POWERS AND RESERVES TO
16 THE STATES OR TO THE PEOPLE THOSE POWERS NOT GRANTED TO THE
17 FEDERAL GOVERNMENT;

18 (c) THE FEDERAL GOVERNMENT HAS ENACTED MANY LAWS THAT

1 HAVE PREEMPTED STATE LAWS WITH RESPECT TO HEALTH CARE,
2 INCLUDING THE RECENT "PATIENT PROTECTION AND AFFORDABLE CARE
3 ACT", PUB.L. 111-148, EVEN THOUGH HEALTH CARE REGULATION IS
4 PROPERLY THE AUTHORITY AND RESPONSIBILITY OF THE STATES;

5 (d) THE STATE OF COLORADO SHOULD STRIVE TO INCREASE
6 INDIVIDUAL LIBERTY AND CONTROL OVER PERSONAL HEALTH CARE
7 DECISIONS, AND THE BEST METHOD TO SECURE THAT CONTROL IS BY
8 VESTING REGULATORY AUTHORITY OVER HEALTH CARE IN THE STATES;

9 (e) BY ACTING IN CONCERT WITH OTHER STATES, COLORADO MAY
10 EXPRESS AND INSPIRE CONFIDENCE IN THE ABILITY OF THE STATES TO
11 ESTABLISH A FRAMEWORK FOR INTERSTATE COMPETITION;

12 (f) MOREOVER, ARTICLE I, SECTION 10 OF THE UNITED STATES
13 CONSTITUTION, WHICH CONTAINS THE COMPACT CLAUSE, PRESERVES THE
14 ORIGINAL INHERENT SOVEREIGN RIGHT OF STATES TO ENTER INTO
15 COMPACTS WITH OTHER STATES, RESTRICTING THAT RIGHT ONLY BY
16 REQUIRING THE CONSENT OF THE UNITED STATES CONGRESS;

17 (g) THE UNITED STATES SUPREME COURT HAS RECOGNIZED, IN
18 CUYLER V. ADAMS, 449 U.S. 433 (1981) THAT "WHERE CONGRESS HAS
19 AUTHORIZED THE STATES TO ENTER INTO A COOPERATIVE AGREEMENT,
20 AND WHERE THE SUBJECT MATTER OF THAT AGREEMENT IS AN
21 APPROPRIATE SUBJECT FOR CONGRESSIONAL LEGISLATION, THE CONSENT
22 OF CONGRESS TRANSFORMS THE STATES' AGREEMENT INTO FEDERAL LAW
23 UNDER THE COMPACT CLAUSE", AND THE STATES' AGREEMENT
24 SUPERSEDES FEDERAL LAW, AS IT APPLIES IN THE SIGNATORY STATES, WITH
25 REGARD TO THE SUBJECT MATTER OF THE AGREEMENT;

26 (h) THE STATE OF COLORADO RECOGNIZES THAT CONSENT OF
27 CONGRESS MAY BE MORE EASILY SECURED IF SEVERAL STATES

1 COLLECTIVELY SEEK CONSENT THROUGH AN INTERSTATE COMPACT; AND

2 (i) ADOPTION OF A HEALTH CARE COMPACT THAT, ONCE APPROVED
3 BY THE UNITED STATES CONGRESS, SUPERSEDES FEDERAL LAW,
4 INCLUDING THE "PATIENT PROTECTION AND AFFORDABLE CARE ACT", IS
5 IMPERATIVE TO PRESERVE THE SOVEREIGN RIGHTS OF STATES AND THE
6 INDIVIDUAL LIBERTIES OF THEIR RESIDENTS.

7 **24-60-3503. Definitions.** AS USED IN THIS PART 35, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE
10 APPOINTED PURSUANT TO SECTION 10-1-104, C.R.S., OR THE
11 COMMISSIONER'S DESIGNEE.

12 (2) "DEPARTMENTS" MEANS THE STATE DEPARTMENTS OF HEALTH
13 CARE POLICY AND FINANCING, PUBLIC HEALTH AND ENVIRONMENT, AND
14 LABOR AND EMPLOYMENT.

15 (3) "DIVISION" MEANS THE DIVISION OF INSURANCE IN THE
16 DEPARTMENT OF REGULATORY AGENCIES CREATED PURSUANT TO SECTION
17 10-1-103, C.R.S.

18 (4) "EXECUTIVE DIRECTORS" MEANS THE EXECUTIVE DIRECTORS
19 OF THE DEPARTMENTS OR THEIR DESIGNEES.

20 (5) "FEDERAL HEALTH CARE REFORM LAW" MEANS THE "PATIENT
21 PROTECTION AND AFFORDABLE CARE ACT", PUB.L. 111-148, AS
22 AMENDED BY THE "HEALTH CARE AND EDUCATION RECONCILIATION ACT
23 OF 2010", PUB.L. 111-152.

24 (6) "FEDERAL LAW" MEANS ANY PROVISION OF THE UNITED
25 STATES CODE OR CODE OF FEDERAL REGULATIONS THAT REGULATES ANY
26 ASPECT OF HEALTH CARE AND INCLUDES THE FEDERAL HEALTH CARE
27 REFORM LAW.

1 (7) "HEALTH CARE" HAS THE SAME MEANING AS SET FORTH IN 45
2 CFR 160.103; EXCEPT THAT THE TERM EXCLUDES CARE, SERVICES, OR
3 SUPPLIES PROVIDED BY THE UNITED STATES DEPARTMENTS OF DEFENSE
4 AND VETERANS AFFAIRS.

5 (8) "MEDICAID PROGRAM" MEANS THE STATE'S PROGRAM ENACTED
6 AND OPERATED PURSUANT TO TITLE XIX OF THE FEDERAL "SOCIAL
7 SECURITY ACT", 42 U.S.C. SEC. 1396 ET SEQ.

8 (9) "STATE" MEANS A STATE OR TERRITORY OF THE UNITED
9 STATES OR THE DISTRICT OF COLUMBIA.

10 **24-60-3504. Model legislation - compact authorized.** (1) THE
11 EXECUTIVE DIRECTORS AND THE COMMISSIONER, IN CONSULTATION WITH
12 REPRESENTATIVES OF OTHER STATE DEPARTMENTS OR AGENCIES AND
13 STAKEHOLDER GROUPS WHOSE PARTICIPATION THE EXECUTIVE DIRECTORS
14 AND COMMISSIONER DEEM BENEFICIAL, SHALL DEVELOP, PARTICIPATE IN
15 THE DEVELOPMENT OF, AND NEGOTIATE FOR AN INTERSTATE COMPACT ON
16 BEHALF OF THE STATE OF COLORADO WITH OTHER STATES AND SHALL
17 RECOMMEND MODEL LEGISLATION FOR AN INTERSTATE COMPACT THAT, IF
18 ADOPTED IN THE RESPECTIVE SIGNATORY STATES, WOULD ADVANCE THE
19 FOLLOWING POLICY GOALS:

20 (a) SECURING THE CONSENT OF THE UNITED STATES CONGRESS TO
21 AN INTERSTATE COMPACT THAT WOULD RETURN THE AUTHORITY TO
22 REGULATE HEALTH CARE TO THE SIGNATORY STATES, CONSISTENT WITH
23 THE GOALS AND PRINCIPLES ARTICULATED IN THE COMPACT;

24 (b) IMPROVING HEALTH CARE POLICY WITHIN THE SIGNATORY
25 STATES AND ACCORDING TO THE JUDGMENT AND DISCRETION OF EACH
26 SIGNATORY STATE;

27 (c) AFFIRMING THAT THE LEGISLATURES OF THE SIGNATORY

1 STATES HAVE THE PRIMARY RESPONSIBILITY AND AUTHORITY TO
2 REGULATE HEALTH CARE IN THEIR RESPECTIVE STATES THROUGH THE
3 ENACTMENT OF STATE LAWS THAT SUPERSEDE ANY FEDERAL LAW OR
4 REGULATION IN THE AREA OF HEALTH CARE;

5 (d) AUTHORIZING EACH SIGNATORY STATE TO OPT OUT OF THE
6 FEDERAL HEALTH CARE REFORM LAW AND ANY OTHER FEDERAL LAW THAT
7 REQUIRES STATES TO TAKE ACTION IN THE AREA OF HEALTH CARE;

8 (e) IN ORDER TO MAXIMIZE OPPORTUNITIES FOR STATE
9 INNOVATION, ALLOWING EACH SIGNATORY STATE THE RIGHT TO CHOOSE
10 TO RECEIVE FEDERAL FUNDS FOR THE STATE'S MEDICAID PROGRAM IN THE
11 FORM OF BLOCK GRANTS AND TO CHOOSE TO USE THOSE FEDERAL FUNDS
12 IN THE MANNER THE RECEIVING STATE DEEMS APPROPRIATE WITHOUT
13 HAVING TO COMPLY WITH FEDERAL LAW REQUIREMENTS AS TO
14 MAINTENANCE OF EFFORT OR MINIMUM ELIGIBILITY STANDARDS AND
15 WITHOUT HAVING TO SEEK A WAIVER FROM THE FEDERAL GOVERNMENT TO
16 APPROVE CHANGES TO THE STATE'S MEDICAID PROGRAM;

17 (f) CREATING AN INTERSTATE ADVISORY HEALTH CARE
18 COMMISSION, CONSISTING OF MEMBERS APPOINTED BY EACH SIGNATORY
19 STATE, AUTHORIZED TO PERFORM THE FOLLOWING DUTIES:

20 (I) TO STUDY, IN ITS DISCRETION, THE ISSUES OF HEALTH CARE
21 REGULATION OF PARTICULAR CONCERN TO THE SIGNATORY STATES AND
22 MAKE NONBINDING RECOMMENDATIONS TO THE SIGNATORY STATES;

23 (II) TO MAKE AVAILABLE TO THE SIGNATORY STATES
24 INFORMATION TO ASSIST THE SIGNATORY STATES IN THEIR REGULATION OF
25 HEALTH CARE, INCLUDING ASSESSING THE PERFORMANCE OF VARIOUS
26 STATE HEALTH CARE PROGRAMS AND COMPILING INFORMATION ON THE
27 COST OF HEALTH CARE;

1 (III) TO CONSIDER ADOPTING RULES TO FACILITATE THE
2 INTERSTATE PURCHASE OF HEALTH INSURANCE; AND

3 (IV) TO CONSIDER ESTABLISHING A HEALTH BENEFIT EXCHANGE
4 IN WHICH RESIDENTS OF AND BUSINESSES IN THE SIGNATORY STATES MAY
5 PARTICIPATE; AND

6 (g) ANY OTHER PROVISIONS DEEMED APPROPRIATE TO FOSTER THE
7 POLICIES EXPRESSED IN SECTION 24-60-3502.

8 (2) IF NECESSARY TO FACILITATE NEGOTIATIONS WITH OTHER
9 STATES IN THE DEVELOPMENT OF AN INTERSTATE COMPACT ON HEALTH
10 CARE, THE EXECUTIVE DIRECTORS AND COMMISSIONER ARE GRANTED
11 FLEXIBILITY TO MODIFY OR EXCLUDE ONE OR MORE OF THE POLICY GOALS
12 SET FORTH IN SUBSECTION (1) OF THIS SECTION AS LONG AS THE
13 OVERARCHING POLICY OF PROTECTING THE RIGHTS OF STATES TO
14 REGULATE HEALTH CARE IS NOT FRUSTRATED.

15 (3)(a) THE EXECUTIVE DIRECTORS AND THE COMMISSIONER SHALL
16 KEEP THE GENERAL ASSEMBLY INFORMED AS TO THE PROGRESS OF
17 NEGOTIATIONS UNDERTAKEN PURSUANT TO THIS SECTION, AND TO THAT
18 END, STARTING JANUARY 1, 2012, SHALL SUBMIT AT LEAST QUARTERLY
19 REPORTS TO THE MEMBERS OF THE SENATE COMMITTEES ON BUSINESS,
20 LABOR, AND TECHNOLOGY AND HEALTH AND HUMAN SERVICES AND THE
21 HOUSE OF REPRESENTATIVES COMMITTEES ON ECONOMIC AND BUSINESS
22 DEVELOPMENT AND HEALTH AND ENVIRONMENT, OR THEIR SUCCESSOR
23 COMMITTEES. THE REPORTS MUST CONTAIN AT LEAST THE FOLLOWING
24 INFORMATION:

- 25 (I) THE STATUS OF DEVELOPMENT OF AN INTERSTATE COMPACT;
- 26 (II) THE STATES THAT ARE INVOLVED IN NEGOTIATIONS;
- 27 (III) WHAT, IF ANY, DIFFICULTIES HAVE BEEN ENCOUNTERED IN

1 THE NEGOTIATIONS;

2 (IV) WHAT, IF ANY, POLICY GOALS THE EXECUTIVE DIRECTORS
3 AND THE COMMISSIONER HAVE HAD TO MODIFY AS PART OF THE
4 NEGOTIATIONS;

5 (V) THE ESTIMATED DATE BY WHICH A PROPOSED INTERSTATE
6 COMPACT WILL BE AVAILABLE; AND

7 (VI) ANY OTHER INFORMATION REQUESTED BY THE COMMITTEES
8 OR DEEMED APPROPRIATE BY THE EXECUTIVE DIRECTORS OR THE
9 COMMISSIONER.

10 (b) ONCE AN INTERSTATE COMPACT IS DEVELOPED, THE EXECUTIVE
11 DIRECTORS AND COMMISSIONER SHALL PRESENT THE PROPOSED
12 INTERSTATE COMPACT TO THE COMMITTEES SPECIFIED IN PARAGRAPH (a)
13 OF THIS SUBSECTION (3) EITHER JOINTLY OR AT INDIVIDUAL MEETINGS OF
14 EACH COMMITTEE, AND THE CHAIRS OF THE FOUR COMMITTEES SHALL
15 CONSIDER WHETHER TO PURSUE LEGISLATION TO RATIFY THE INTERSTATE
16 COMPACT AND DIRECT THE GOVERNOR, ON BEHALF OF THE STATE OF
17 COLORADO, TO ENTER THE INTERSTATE COMPACT.

18 (4) THE EXECUTIVE DIRECTORS AND COMMISSIONER, AND ANY
19 OTHER REPRESENTATIVES OF STATE DEPARTMENTS OR AGENCIES WHOSE
20 PARTICIPATION IS REQUESTED, SHALL PERFORM THEIR RESPONSIBILITIES
21 UNDER THIS SECTION WITHIN EXISTING RESOURCES.

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