

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0779.01 Christy Chase

HOUSE BILL 11-1273

HOUSE SPONSORSHIP

Nikkel and Stephens, Gardner B., Acree, Barker, Baumgardner, Becker, Beezley, Bradford, Brown, Conti, Coram, DelGrosso, Gerou, Holbert, Joshi, Kerr J., Liston, Looper, Massey, McNulty, Murray, Priola, Ramirez, Scott, Sonnenberg, Summers, Swalm, Swerdfeger, Szabo, Vaad, Waller

SENATE SPONSORSHIP

Kopp, Harvey, Brophy, Cadman, Grantham, King K., King S., Lambert, Lundberg, Mitchell, Renfro, Roberts, Scheffel, Spence, White

House Committees

Health and Environment
Appropriations

Senate Committees

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

13 **ARTICLE I**

14 **PURPOSE**

15 (a) THE MEMBER STATES FIND THAT:

16 (1) THE SEPARATION OF POWERS, BOTH AMONG THE BRANCHES OF
17 THE FEDERAL GOVERNMENT AND BETWEEN FEDERAL AND STATE
18 AUTHORITY, IS ESSENTIAL TO THE PRESERVATION OF INDIVIDUAL LIBERTY;

1 (2) THE UNITED STATES CONSTITUTION CREATES A FEDERAL
2 GOVERNMENT OF LIMITED AND ENUMERATED POWERS AND RESERVES TO
3 THE STATES OR TO THE PEOPLE THOSE POWERS NOT GRANTED TO THE
4 FEDERAL GOVERNMENT;

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

10 (4) THE MEMBER STATES SEEK TO PROTECT INDIVIDUAL LIBERTY
11 AND PERSONAL CONTROL OVER HEALTH CARE DECISIONS AND BELIEVE THE
12 BEST METHOD TO ACHIEVE THESE ENDS IS TO VEST REGULATORY
13 AUTHORITY OVER HEALTH CARE IN THE STATES;

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

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

21 **ARTICLE II**

22 **DEFINITIONS**

23 AS USED IN THIS COMPACT, UNLESS THE CONTEXT CLEARLY
24 INDICATES OTHERWISE:

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

27 (b) "CURRENT YEAR INFLATION ADJUSTMENT FACTOR" MEANS THE

1 TOTAL GROSS DOMESTIC PRODUCT DEFLATOR IN THE CURRENT YEAR
2 DIVIDED BY THE TOTAL GROSS DOMESTIC PRODUCT DEFLATOR IN FEDERAL
3 FISCAL YEAR 2010. TOTAL GROSS DOMESTIC PRODUCT DEFLATOR SHALL
4 BE DETERMINED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED
5 STATES DEPARTMENT OF COMMERCE.

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

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

11 (2) THE DATE UPON WHICH THE UNITED STATES CONGRESS
12 CONSENTS TO THIS COMPACT PURSUANT TO ARTICLE I, SECTION 10 OF THE
13 UNITED STATES CONSTITUTION, AFTER AT LEAST TWO MEMBER STATES
14 ADOPT THE COMPACT.

15 (d) (1) "HEALTH CARE" MEANS CARE, SERVICES, SUPPLIES, OR
16 PLANS RELATED TO THE HEALTH OF AN INDIVIDUAL AND INCLUDES THE
17 FOLLOWING:

18 (i) PREVENTIVE, DIAGNOSTIC, THERAPEUTIC, REHABILITATIVE,
19 MAINTENANCE, OR PALLIATIVE CARE AND COUNSELING, SERVICE,
20 ASSESSMENT, OR PROCEDURE WITH RESPECT TO THE PHYSICAL OR MENTAL
21 CONDITION OR FUNCTIONAL STATUS OF AN INDIVIDUAL OR THAT AFFECTS
22 THE STRUCTURE OR FUNCTION OF THE BODY;

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

25 (iii) AN INDIVIDUAL OR GROUP PLAN THAT PROVIDES, OR PAYS THE
26 COST OF, CARE, SERVICES, OR SUPPLIES RELATED TO THE HEALTH OF AN
27 INDIVIDUAL.

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

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

6 (f) "MEMBER STATE BASE FUNDING LEVEL" MEANS A NUMBER
7 EQUAL TO THE TOTAL FEDERAL SPENDING ON HEALTH CARE IN THE
8 MEMBER STATE DURING FEDERAL FISCAL YEAR 2010. ON OR BEFORE THE
9 EFFECTIVE DATE, EACH MEMBER STATE SHALL DETERMINE THE MEMBER
10 STATE BASE FUNDING LEVEL FOR ITS STATE, AND THAT NUMBER SHALL BE
11 BINDING ON THE MEMBER STATE. THE PRELIMINARY ESTIMATE OF THE
12 MEMBER STATE BASE FUNDING LEVEL FOR THE STATE OF COLORADO IS
13 EIGHT BILLION NINE HUNDRED SEVEN MILLION DOLLARS.

14 (g) "MEMBER STATE CURRENT YEAR FUNDING LEVEL" MEANS THE
15 MEMBER STATE BASE FUNDING LEVEL MULTIPLIED BY THE MEMBER STATE
16 CURRENT YEAR POPULATION ADJUSTMENT FACTOR MULTIPLIED BY THE
17 CURRENT YEAR INFLATION ADJUSTMENT FACTOR.

18 (h) "MEMBER STATE CURRENT YEAR POPULATION ADJUSTMENT
19 FACTOR" MEANS THE AVERAGE POPULATION OF THE MEMBER STATE IN THE
20 CURRENT YEAR LESS THE AVERAGE POPULATION OF THE MEMBER STATE IN
21 FEDERAL FISCAL YEAR 2010, DIVIDED BY THE AVERAGE POPULATION OF
22 THE MEMBER STATE IN FEDERAL FISCAL YEAR 2010, PLUS ONE. AVERAGE
23 POPULATION IN A MEMBER STATE SHALL BE DETERMINED BY THE UNITED
24 STATES BUREAU OF THE CENSUS.

25 **ARTICLE III**

26 **PLEDGE**

27 THE MEMBER STATES SHALL TAKE JOINT AND SEPARATE ACTION TO

1 SECURE THE CONSENT OF THE UNITED STATES CONGRESS TO THIS
2 COMPACT IN ORDER TO RETURN THE AUTHORITY TO REGULATE HEALTH
3 CARE TO THE MEMBER STATES CONSISTENT WITH THE GOALS AND
4 PRINCIPLES ARTICULATED IN THIS COMPACT. THE MEMBER STATES SHALL
5 IMPROVE HEALTH CARE POLICY WITHIN THEIR RESPECTIVE JURISDICTIONS
6 AND ACCORDING TO THE JUDGMENT AND DISCRETION OF EACH MEMBER
7 STATE.

8 **ARTICLE IV**

9 **LEGISLATIVE POWER**

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

12 **ARTICLE V**

13 **STATE CONTROL**

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

26 **ARTICLE VI**

27 **FUNDING**

1 (a) EACH FEDERAL FISCAL YEAR, EACH MEMBER STATE SHALL
2 HAVE THE RIGHT TO FEDERAL MONEYS UP TO AN AMOUNT EQUAL TO ITS
3 MEMBER STATE CURRENT YEAR FUNDING LEVEL FOR THAT FEDERAL FISCAL
4 YEAR, FUNDED BY CONGRESS AS MANDATORY SPENDING AND NOT SUBJECT
5 TO ANNUAL APPROPRIATION, TO SUPPORT THE EXERCISE OF MEMBER STATE
6 AUTHORITY UNDER THIS COMPACT. THIS FUNDING SHALL NOT BE
7 CONDITIONAL ON ANY ACTION OF OR REGULATION, POLICY, LAW, OR RULE
8 BEING ADOPTED BY THE MEMBER STATE.

9 (b) BY THE START OF EACH FEDERAL FISCAL YEAR, CONGRESS
10 SHALL ESTABLISH AN INITIAL MEMBER STATE CURRENT YEAR FUNDING
11 LEVEL FOR EACH MEMBER STATE, BASED UPON REASONABLE ESTIMATES.
12 THE FINAL MEMBER STATE CURRENT YEAR FUNDING LEVEL SHALL BE
13 CALCULATED, AND FUNDING SHALL BE RECONCILED BY THE UNITED
14 STATES CONGRESS BASED UPON INFORMATION PROVIDED BY EACH
15 MEMBER STATE AND AUDITED BY THE UNITED STATES GOVERNMENT
16 ACCOUNTABILITY OFFICE.

17 ARTICLE VII

18 INTERSTATE ADVISORY HEALTH

19 CARE COMMISSION

20 (a) THE INTERSTATE ADVISORY HEALTH CARE COMMISSION IS
21 ESTABLISHED. THE COMMISSION CONSISTS OF MEMBERS APPOINTED BY
22 EACH MEMBER STATE THROUGH A PROCESS TO BE DETERMINED BY EACH
23 MEMBER STATE. A MEMBER STATE MAY NOT APPOINT MORE THAN TWO
24 MEMBERS TO THE COMMISSION AND MAY WITHDRAW MEMBERSHIP FROM
25 THE COMMISSION AT ANY TIME. EACH COMMISSION MEMBER IS ENTITLED
26 TO ONE VOTE. THE COMMISSION SHALL NOT ACT UNLESS A MAJORITY OF
27 THE MEMBERS ARE PRESENT, AND NO ACTION SHALL BE BINDING UNLESS

1 APPROVED BY A MAJORITY OF THE COMMISSION'S TOTAL MEMBERSHIP.

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

6 (c) THE COMMISSION MAY STUDY ISSUES OF HEALTH CARE
7 REGULATION THAT ARE OF PARTICULAR CONCERN TO THE MEMBER STATES.
8 THE COMMISSION MAY MAKE NONBINDING RECOMMENDATIONS TO THE
9 MEMBER STATES. THE LEGISLATURES OF THE MEMBER STATES MAY
10 CONSIDER THESE RECOMMENDATIONS IN DETERMINING THE APPROPRIATE
11 HEALTH CARE POLICIES IN THEIR RESPECTIVE STATES.

12 (d) THE COMMISSION SHALL COLLECT INFORMATION AND DATA TO
13 ASSIST THE MEMBER STATES IN THEIR REGULATION OF HEALTH CARE,
14 INCLUDING ASSESSING THE PERFORMANCE OF VARIOUS STATE HEALTH
15 CARE PROGRAMS AND COMPILING INFORMATION ON THE PRICES OF HEALTH
16 CARE. THE COMMISSION SHALL MAKE THIS INFORMATION AND DATA
17 AVAILABLE TO THE LEGISLATURES OF THE MEMBER STATES.
18 NOTWITHSTANDING ANY OTHER PROVISION IN THIS COMPACT, NO MEMBER
19 STATE SHALL DISCLOSE TO THE COMMISSION THE HEALTH INFORMATION OF
20 ANY INDIVIDUAL, NOR SHALL THE COMMISSION DISCLOSE THE HEALTH
21 INFORMATION OF ANY INDIVIDUAL.

22 (e) THE COMMISSION SHALL BE FUNDED BY THE MEMBER STATES
23 AS AGREED TO BY THE MEMBER STATES. THE COMMISSION SHALL HAVE
24 THE RESPONSIBILITIES AND DUTIES AS MAY BE CONFERRED UPON IT BY
25 SUBSEQUENT ACTION OF THE RESPECTIVE LEGISLATURES OF THE MEMBER
26 STATES IN ACCORDANCE WITH THE TERMS OF THIS COMPACT.

27 (f) THE COMMISSION SHALL NOT TAKE ANY ACTION WITHIN A

1 MEMBER STATE THAT CONTRAVENES ANY STATE LAW OF THAT MEMBER
2 STATE.

3 **ARTICLE VIII**

4 **CONGRESSIONAL CONSENT**

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

7 THIS COMPACT SHALL BE EFFECTIVE UNLESS THE UNITED STATES
8 CONGRESS, IN CONSENTING TO THIS COMPACT, ALTERS THE FUNDAMENTAL
9 PURPOSES OF THIS COMPACT, WHICH ARE:

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

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

17 **ARTICLE IX**

18 **AMENDMENTS**

19 THE MEMBER STATES, BY UNANIMOUS AGREEMENT, MAY AMEND
20 THIS COMPACT FROM TIME TO TIME WITHOUT THE PRIOR CONSENT OR
21 APPROVAL OF CONGRESS, AND ANY AMENDMENT SHALL BE EFFECTIVE
22 UNLESS, WITHIN ONE YEAR, CONGRESS DISAPPROVES THAT AMENDMENT.

23 ANY STATE MAY JOIN THIS COMPACT AFTER THE DATE ON WHICH
24 CONGRESS CONSENTS TO THE COMPACT BY ADOPTION INTO LAW UNDER ITS
25 STATE CONSTITUTION.

26 **ARTICLE X**

27 **WITHDRAWAL; DISSOLUTION**

1 ANY MEMBER STATE MAY WITHDRAW FROM THIS COMPACT BY
2 ADOPTING A LAW TO THAT EFFECT, BUT NO SUCH WITHDRAWAL SHALL
3 TAKE EFFECT UNTIL SIX MONTHS AFTER THE GOVERNOR OF THE
4 WITHDRAWING MEMBER STATE HAS GIVEN NOTICE OF THE WITHDRAWAL
5 TO THE OTHER MEMBER STATES. A WITHDRAWING STATE SHALL BE LIABLE
6 FOR ANY OBLIGATIONS THAT IT MAY HAVE INCURRED PRIOR TO THE DATE
7 ON WHICH ITS WITHDRAWAL BECOMES EFFECTIVE. THIS COMPACT SHALL
8 BE DISSOLVED UPON THE WITHDRAWAL OF ALL BUT ONE OF THE MEMBER
9 STATES.

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