HJR

35

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

SPONSOR STATEMENT

HJR 35 – HEALTHCARE FREEDOM ACT

"Proposing amendments to the Constitution of the State of Alaska prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system."

HJR 35 would give Alaskans the opportunity to vote on a Constitutional Amendment prohibiting the passage of laws that would force any person or employer to participate in a particular health care system or plan. Similar measures are under consideration in 35 states.

The Health Care Freedom Act seeks to protect two essential rights. First, it would protect a person's right to participate or not in any health care system, and it would prohibit the government from imposing fines or penalties because of that person's decision. Second, it would protect the right of an individual to purchase – and the right of doctors to provide – lawful medical services without government fines or penalties. HJR 35 would place these essential rights in the state constitution.

Few Alaskans question the need for effective health care reform to improve access, quality and affordability while ensuring that personal health care is patient-driven. Advocates of a larger government role in regulating and providing health insurance and care support forcing individuals to join a government-approved health insurance plan, whether or not they want it, can afford it, or it best meets their personal needs. But the overwhelming majority of Alaskans oppose this mandate.

If the federal government adopts nationalized health care and a significant block of states change their constitutions to protect their citizens, a legal clash may well be winnable for the states. This United States Supreme Court may just be in the mood to protect individual liberty and state sovereignty in such a private matter as personal health care.

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **February 8, 2010**

TO: **Representative Kelly**

FROM: **Derek Miller**

RE: **Sectional Analysis for HJR 35 (26-LS1063\R)**

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.
Proposes to amend Article 1, Section 15 of the State of Alaska Constitution by inserting **(a)** before the clause.

Section 2.
Proposes to amend Article 1, Section 15 of the State of Alaska Constitution by inserting a new section that would prohibit the passage of laws that prohibit a person or penalize a person for making direct payments to a health care provider for tendering health care services or prohibit or penalize the purchase of health care insurance from a privately owned health care insurance company. The section also prohibits the passage of laws that compel a person, employer, or health care provider to participate in a health care system or that penalizes a person, employer, or health care provider for declining to participate in a health care system. The section exempts a health care system that provides indemnity and medical benefits to injured workers.

Section 3.

Places the amendments proposed by this resolution before the voters of the state at the next general election in conformity with Article 13, Section 1 of the Constitution of the State of Alaska and the election laws of the state.

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **February 15, 2010**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Answers to Questions @ 2/9/10 HESS Hearing**

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1) **Does HJR 35 prevent the State of Alaska from initiating a new tier to the state retirement system? How would this constitutional amendment impact future changes to the current State of Alaska retirement system?**
This resolution does NOT prevent the State from initiating a new tier to the state retirement system. Changes can be made to the retirement system as long as those changes aren't a mandate on individuals or employers to purchase insurance. The state would also be prohibited from passing laws that penalize or fine individuals or employers from choosing not to purchase coverage.

2) **Does this resolution prevent the federal government from making changes to Medicare, Tricare, Indian Health Services, etc...?**
This resolution does NOT preclude the federal government from doing anything. Individuals would still have the option to participate in the federal health insurance program. This act simply protects a person's right not to participate.

3) **How does this legislation address the problems the HESS committee has looked at? Example: Access, quality, affordability? Are there any fixes in the bill?**
HJR 35 prevents a one-size-fits-all universal coverage system. Alaska legislators must work on a targeted set of policy solutions to cover the uninsured and there are reforms that will advance this goal, along with HJR 35.

4) **Does this bind future legislatures from adopting the program the federal government comes up with?**
Yes, if that program includes mandating individuals and employers to purchase insurance or penalizes individuals for choosing not to purchase insurance. Individuals however, would still have the option to participate in the program.

5) **Does this amendment prevent the state from implementing a plan if it penalized employees and employers for not purchasing health insurance?**
Yes.

Source:

Christie Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council
1101 Vermont Avenue, N.W., 11th Floor
Washington, D.C. 20005
Direct: 202-742-8505

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HJR35**
() Publish Date:

Identifier (file name): HJR-035-OOG-DOE-2-9-10
Dept. Affected: OOG
Title: Constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services....
RDU: Elections
Component: Elections
Sponsor: Reps. Kelly, Keller, P. Wilson, Gatto, Ramras, T. Wilson
Requester: House Health & Social Services
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/9/10, 8:53am
Approved by: Linda Perez, Director — Date 2/9/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3959

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

ISSUE ALERT

To:	Alaska ALEC Members
From:	ALEC's Health and Human Services Task Force
Re:	Alaska House Joint Resolution 35
Date:	February 9, 2010

It has come to our attention that Alaska Joint Resolution 35 will be heard by the House Health and Social Services Committee today. HJR 35 would preserve in the Alaska Constitution the right of patients to make their own health care choices, and is modeled after ALEC's own *Freedom of Choice in Health Care Act*. In total, 36 states have either filed, prefiled, or have announced their intentions to file this legislation.

ALEC applauds HJR 35 and urges all Alaska ALEC members to consider the following key points about this legislation:

HJR 35 Ensures Access to Health Services—Without Waiting Lists

Single-payer systems, like in Canada, make it illegal for citizens to go outside of the government's health care plan and contract for their own medical services. HJR 35 would make this fundamental provision of single-payer health care unconstitutional. Citizens should have the right to pay directly for health care services with their own money. When government controls the dollars, they make treatment decisions based on what is best for government, not what is best for the patient.

HJR 35 Stops Health Mandates That Don't Work

It is important for people to have health insurance coverage, but a government requirement to purchase health insurance is ineffective, bureaucratic, and costly. In Massachusetts, a state that has imposed an individual and employer mandate since 2006, more than 1/3 of the uninsured still don't have coverage; health insurance costs 40% more than in the rest of the country; it's harder for the newly-insured to see a doctor; and legislators expect a $2-4 billion shortfall over the next decade.

An individual mandate would harm patients, and an employer mandate would threaten our fragile economy. HJR 35 would protect Alaska from these threats.

HJR 35 May Help Shield Alaskans from a Federal Individual Mandate

HJR 35 would render any state attempt to require an individual to purchase health insurance—or to forbid an individual from securing medical care outside of the required health care system—unconstitutional. HJR 35 may also cause a federalism clash if Congress passes a law with either of these provisions.

This is a legal battle that has been fought before and won before. ALEC recognizes that the Supremacy Clause renders federal law as the law of the land. However, states may provide stronger protection of individual freedoms than the U.S. Constitution allows, and the federal government has limited recourse in violating those protections. In the case of federal-state conflict, courts must balance the competing interests—and recent Supreme Court cases have upheld the power of states to protect individual freedoms.

Thank you for your attention in this matter. Should you have any questions on HJR 35, please contact the director of ALEC's HHS Task Force, Christie Herrera, at 202-742-8505 or christie@alec.org.

GOLDWATER
INSTITUTE

The Health Care Freedom Act:
Questions & Answers

by Clint Bolick, Litigation Director, Goldwater Institute

The Health Care Freedom Act will appear as a proposed constitutional amendment on Arizona's 2010 election ballot, and similar measures are under consideration in more than 30 other states. With the possibility that Congress will enact some sort of national health insurance legislation, questions are being raised about the scope of the Health Care Freedom Act and its effect should a federal bill become law. In the following pages, Clint Bolick, who helped to author the Health Care Freedom Act, answers frequently asked questions.

Q: What is the Health Care Freedom Act?

A: The Health Care Freedom Act is a proposed amendment to the Arizona Constitution that would preserve certain existing rights that individuals have regarding health care. It was initially proposed by two Arizona physicians, Dr. Eric Novack and Dr. Jeffrey Singer, with drafting assistance from the Goldwater Institute. The measure qualified as a voter initiative on the 2008 ballot, and despite a well-financed opposition campaign, it was defeated by less than one-half of 1 percent of the vote. Changes were made to address concerns raised by the opponents, and the Arizona Legislature voted to refer the revised version to the 2010 ballot.

The American Legislative Exchange Council adopted model legislation based on the Arizona measure, and activists and legislators in at least 35 additional states are pursuing constitutional amendments or statutes based on the Arizona model.

Q: What are the key provisions?

A: Although the precise language varies from state to state, the Health Care Freedom Act seeks to protect two essential rights. First, it protects a person's right to participate or not in any health care system, and prohibits the government from imposing fines or penalties on that person's decision. Second, it protects the right of individuals to purchase—and the right of doctors to provide—lawful medical services without government fine or penalty. The Health Care Freedom Act would place these essential rights in the state constitution (or, in some states, it would protect them by statute).

Q: What motivated the Health Care Freedom Act?

A: No one questions the need for serious health care reform. However, the proponents of the Health Care Freedom Act believe that regardless of how such reform is fashioned, either at the state or federal level, the essential rights protected by the Health Care Freedom Act should be preserved. Many advocates of a larger government role in regulating or providing health insurance support a mandate that would compel individuals to join a government-approved health insurance plan, whether or not they can afford it and whether or not the system best fits their needs. In some countries in which government plays a large role in providing health insurance, medical services are rationed and individuals are prevented or discouraged from obtaining otherwise lawful medical services. Supporters of the Health Care Freedom Act have a variety of perspectives on the form that health care reform should take. But they agree that no matter what legislation is passed, it should not take from Americans their precious right to control their own medical affairs.

Q: By what authority can states pass the Health Care Freedom Act?

A: It is well-established that the U.S. Constitution provides a baseline for the protection of individual rights, and that state constitutions may provide additional protections—and all of them do. For instance, some states provide greater protections of freedom of speech or due process rights. Because the Health Care Freedom Act offers greater protection than the federal constitution, states are allowed to enact it.

Q: Does it matter whether the Health Care Freedom Act is passed as a statute or as a constitutional amendment?

A: A state constitution is the organic law of the state, reflecting the most fundamental values shared by the citizens of the state. Moreover, a state constitutional amendment will ensure the state legislature can never infringe upon the protected rights. So a constitutional amendment is preferable, especially to protect against legislative tinkering. However, for purposes of a federalism defense against excessive federal legislation, it should not matter whether the people of the state have acted through their constitution or by statute.

Q: Does the Health Care Freedom Act attempt to "nullify" federal health insurance legislation?

A: Absolutely not. If federal legislation is enacted, individuals would still have the option to participate in federal health insurance programs. This act simply protects a person's right not to participate.

Q: To the extent that the Health Care Freedom Act conflicts with provisions of federal legislation, isn't the state law automatically preempted by the Supremacy Clause of the U.S. Constitution?

A: No. In any clash between state and federal provisions, at least four federal constitutional provisions are relevant. The Supremacy Clause establishes the Constitution as the supreme law of the land and provides that federal laws prevail over conflicting state laws where Congress has the legitimate authority to enact the legislation and where it does not impermissibly tread upon state sovereignty. The federal government will have to demonstrate that its legislation legitimately is derived from congressional authority to regulate interstate commerce. It will also have to show the legislation does not violate the 10th Amendment, which reserves to the states all government power not expressly delegated to the national government; and the 11th Amendment, which protects states from being used as mere instrumentalities of the national government. This constitutional construct is known as federalism.

Q: Are certain provisions of proposed federal health care legislation vulnerable to constitutional challenge even without the Health Care Freedom Act?

A: Yes, in at least three ways. First, to the extent that the legislation purports to regulate transactions that do not directly affect interstate commerce, such as mandating insurance for individuals, Congress may lack authority to do so under the Commerce Clause. Several relatively recent decisions by the U.S. Supreme Court have invalidated federal legislation on this basis. In *U.S. v. Lopez* (1995), the Court struck down federal laws that restricted guns in school zones; and in *U.S. v. Morrison*, it struck down a federal statute involving violence against women. In both cases, the Court found the subject matter of the federal laws did not "substantially affect" interstate commerce, so Congress had no power to regulate it under the circumstances presented.

Second, to the extent the legislation interferes with the individual's right to choose health insurance providers, doctors, or lawful medical services, it may violate the right to medical self-determination recognized under the U.S. Constitution. As the Court declared in *Griswold v. Connecticut* (1965), "We have recognized that the special relationship between patient and physician will often be encompassed within the domain of private life protected by the Due Process Clause." Several of the early abortion cases involved what Justice William O. Douglas, concurring in *Doe v. Bolton* (1973), described as the "right to seek advice on one's health and the right to place reliance on the physician of one's choice." Whether or not one agrees with those abortion rulings, they establish a strong basis for challenging certain federal and state intrusions.

Third, several recent decisions have invalidated federal laws that "commandeer" state governments to do their bidding. In *New York v. United States* (1992), for instance, the Court struck down federal rules requiring states to take ownership of certain radioactive waste and to expose themselves to liability. Speaking for the Court, Justice Sandra Day O'Connor ruled that

"no matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate." Tellingly, she added "the Constitution protects us from our own best intentions: It divides power among sovereigns . . . precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." To the extent that federal health insurance legislation forces states to implement its provisions, it could be subject to robust constitutional challenge.

Q: Could the Health Care Freedom Act provide additional protection against federal health insurance legislation that violates protected rights?

A: Yes. Although the federal government usually prevails in federalism clashes, the current U.S. Supreme Court is the most pro-federalism Court in decades. There are no cases precisely on point, but the Court under Chief Justice John Roberts has sided with the states in at least three major recent federalism clashes. In the case most closely on point, *Gonzales v. Oregon* (2006), the Court upheld the state's "right-to-die" law, which was enacted by Oregon voters, over the objections of the U.S. Attorney General, who argued that federal law pre-empted the state law. Applying "the structure and limitations of federalism," the Court observed that states have great latitude in regulating health and safety, including medical standards, which are primarily and historically a matter of local concern. Holding that the attorney general's reading of the federal statute would mark "a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality," the Court interpreted the statute to allow Oregon to protect the rights of its citizens.

Horne v. Flores (2009) considered a measure adopted by Arizona voters to require English immersion as the state's educational policy for students for whom English is a second language. Lower federal courts had imposed an injunction based on a finding that Arizona was failing to comply with federal bilingual education requirements. The Supreme Court held that injunctions affecting "areas of core state responsibility, such as public education," should be lifted as quickly as circumstances warrant. It observed that "federalism concerns are heightened when . . . a federal court decree has the effect of dictating state or local budget priorities." The Court remanded the case to lower courts to reconsider the injunction.

In *Northwest Austin Municipal Utility District No. 1 v. Holder* (2009), the Court examined a challenge to section 5 of the Voting Rights Act, which places certain states and localities in a penalty box, requiring them to obtain "pre-clearance" by the U.S. Department of Justice for any changes that impact voting. The Court was sharply critical of the "federalism costs" imposed upon the covered jurisdictions. It avoided the constitutional question by applying the federal law in a way that allowed the utility district to "bail out" from pre-clearance requirements under section 5.

In each of these cases, the Court sided with states in federalism disputes with the federal government.

Q: Will the Health Care Freedom Act affect future state legislation regarding health insurance?

A: Yes. If it is passed as a constitutional amendment, it would prevent any future legislation that infringes upon the rights protected by the amendment.

Q: Won't this be really expensive for the states to defend in court?

A: The Goldwater Institute has offered to defend the constitutionality of the Health Care Freedom Act at no cost to any state. Because legal challenges would involve purely constitutional issues and would not require expensive trials, to the extent that states become involved in litigation, they should be able to do so within existing Attorney General litigation budgets. Moreover, depending on the details of national health insurance legislation, the cost of federal mandates is likely to far exceed the cost of litigation.

Q: Even if the states and individuals did not prevail in a challenge to intrusive federal health insurance legislation, would there be reasons to support the Health Care Freedom Act?

A: Yes. First, if these rights are given additional protection under state constitutions, they will create an absolute barrier to future state legislation that violates those rights. Moreover, efforts to enact the Health Care Freedom Act send a powerful message to our nation's capitol that people at the grassroots take these rights very seriously and intend to protect them.

Q: Does the Health Care Freedom Act impair drug laws?

A: Absolutely not. It protects the right to purchase or provide "lawful" medical services. It does not limit the power of any government to determine what constitutes lawful medical services.

Q: Does the Health Care Freedom Act affect the issue of abortion?

A: No. Again, to the extent that states may regulate abortion under applicable constitutional doctrine and state or federal law, this measure would not alter that power in any way. The Health Care Freedom Act does, however, prevent the government from forcing individuals into health care systems against their will, and matters of conscience may influence such individual decisions.

Q: Does the Health Care Freedom Act affect Veterans' Administration programs, workers' compensation, Medicare, Medicaid, or state health-care systems?

A: Generally, no. The Health Care Freedom Act leaves intact any rules and regulations that were in place as of January 1, 2009. The only way such programs could be affected is if they are changed in the future in ways that violate the freedom of choice protected by the Health Care Freedom Act.

Q: Will this restrict the government from limiting the choice of providers or imposing other limits for the people who do opt-in to a government health care system?

A: No and yes, respectively. If a person voluntarily joins a government health care system, the government may set the terms and conditions, including choice of providers. However, the government cannot prevent a person from purchasing, or a health care professional from providing, lawful medical services outside that system.

Q: Is the Health Care Freedom Act supported financially by insurance companies?

A: No. Many insurance companies support an individual mandate (requiring individuals to buy health insurance or face government fines), which the Health Care Freedom Act would prohibit. An individual mandate guarantees a customer base to the insurance industry. It is present in some legislative proposals as a means to subsidize health insurance for others. If insurance companies play a role in the battle over the Health Care Freedom Act, we expect they will oppose it, possibly with significant resources.

Q: Are there other ways in which freedom advocates can use state constitutions to protect their liberties?

A: Absolutely. State constitutions are full of provisions unknown to the U.S. Constitution that are designed to protect individual liberty and limit the power of government, such as the line-item veto, anti-monopoly provisions, prohibitions against corporate subsidies ("gift clauses"), constraints against earmarks ("special law clauses"), and the like. Citizens and legislatures can amend their state constitutions to add additional protections; and taxpayers can enforce their state constitutional rights in state courts. State constitutions were intended to be the first line of defense in protecting the freedoms of the people. As the power of government grows at every level, we need to use whatever tools are available to us to safeguard our rights. For more on how state constitutions can protect liberty, see the recent Goldwater Institute report, **"50 Bright Stars: An Assessment of Each State's Constitutional Commitment to Limited Government."**

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Questions and Answers: ALEC's *Freedom of Choice in Health Care Act*

For more information, contact Christie Herrera, director of ALEC's Health and Human Services Task Force, at (202) 742-8505 or christie@alec.org.

Why does my state need the *Freedom of Choice in Health Care Act*?
Efforts in our state capitol, and in Washington, are gaining steam to put complete control over your health care in the hands of government bureaucrats and appointed "experts." Government control means you will have less freedom to make the health care choices that are best for you and your family. The *Freedom of Choice in Health Care Act* will protect your health care freedom from these threats.

What does the *Freedom of Choice in Health Care Act do*?
The *Freedom of Choice in Health Care Act* will preserve and protect your right to make your own health care and health insurance choices. Specifically, it would protect your right to pay directly for medical care, and it would prohibit any individual or employer from being penalized for not purchasing government-defined health insurance.

Why should my state's constitution protect the right of patients to pay directly for medical care?
Single-payer systems, like in Canada, make it illegal for citizens to go outside of the government's health care plan and contract for their own medical services. The *Freedom of Choice in Health Care Act* would make this fundamental provision of Canadian-style, single-payer health care unconstitutional.

Patients should have the right to pay directly for medical services with their own money. When consumers control the dollars, they make the treatment decisions. When the government controls the dollars, they make treatment decisions based on what's best for the government, not what's best for the patient.

The consequences of government making medical decisions are often dire, and sometimes deadly. In New Zealand, breast cancer patients were blocked from accessing the lifesaving drug Herceptin because it cost too much. In Sweden the wait for heart surgery can be as long as 25 weeks. In Canada more than 800,000 patients are currently on waiting lists for medical procedures.

The *Freedom of Choice in Health Care Act* will ensure that patients, not government bureaucrats, decide which doctor to see or what medical treatments to get.

More information about the consequences of single-payer health care can be found in:

* Michael Tanner, "The Grass Is Not Always Greener: A Look at National Health Systems Around the World," Cato Institute Policy Analysis No. 613, March 18, 2008: http://www.cato.org/pubs/pas/pa-613.pdf.

* John C. Goodman, Linda Gorman, Devon Herrick, and Robert M. Sade, *Health Care Reform: Do Other Countries Have the Answers?*, National Center for Policy Analysis, March 10, 2009: http://www.ncpa.org/pdfs/sp_Do_Other_Countries_Have_the_Answers.pdf.

* http://BigGovHealth.org: A website with "single-payer horror stories" and fact sheets on the U.S. and worldwide infant mortality/life expectancy statistics; whether the U.S. Veterans Administration is a model for health reform; and much more.

Why should my state's constitution block penalties for individuals or employers who don't purchase health insurance?

It is important for people to have health insurance coverage, but a government requirement to purchase health insurance is ineffective, bureaucratic, and costly. The *Freedom of Choice in Health Care Act* would strike at heart of individual and employer mandates—implemented in Massachusetts, Hawaii, and elsewhere—that just don't work.

In Massachusetts—a state that imposed an individual mandate and an employer mandate in 2006—more than 1/3 of their uninsured still don't have coverage; health insurance is 40% more expensive than in the rest of the country; it's getting harder to see a doctor since before "reform" was enacted; and legislators expect a $2-$4 billion shortfall over the next decade.

The Massachusetts mandate didn't just affect the uninsured. The Massachusetts government actually told 20% of its already-insured citizens to buy more health insurance, because their existing coverage wasn't "good enough." When the government enforces a requirement for people to buy health insurance, they need to define what "insurance" is. The Cato Institute estimates that a federal individual mandate will force 100 million Americans to drop their existing plans and buy more expensive health insurance that is "good enough" for bureaucrats.

Employer mandates don't yield universal coverage and are harmful for consumers and workers. Hawaii has had a "pay or play" employer mandate for 35 years, and yet the number of uninsured has remained the same because employers shifted jobs to (exempt) part-time employees. And when the government forces businesses to buy health insurance for their

workers, it really means higher taxes and fewer jobs. When businesses face cost increases, they'll pass on those costs in the form of increased prices, job cuts, or wage freezes.

An individual mandate would harm patients, and an employer mandate would threaten our fragile economy. The *Freedom of Choice in Health Care Act* would protect our citizens from these threats.

More information about the consequences of individual and employer mandates can be found in:

* Michael Tanner, "Massachusetts Miracle or Massachusetts Miserable: What the Failure of the 'Massachusetts Model' Tells Us About Health Reform," Cato Institute Briefing Paper No. 112, June 9, 2009: http://www.cato.org/pubs/bp/bp112.pdf.

* Michael F. Cannon, "All the President's Mandates: Compulsory Health Insurance *Is* A Government Takeover," Cato Institute Briefing Paper No. 114, September 23, 2009: http://www.cato.org/pubs/bp/bp114.pdf.

* James Sherk and Robert A. Book, "Employer Health Care Mandates: Taxing Low-Income Workers to Pay for Health Care," Heritage Foundation WebMemo No. 2552, July 21, 2009: http://www.heritage.org/Research/HealthCare/upload/wm_2552.pdf.

Does supporting the *Freedom of Choice in Health Care Act* mean that I favor "free riders" who choose to not purchase health insurance and then show up in the emergency room?
Free riders do present a cost-shifting problem as uncompensated care costs are borne by the already-insured—although researchers estimate uncompensated care to be just 2-3% of overall health costs. The Massachusetts data reveal that at best, an individual mandate didn't affect ER visits at all—and at worst, an individual mandate actually increased ER usage by 17%.

The Massachusetts example shows that an individual mandate alone will not decrease ER usage. One Massachusetts survey reported that although the newly-insured had "insurance coverage" on paper, 90% of them did not have access to care from a non-ER provider. Other reports indicate that average wait times to get appointments with doctors in Boston ranged from 21 days for cardiologists to 70 days for obstetrician-gynecologists. And the Massachusetts Medical Society reports that the average wait to see a primary care doctor is 36 days.

Lawmakers cannot artificially create a growing demand for care without other policies (encouraging "minute clinics," enacting medical liability reform to encourage more doctors to practice, loosening scope of practice laws, etc.) to encourage healthcare supply. And those reforms can be achieved without a bureaucratic, ineffective, and costly requirement to

purchase health coverage.

More information about the why an individual mandate won't solve the "free rider" problem can be found in:

* Minna Jung, "What Massachusetts Teaches Us About Emergency Departments and Reform," Robert Wood Johnson Foundation's User's Guide to the Health Reform Galaxy Blog, October 5, 2009: http://rwjfblogs.typepad.com/healthreform/2009/10/what-massachusetts-teaches-us-about-emergency-departments-and-reform.html.

* Liz Kowalczyk, "ER Visits, Costs in Massachusetts Climb," *Boston Globe*, April 24, 2009: http://www.boston.com/news/local/massachusetts/articles/2009/04/24/er_visits_costs_in_mass_climb/.

Does the *Freedom of Choice in Health Care Act* only benefit insurance companies?
The *Freedom of Choice in Health Care Act* prohibits the forced purchase of private health insurance plans. This benefits patients, not insurance companies.

How will the *Freedom of Choice in Health Care Act* affect Medicaid, SCHIP, or Medicare?
The *Freedom of Choice in Health Care Act* will not in any way impact the funding of, or functioning of Medicaid, SCHIP, or Medicare. The language "This section does not affect laws or rules in effect as of January 1, 2009" clarifies this matter. Citizens will be free to participate in any safety net program (Medicaid, Medicare, SCHIP) to which they are entitled, as well as participate in any proposed programs (the public option or the national health insurance exchange) as they do today. The *Freedom of Choice in Health Care Act* simply ensures that citizens are not forced into these programs.

Does the *Freedom of Choice in Health Care Act* enable my state to block any kind of federal health reform?
No. The *Freedom of Choice in Health Care Act* would not attempt to block implementation of any federal law as long as the federal law does not require an individual/employer mandate, or forbid patients from paying directly for medical services.

Congress is still debating health reform. Doesn't this solve a problem that doesn't yet exist?
Two hundred and twenty years ago, some founders questioned the need for the Bill of Rights to be included in the U.S. Constitution. Eventually, they realized that the Bill of Rights was essential in protecting the people from a powerful central government. Today, the First through Tenth Amendments preserve our freedoms—and the *Freedom of Choice in Health Care Act* will protect our right to health care freedom in the same way.

But this is more than an issue of federal encroachment. Threats of single-payer health care, or of an individual/employer mandate, also exist at the state level. In 2009, 14 states introduced legislation to enact state-based, single-payer health care. Countless other states have proposed requirements for individuals or employers to purchase health coverage or else pay a fine to the state. The *Freedom of Choice in Health Care Act* would make these state-based assaults on patients' rights unconstitutional.

Does supporting the *Freedom of Choice in Health Care Act* mean that I am against health reform? Doesn't this tie our hands with future reforms?

No. The *Freedom of Choice in Health Care Act* simply states that the cornerstone of any future health care reform must be the preservation and protection of patients' rights.

# # #

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Governor Sean Parnell
STATE OF ALASKA

January 13, 2010

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

The Honorable Mark Begich
United States Senate
144 Russell Senate Office Building
Washington, DC 20510

The Honorable Don Young
United States Congress
2111 Rayburn House Office Building
Washington, DC 20515

Dear Senators Murkowski and Begich and Congressman Young,

As Congress contemplates final passage of the proposed health care reform legislation, I ask that you consider the concerns raised by my administration on behalf of Alaska's residents. As I have previously communicated to you, both publicly, and through my staff, the current federal proposal does little to address the main health care issues facing Alaskans – cost and access.

The current health care reform legislation before Congress is troubling on several levels. For the many Alaskans currently unable to afford insurance, the proposal, as outlined by Congress, will do nothing but mandate they purchase it, while increasing the insurance premiums. I am particularly concerned with the increase in costs by the pending legislation for Alaska's seniors, families, small businesses, and physicians. Beyond this burden, which is placed squarely on the shoulders of Alaskans, the legislation will put a significant strain on the State of Alaska's General Fund budget.

In addition to the enormous cost Alaskans would face, the proposal does little to address Alaska's health care workforce shortage; requiring individuals to purchase health insurance does not guarantee that people will have access to health care.

Beyond the practical concerns about the benefits of this legislation that I have raised, I am concerned about the constitutionality of forcing Americans to purchase health insurance. As you know, I have directed Alaska's Attorney General to conduct a review of the reform legislation, including this requirement.

So that you are fully aware of the State of Alaska's concerns, I am including two supplementary documents provided to you over the course of the health care reform debate. The first document updates a previously submitted policy review of the healthcare legislation passed by the Senate. The second document provides Alaska's perspective on the so-called "Nebraska Compromise" whereby the cost of

Medicaid expansion in Nebraska will be indefinitely supported by the federal government. As you will note, this expansion will cost Alaskans $700 million over the first 20-year window of implementation while Nebraskans will not be responsible for paying anything.

Finally, I ask that you consider securing a 100-percent federal Medical Assistance Percentage for services rendered to Native Americans and Alaska Natives outside of Tribal facilities. Such a provision would be advantageous to Alaska and other states with large Native populations. Supporting documents outlining this request have previously been submitted to you.

Thank you for your serious consideration of my concerns regarding the proposed legislation. I look forward to continue to work with you to ensure that Alaskans are treated fairly, and that the health care needs of the citizens of this great state are adequately met.

Sincerely,

Sean Parnell
Governor

Enclosures

January 13, 2010

The Honorable Harry M. Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Reid, Senator McConnell, Speaker Pelosi, and Representative Boehner:

As governors, we believe the reform of the health care system can be very beneficial to our nation's economic future and the well-being of our citizens; however, the current health care bills are a lost opportunity to improve the lives of Americans, create a sustainable system of health care and help stabilize both our state and national economies.

Health care reform should be about fixing our broken Medicaid and Medicare systems; instead, the current health care bills entitle 15-20 million more people to Medicaid. While providing health care to low income individuals is important, the net result of this entitlement expansion will be a significant cost shift to those privately insured around the country. According to the Congressional Budget Office (CBO), the unfunded mandate to states and territories is $25 billion; although many states disagree with that figure. For example, Texas costs are estimated to be $21 billion over ten years.

The National Association of State Budget Directors (NASBO) has demonstrated states/territories are in no position to comply with the maintenance of effort provisions found in the bills or to accept any increased costs or additional administrative burdens to expand Medicaid. State general fund expenditures have dropped for the second year in a row. The December 2009 survey shows that the budget situation faced by states truly is unprecedented. Many states cannot afford their current share of the Medicaid program, and they will also have to face a funding cliff whenever the stimulus-enhanced FMAP dollars are exhausted. States have already been forced to cut vital services with 30 states cutting education, 29 states cutting Corrections, and 28 states already cutting Medicaid.

Current federal proposals would strip the states of our ability to negotiate Medicaid provider rates, and we believe that states and territories should be allowed to negotiate Medicaid provider rates as found in current law. The pending bills cause states and territories to lose money through the bills' treatment of the prescription drug rebate provisions. States and territories also should not be asked to forego a share of the savings from any new Medicaid rebates collected for the dual eligible population receiving prescription drugs through the Medicare Part D program.

These bills also impose a one-size-fits all federally-designed health insurance exchange and the insurance rating rules tie states' and territories' hands. Health insurance exchanges desired by any state should be state-based and state-designed to ensure maximum state flexibility to design and operate exchange mechanisms that facilitate the purchase of insurance. Utah should not be forced to replicate Massachusetts' exchange, and vice versa. In the same vein, the health insurance rating rules should account for the existing variation in state and territory statutes and the state and territory should retain the authority to provide oversight and adopt tighter rating bands if necessary.

In order to pay for the bills, the legislation cuts Medicare $571 billion in the House bill and $466.7 billion in the Senate bill. Also included are far-reaching massive tax increases which will impact American individuals and families at all income levels. From employer mandates and taxes on high-value insurance plans to taxes on both branded and generic drugs and medical devices, these bills are funded, and thereby the bills' costs are lowered, by taking more from taxpayers and reforming the health care system less. In particular, the Senate's $6.7 billion insurance premium tax will be passed directly to consumers and will impose new costs on Americans who already have coverage. The unfunded mandates to states likely will require many states to necessarily raise taxes, too.

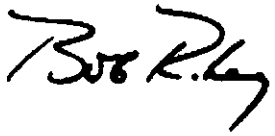
Although CBO has scored the Senate bill at $842 billion and the House bill at $1.3 trillion both bills are full of budget gimmicks. The bills delay spending until the fourth year and exclude the costly "Doc Fix" which ignores the over $200 billion price tag associated with stopping the unavoidable cuts to physicians under the Medicare program.

Governors agree we should work to enhance the quality of health care while making it more affordable and efficient. Unfortunately, the opportunity to truly lower the cost of care has been lost in the rush to try to finish health reform. Both CBO and the Chief Actuary of the Centers for Medicare and Medicaid Services have warned the current legislation will increase the overall costs of health care. The federal government and the states should refocus efforts to lowering the cost of care which will in turn increase coverage, but simply increasing the number of individuals on the public plans without a plan to improve the public programs for participants is irresponsible.

At this juncture, small businesses, seniors, states and territories, and taxpayers have anxiety about Congress' pending health care legislation and rightfully so-- one-sixth of our GDP is at stake. As Republican Governors, we believe in a system which eliminates red tape, empowers consumers to engage in making good health care decisions in the private market, and guarantees affordable coverage for patients with preexisting conditions. Missing from this important legislation is real medical liability reform and provisions which protect seniors' Medicare benefits and access to care. Several states have already implemented medical liability reform with good results; no real medical reform can be accomplished without tort reform. Instead, premiums are increased and small businesses are faced with onerous mandates rather than given the power to pool together and offer health care at lower prices, just as corporations and labor unions do.

Along with the majority of Americans and as leaders of 20 states and territories, we are disappointed with the lack of transparency. We urge you not to circumvent the normal committee process and to conduct an open, fully-bipartisan negotiation. It is time to slow down and pass meaningful health care reform, not hastily prepared partisan legislation which omits reform and saddles American taxpayers for generations to come.

Sincerely,



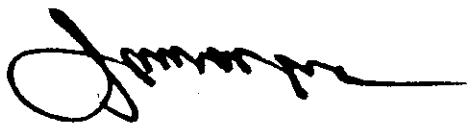
Governor Bob Riley, Alabama

Governor Jan Brewer, Arizona

Governor Sean Parnell, Alaska

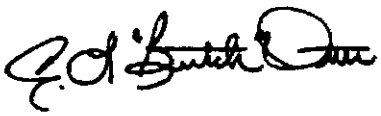
Governor Charlie Crist, Florida

Governor Sonny Perdue, Georgia

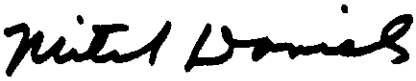


Governor Felix Camacho, Guam

Governor Linda Lingle, Hawaii



Governor C.L. "Butch" Otter, Idaho

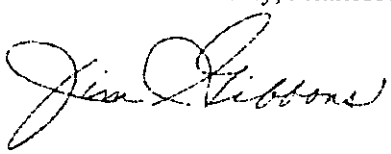


Governor Mitch Daniels, Indiana

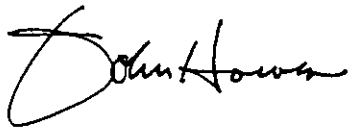
Governor Bobby Jindal, Louisiana

Governor Tim Pawlenty, Minnesota

Governor Haley Barbour, Mississippi



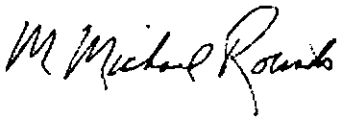
Governor Jim Gibbons, Nevada



Governor John Hoeven, North Dakota

Governor Don Carcieri, Rhode Island

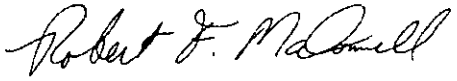
Governor Mark Sanford, South Carolina



Governor Mike Rounds, South Dakota

Governor Rick Perry, Texas

Governor Gary Herbert, Utah



Governor-elect Bob McDonnell, Virginia

NFIB

The Voice of Small Business®

ALASKA

January 19, 2010

The Honorable Mike Kelly
Room 513
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kelly

RE: HJR 35

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for House Joint Resolution 35. The National Federation of Independent Business/Alaska is the largest small-business advocacy group in our state.

HJR 35 provides for placing an amendment to Alaska's Constitution before voters during the next general election making explicit the individual right to health care free choice. The constitutional amendment would prohibit passage of laws that compel any person or employer to participate in a particular health care system. The proposed constitutional change will also permit the purchase of private insurance and allow Alaskans to pay their own health care provider directly.

NFIB/AK is critically concerned about the cost and access to health care for Alaskans. The current versions of health care reform that have passed the U.S. House and U.S. will not address those issues. The mandates they include clearly impose unreasonable burdens on Alaskans and Alaskan businesses. These mandates cannot address the needs of Alaskans.

This proposal will protect Alaskans from the unconstitutional federal mandates to purchase health insurance that may not meet their needs. It will protect small businesses from being taxed for not providing health insurance designed by the federal government that may not meet the needs of their employees.

Sincerely yours,

Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council

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April 14, 2010

To: Members of the Alaska House of Representatives

RE: HJR 35 (Kelly, Keller, Gatto, P. Wilson)—Oppose

On behalf of the members of AARP in Alaska, we encourage you to oppose HJR 35, authored by Representatives Mike Kelly, Wes Keller, Carl Gatto and Peggy Wilson, and co-sponsored by Representatives Tammie Wilson, Bob Lynn, Jay Ramras and Bill Stoltze.

In an attempt to stall or halt health care reform efforts at the national and/or state levels, legislators in several states have introduced legislation or resolutions to limit, alter, or oppose certain state or federal actions, including mandates that would require people to purchase insurance. HJR 35 is one of these.

HJR 35 would keep the purchase of health insurance optional and prohibit the "interference" in an individual's medical services choices.

Let's be honest about what HJR 35 actually is.

This is not just a simple resolution of protest to what Congress passed nor is it a simple political gesture.

HJR 35 seeks to change the Alaska Constitution.

Once we change it, we must live with the unintended consequences for a long time.
Amending our state constitution is an inappropriate vehicle to show concern over national health care reform.

If passed, HJR 35 could tie the hands of current legislators as well as future ones. While the resolution's intent is to address a very specific issue of a non-existent federal health care law, if passed it could lead to a constitutional amendment that would be permanent for Alaska. It could block the ability of current and future lawmakers to fully tackle Alaska's health care issues and prevent them from accessing a full array of options.

Can the supporters of HJR 35 tell us what the impact will be?

The language is so vague and will be open to so many interpretations that it can only result in costly litigation for the state.

This movement across the nation in Alaska and other states is designed to create litigation and to challenge the US Constitution's supremacy clause. Supporters openly share this strategy on their various websites.

Our health care should not end up in litigation—that's nobody's idea of freedom of choice.

Congress has passed health care reform and, if we amend our Constitution as HJR 35 intends, it is entirely possible that existing programs could also be jeopardized including Medicaid matching funds and Denali KidCare.

This resolution could also impact the private sector too. It could result in insurance companies raising premiums, deductibles and co-pays—driving up already skyrocketing health care costs for individuals and businesses. Physicians and other providers, including our network of community health centers, hospitals and nursing homes, could lose future Medicaid reimbursement and would find themselves serving even more uninsured patients.

HJR 35 is a risky gamble. It is more than a political gesture to Washington, DC. HJR 35 raises too many unanswered questions and unintended consequences. Why bet Alaska's health care on an unproven idea?

AARP is worked with Congress to ensure that, with the passage of health care reform, the implementation improves the state's ability to deliver health care for its citizens. Health care for our citizens is too important to become a turf war between the state and federal government.

AARP requests an "NAY" vote on HJR 35.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
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463-3580 (fax)