

State Reaction to Federal Health Reform

by Lisa Mecklenberg Jackson, Staff Attorney

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In response to federal health reform legislation, members of at least 39 state legislatures have proposed legislation to limit, alter, or oppose selected state or federal actions, including single-payer provisions and individual mandates that would require purchase of insurance. In general the measures, covering both 2009 and 2010, seek to make or keep health insurance optional and allow people to purchase any type of coverage they may choose. The language used varies from state to state.

In 30 of the states, including Montana via bill draft LC 18, the measures include a proposed constitutional amendment (which requires 2/3 vote of Legislature) by ballot initiative opposing the individual mandate. Based on language initially implemented in Arizona, language in these constitutional amendment provisions proposes "to preserve the freedom of all residents of the state to provide for their own health care... and that a law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system. Further, a person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services."

In at least 16 states, proposed bills would amend state law not the state constitution. These require a simple majority vote and action by the governor; they also can be re-amended or repealed by a future state law. So far in 2010, Virginia became the first in the nation to enact a new statute section titled, "Health insurance coverage not required." It passed March 4 and became law on March 10, 2010. Idaho and Utah are the second and third states to enact a similar statute.

Attorney generals from 13 states (19 as of 4/13/10) filed suit March 23, 2010 in U.S. District Court in Florida, saying the federal health reform law violates the U.S. Constitution by requiring people to buy health insurance. Although asked to join the suit via an April 2, 2010 letter from a number of Montana legislators, Montana's Attorney General Steve Bullock declined to join the suit stating he saw "no credible constitutional claim" with regard to the lawsuit. May 14, 2010, has been scheduled as the last day to amend the attorney generals' complaint and to add further states to the action absent permission from the court. A briefing schedule has been set with oral argument on the anticipated motion to dismiss by the U.S. to be held on September 14, 2010.

ARGUMENTS SAYING FEDERAL HEALTH REFORM IS UNCONSTITUTIONAL

- Congress' power to regulate interstate commerce under Article I, Section 8 of the U.S. Constitution is not broad enough to require an individual to purchase health insurance, a personal decision.
- The bill violates the 10th Amendment to the U.S. Constitution, which states the federal government has no authority to regulate states beyond the powers granted to it under the Constitution, by forcing the states to carry out its provisions but not reimbursing them for the costs.
- It's an unfunded mandate on the states--states can't afford it.

ARGUMENTS SAYING FEDERAL HEALTH REFORM IS CONSTITUTIONAL

- Under the U.S. Constitution, federal law trumps state law.
- The U.S. Supreme Court has long recognized that insurance is interstate commerce under Article I, Section 8 and therefore Congress has the authority to regulate it. This power also includes the regulation of intrastate activity, such as the potential costs imposed by the use of a health care system by the uninsured.
- Also under Article I, Section 8 of the U.S. Constitution, Congress has the power to collect taxes for the general welfare of the United States which includes taxes imposed on individuals who choose not to carry health insurance.