

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

All members were present except:

- Representative Bob Bethell – excused
- Representative David Crum – excused
- Representative Susan Mosier - excused

Committee staff present:

- Norm Furse, Office of the Revisor of Statutes
- Martha Dorsey, Kansas Legislative Research Department
- Dorothy Noblit, Kansas Legislative Research Department
- Jay Hall, Kansas Legislative Research Department
- Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:

- Senator Mary Pilcher-Cook ([Attachment 1](#))
- Richard B. Warner, M.D. ([Attachment 2](#))
- Dr. Milton R. Wolf, M.D. ([Attachment 3](#))
- Dan Murray, State Director, National Federation of Independent Business ([Attachment 4](#))
- Greg Ward ([Attachment 5](#))
- David J. Powell ([Attachment 6](#))

Others attending:

See attached list.

HB 2129 - Physical therapists evaluation and treatment of patients.

HCR 5007 – Constitutional amendment to preserve right to choose health care services and participate in health insurance plan.

Chairperson Landwehr opened the hearing on **HB 2129** and **HCR 5007**.

Senator Mary Pilcher-Cook presented supportive testimony. ([Attachment 1](#)) The constitutional amendment would preserve the freedom of Kansans to make their own health care choices and allow citizens to pay directly for lawful health care services. Both the Amendment and the Act would prohibit forcing individuals or employers to purchase health insurance. Kansas citizens used to have the right to make their own health care decisions. Now it is incumbent upon state legislators to give citizens back the right to make their own health decisions, and then help them protect that right.

Forcing individuals to purchase health insurance is an exceptional violation of individual liberties. By its nature it would have to be enforced, and to enforce it, the government would have to inflict penalties or punishment for noncompliance. This would be punishment for simply being born, and refusing to buy a service, which begs the question: what service or product will government force us to buy next?

If the government can tell us we must purchase health insurance simply because we were born, there will be no limit to other things the government can make us purchase. The government will have the ability to control how we live, what we buy, where we go, and what we do.

Both the Amendment and Act do not prohibit the people of Kansas from participating in any federal health plan they choose – they just can't be ***forced*** to participate in any health care system. When governmental power uses subjective criteria to decide who can get away with not following the law, but who must comply with the law, it is called tyranny. Granting waivers to some companies and not others, with no rules to be objectively applied, is certainly not democracy.

Tyranny is when the belief exists that some persons have a right — or even a duty — to impose their wills upon other people. It could be enforced by one man, or voters could enable tyranny on a minority "for their own good." In any case, tyranny denies the principles of liberty which rest on the belief that all proper authority instead comes from our Creator – a power above all other powers – and from laws higher than man himself. This is the fundamental principle of liberty that has given us our freedom and has made

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

our country great above all others.

Our country didn't become great because of our military strength or our rich natural resources. It became great because of the self-evident truths as outlined in our Declaration of Independence, which gave us our economic freedom – that all men are created equal, endowed by their Creator with certain unalienable truths – that among these truths are life, liberty and the pursuit of happiness.

Our government didn't grant us our rights, it recognized we were born with those rights – and it recognized we have a right to pursue health care in the way we see fit. Our country didn't become great based on a command and control economy, our country became great because it is based on freedom and liberty.

It is incumbent upon Kansas state legislators today to protect the liberty of the people of Kansas in regards to their health care. The proposed constitutional amendment is neutral to health care reforms – we can still reform health care to contain costs and make it more accessible to all. At this time, by their constitutional oaths, state legislators have a duty as a number one priority to protect the liberty of the people of Kansas.

Representative Mah requested an explanation of the bills and was particularly interested in any differences from the 2010 versions. Revisor Norm Furse proceeded to review the two documents. He explained he could not review the differences at that time because he was not involved in the writing of the documents in 2010 but indicated he would determine the differences and report back to the committee. A couple of key points are 1) that a citizen of the state has the right to purchase health insurance or to refuse to purchase health insurance and 2) the government is directed not to interfere with the citizen's right to purchase or with the right to refuse to purchase. The government is not to enact laws that would restrict these rights or that would impose a form of punishment for exercising these rights. The resolution would add an article 16 to the constitution of the state of Kansas and would provide to preserve the freedom of Kansans to provide for their health care. It states a law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system or purchase health insurance. 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. He then briefly reviewed the remaining sections.

Representative Flaharty asked a question concerning part 1, section 2, which says a person shall not be required to pay penalties or fines does that mean it would prohibit late charges of interest on payments? Revisor Furse indicated he thinks it relates to federal law which has some penalties or fines for noncompliance.

Representative Ward commented on the last sentence in subsection 1 of the bill that says any law to the contrary shall be null and void and questioned if it was a nullification provision, that state law would nullify the federal law and is that the intent. Revisor Furse responded the intent is that any law directly contrary to the statement in section 1 would not be operative after the enactment of section 1. There was discussion concerning the intent of the law. Chairperson Landwehr indicated we are saying the federal government cannot come in and tell the state of Kansas who, what, when, where and how they will handle health care insurance for the state. It will be a decision left up to the people of Kansas should we pass the constitutional amendment. Representative Ward questioned whether **HB 2129** could be used as a defense for a citizen who chooses not to purchase health insurance as directed by the federal law and avoid having to pay the penalty outlined in the federal law. Chairperson Landwehr responded the answer to that question would eventually be determined by a court of law. In response to a question concerning the intent of the bill, Chairperson Landwehr indicated the intent of the sponsors of this bill was to not allow the federal government to come in and tell the citizens of Kansas that they will have to purchase health insurance because it violates our state's sovereignty. Representative Ward made comments concerning nullification laws and asked if the statement null and void was in **HCR 5007**. Chairperson Landwehr indicated it was not in the resolution.

Representative Mah questioned the use of the word “entity” when referring to the health care system as a public or private entity. Revisor Furse responded the word was used to mean whatever the offerings are for the purpose of the health care insurance. With no further questions, the hearing resumed.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

Richard B. Warner, MD, presented supportive testimony from the perspective of a psychiatric physician in private practice. ([Attachment 2](#)) Dr. Warner is a recent past president of the Kansas Medical Society and a member of the Kansas delegation to the American Medical Association. He also serves on the Board of Directors of the Kansas Health Insurance Association, which administers the high risk pool for the State of Kansas. The federal Affordable Care Act of 2010 has at its heart a provision that mandates that all citizens of the United States who are not provided health insurance by their employer or by the government must purchase it individually or face penalties administered by the Internal Revenue Service. While increasing the individual ownership of health insurance would be a very good thing, to do so by mandating its purchase would be both unwise policy and contrary to our constitutional system of government.

At the time that the Affordable Care Act was passed, questions about its constitutionality were often dismissed, but a year later the question is taken much more seriously. The federal judge hearing the case brought by the state of Virginia has ruled that the individual mandate is an unconstitutional stretching of the Commerce Clause beyond any previous limits. Indeed, if the federal government can order that people purchase a good or service, whether they want it or not, what limits are there? Governor Brownback and Attorney General Schmidt have properly taken action to join Kansas to the suit brought by twenty-five other states in Florida. This proposed amendment to the Kansas Constitution is important as the ultimate statement of the prerogatives of the state of Kansas and its citizens.

Beyond the constitutional issue lies the question of whether it might be good policy to require people to purchase health insurance. This question has been addressed by the Kansas Medical Society in its Principles for Health Care Reform, adopted by the KMS House of Delegates in 2004 and reaffirmed in 2008. That opinion is that while health insurance coverage for every person in Kansas is the ideal, mandating universal purchase by law is not desirable. Mandating the purchase of insurance is inevitably accompanied by the government prescribing the design of health insurance benefits and premiums, often in ways that may satisfy social wishes but which are uneconomic. For instance, the Affordable Care Act seeks to solve the problem of covering individuals whose pre-existing conditions make them expensive to insure by requiring that insurance companies abide by guaranteed issue and modified community rating for premiums. In the eight states that attempted this solution in the 1990's, all ruined their markets for individual health insurance. People found they could delay their purchase of insurance until they had real need for it. Since people of low risk remained out of the risk pools, higher premiums were necessary to cover the people who remained in the market. It is proposed that the requirement that everyone purchase insurance will prevent that from happening, but the penalty needed to enforce the mandate has to be so high that it is politically unpalatable. The better approach to the problem of pre-existing conditions is state-based subsidized high risk pools. Kansas and 35 other states maintain such pools.

Similarly, the federal Affordable Care Act calls for the premium age ratio to be no more than 3 to 1 for the oldest to the youngest. Since the normal market ratio is more like 6 to one, it will result in a huge increase in premiums for people under the age of thirty, which is the age group least likely to buy health insurance in the first place. The designers of the law rely on the individual mandate to coerce people into buying something that they find uneconomic at even half the price.

Finally, I would like to touch on the Amendment's provision to protect the right of individual patients and their doctors to contract for the direct payment for lawful services. Besides protecting a basic liberty, this would encourage arrangements that would help us to reduce our excessive reliance on third party payment, which underlies much medical inflation and the loss of control over medical decisions. It would result in truer pricing and the transparency for which many have called. It would protect the patient-physician relationship, which is the moral bedrock upon which medical care rests.

Dr. Milton R. Wolf, M.D., presented supportive testimony. ([Attachment 3](#)).

The False Promises of ObamaCare. The Patient Protection and Affordability Care Act. There's not a single word in this law's title that's true, including the words 'the' and 'and'. It would take the ultimate willing suspension of disbelief to buy into the President's promise that ObamaCare can insure an additional 32 million Americans while maintaining the current level of care for the 90% of Americans currently happy with their health care and all the while reduce the deficit.

At the core of ObamaCare is the frankly un-American threat of imprisonment for anyone who refuses to be forced into a financial contract with government-approved companies. This, of course, is the individual mandate that otherwise free Americans must purchase government-approved insurance at the risk of

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

financial penalties and ultimately imprisonment. At least one court has declared this mandate to be unconstitutional but it will likely take years before the courts resolve the matter. Kansans cannot wait.

The sales job for ObamaCare is based on many, as I call them, unkeepable promises that are already beginning to crumble.

ObamaCare would reduce our deficit. Laughable at best. Can anyone name the social entitlement program – ever – that came in on budget? Barack Obama's own Medicare Chief Actuary Richard Foster just last week declared that he doubts the promised ObamaCare savings. This financial savings – bending the cost curve downward, as they put it – was the very basis of ObamaCare and it was a fantasy from the beginning.

ObamaCare would allow you to keep your doctor and your current insurance. How is it possible for Kansans to keep their own doctors if their doctors can't keep their own practices? How is possible for Kansans to keep their own insurance if their insurance companies can't stay in business? Again Medicare Chief Actuary Richard Foster acknowledges that Americans will lose their insurance because of ObamaCare.

Our former governor and now Health and Human Services Secretary Kathleen Sebelius understands the volatility caused by these to false promises. You will recall that Sebelius hid from Congress until after the ObamaCare vote a damning report from the Medicare and Medicaid Office of the Actuary showing ObamaCare would cost \$311 billion more than promised and would displace 14 million Americans from their current insurance. For this administration, transparency promises last only until the teleprompter is unplugged.

ObamaCare would not jeopardize senior citizens' care. Medicare Advantage, the very popular free-market reform is in serious jeopardy precisely because of President Obama's cuts to Medicare to pay for other parts of his overhaul plan. This is on top of the ever downward pressure on Medicare reimbursement itself. Littered among the ObamaCare trail of destruction will be the medical practices that simply cannot afford to stay in business and work with the government. Kansas senior citizens may be issued shiny new Medicare insurance cards but what value are they if they can't find a doctor who will accept them?

ObamaCare would not ration health care. The president promised time and time again that he would not ration health care, and then promptly, under the cloak of a recess appointment, installed as the head of Medicare a man who would do it for him. Dr. Donald Berwick has announced unambiguously and with glee many times over that he will indeed ration America's medical care (in addition to his own bizarre promises to redistribute your wealth) but he assures us that he's our intellectual better, so it will be fine. He also declares he's "romantic" about the British-government-run system and specifically admires how the British purposefully undersupply medical needs to alleviate "bottlenecks." They've been alleviated all right. Britain's colon cancer mortality rate, for example, is 40 percent higher than America's; breast cancer 88 percent higher; prostate cancer a staggering 604 percent higher. If we accepted those rates in America, from cancer alone, it would allow 125,000 preventable deaths a year, more than all the men, women and children in Topeka.

ObamaCare would not raise taxes on anyone earning less than \$250,000 a year. The President said this: "I can make a firm pledge. Under my plan, no family making less than \$250,000 a year will see any form of tax increase. Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes." New excise taxes on pharmaceuticals and medical products will, of course, be passed on to the patients who depend on these lifesaving medicines, pacemakers, MRI machines or even tongue depressors. Even more flagrant, there are new ObamaCare taxes on everything from tampons to tanning salons, from gold to the sale of your home.

ObamaCare would create 4 million new jobs, 400,000 almost immediately. Not to be outdone, former House Speaker Nancy Pelosi added this grand promise of her own. However, since the health care takeover was signed into law, unemployment remains near 10 percent.

ObamaCare hearings would be held in public. Unlike the other promises, this one could have been kept and in fact may have prevented all these other catastrophic failures, but sadly, it was wantonly ignored by this president. Candidate Obama pledged eight times to hold health care hearings in public. Invite the C-

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

SPAN cameras, he said, because open hearings would allow Americans to know who was on their side. Indeed it would have.

ObamaCare and Kansas Patients. My patients are worried. Their concerns are many and they are justified.

Costs & Regulatory Burden. Whatever their intentions are, when the government increases medical costs, both directly through taxes and indirectly through regulations, Kansans suffer. Every new regulation the government imposes increases costs that ultimately are the burden of the patient. What's worse, this new plan specifically increases taxes on medical devices. These increasing costs are one of the largest threats to the access of medical care.

I spoke recently to a CEO of a not-for-profit hospital here in Kansas (for which I do not speak and therefore will protect their anonymity). He believes the government's regulatory burden has created a breaking point for community hospitals. His hospital's mission is to provide free medical care to the needy and despite giving tens of millions of dollars' worth of free care, they are forced to spend even more money than that every year just to maintain compliance with government. Every dollar spent for red tape is a dollar not available for needy patients.

Doctor-Patient Relationship. Every time the government forces itself between patients and their doctors, Kansans have suffered. Recently the government took an ugly step into the so-called "comparative effectiveness" world of health care rationing. We all remember when the U.S. Preventative Services Task Force declared that women in the forties no longer needed screening mammography. As a radiologist who practices mammography, I knew immediately the problem. Twenty percent of my breast cancer patients are Kansas women in their forties. They deserve better. Later the flaws of this research would be exposed and the importance of mammography for women in the forties would be re-established beyond reproach but that's not what spared these women from having their health care rationed. It was politics. The health care ration bureaucrats picked the wrong target.

The USPSTF government health recommendations would have killed thousands of Kansas women annually if they had been enacted into law. Fortunately, ordinary doctors and patients were outraged and stopped it from happening. But we were lucky this time -- because breast cancer awareness is high among ordinary Americans. What happens next time when the government attempts to promote practice guidelines on issues where Americans aren't as well-informed?

Under ObamaCare, doctors will be financially rewarded for practicing according to these government guidelines (and punished for straying from them). Hence, the government forces doctors to choose between their patients and some bureaucrat who controls the purse strings – in effect forcing doctors to violate their Hippocratic Oath. Is this the kind of health care we want here in Kansas?

Unintended Consequences. If there's one thing we know about government intervention, there are always unintended consequences. In medicine, we live in a different world. We are judged solely by our results. There's no such thing as intended or unintended consequences; there are only consequences. I'm not here to read your mind. If your actions have bad consequences, then that's all that matters. First do no harm. This is a bedrock principle in medicine and, frankly, it should be in government as well.

These consequences have prompted the White House to exempt, so far, 733 of its closest friends from the onerous regulations of their law, a topic I cover in my latest column in today's *Washington Times*. I ask a simple question: If ObamaCare is so great, why does the White House keep exempting its best friends from it?

The Kansas Health Care Freedom Act. I am a proud son of Kansas and I honor our unique role in the union: We've been protecting America from Missouri since 1856. In fact, the heritage Barack and I share includes the pre-civil war border wars and our family paid a dear price. But once in a while our neighbors to the east get something right. Last year, Missouri stunned Washington and many politicians around the country when they passed the Missouri Health Care Freedom Proposition C by over 70%. Prop C, of course, was similar to the Kansas Health Care Freedom Amendment in that it is meant to protect its citizens from the compulsion of the federal government or anyone else to enter into binding contracts with health insurance companies. If you like ObamaCare, fine. If you want to purchase insurance approved by Barack Obama, Nancy Pelosi and Kathleen Sebelius, more power to you. But if you believe, as did the generations that came before us, that Americans are free, then it should be your choice.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

Seventy percent. The number was stunning to the purveyors of big government but not at all surprising to me. My patients sound the alarm of ObamaCare. I've traveled the country and spoken to tens of thousands people who are moved for the first time in their lives to political activism because of this government takeover of our health care system.

Seventy percent. Kansans are crying out for health care freedom and paying attention like never before. Did you hear the message of the 2010 election? The United States Congress pushed through ObamaCare against the will of the American people and then suffered an historical defeat at the ballot box. Kansas legislators are not immune from this new reality.

Seventy percent. Kansans, like all Americans, are growing increasingly frustrated by politicians who pursue their own interests rather than the people's. The increasing rapidity with which voters are willing to replace their representatives marks our era. Gone are the days when politicians can hope their votes on matters as mundane as health care won't be noticed.

Seventy percent. Finally, let me paraphrase President Ronald Reagan. If you want to be successful in politics, when you see a 70% issue, it's better to be on the 70% side.

ObamaCare and Beyond. Few people throughout history have recognized exactly when even their own revolutions had begun but make no mistake, our nation, the United States of America, is at a crossroads – one to be determined by ballots not bullets but wherever we go from here, we will never be the same.

We are right in the middle of four year debate about health care. The 2008 and 2010 elections were two of the most consequential of our lifetimes and 2012 will be even more so. Health care by its own right is of enormous importance but the consequences of allowing the government take over a sixth of the economy will indeed be the “fundamental transformation” that President Obama seeks. Recall that Obama has said that his goal was the complete elimination of private health care insurance companies in the next 15 to 20 years. And this is what he is willing to say in public.

Health care has become ground zero for the larger struggle that our nation has faced since its inception. Will we embrace our founding principles of individual freedom and limited government or will we be the first generation of Americans to surrender our freedoms and accept a second-class fate like the European social welfare states?

This administration expects one thing of us – of citizens, of patients, of doctors, of state legislators, of us all – compliance. They expect us to line up as cogs in the wheels of their big government machine. And I say no. We will not go quietly in the night as they seek to remake our nation into something it is not.

I'm proud that Kansas under the leadership of our new Attorney General Derek Schmidt has joined the multi-state federal lawsuit against ObamaCare. It is indeed sweet poetry that Kansas, of all states – home of HHS Secretary Kathleen Sebelius and heritage of Barack Obama – brought the number of states joining the lawsuit into the majority.

We all know where this debate is going. The election of 2012 will either affirm our national as a social welfare state or it will elect a new president and congress that will overturn this unholy law. It's clear what we must do. We must work for the complete repeal of ObamaCare and, until then, use every legal and ethical tactic to slow down and prevent its implementation. The Health Care Freedom Amendment. Nullification. Principled outright defiance of this federal government and their mandates that will harm Kansans. Our Founders deserve to be called Americans because they fought for our liberty and we must do the same.

In my years of practicing medicine, the thousands of lives I've held in my hands, those who have escaped my grasp; my travels across this nation, the tens of thousands of Americans whom I've met; my study of our shared American history, my unshakeable belief in American Exceptionalism, I've come to believe that each of us has a purpose, a destiny. I believe Barack Obama's destiny is to hold a mirror up to America, one that shows us an alternate future, one remade by his “fundamental transformation” into the big-government, European social-welfare second-class existence where our individual liberty is sacrificed on the altar of an ever growing government.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

And I believe I too have a purpose or a destiny, no matter how big or how small and I invite you to join me. I will continue to uphold my Oath but I will also give everything I have to fan those flames of liberty. They flicker tenuously at times like they did some 230 years ago in the Cradle of Democracy but they refuse to die. They grow stronger each day and they roar in our hearts because we know, by the actions we take today, by the courage we can summon, that liberty will find a way, that our founding principles will prevail and that one day, based on our efforts this day, our children will be able to say of us that we too were worthy to be called Americans.

Dan Murray, State Director of the National Federation of Independent Business/Kansas, presented testimony in support of both the Kansas Health Care Freedom Amendment and Act. (Attachment 4) NFIB/KS is the leading small business organization representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB/KS represents the consensus views of its over 4,000 members in Kansas.

Small-business owners remain deeply concerned that the healthcare law costs too much and further jeopardizes the economic recovery of our nation's job creators. In fact, more than 90 percent of them favor repeal of the new law. The healthcare law actually makes things worse for small business and will lead to continued economic uncertainty. Government needs to get out of the way of small businesses, so they can get back to growing their business and creating jobs.

Healthcare coverage for more Americans is a laudable goal, and one that NFIB supports, but expanding coverage by chipping away at the freedoms afforded to individuals and small business owners in the U.S. Constitution is unacceptable. The individual and employer mandates, onslaught of new taxes, and onerous paperwork requirements in this unconstitutional law will devastate small businesses.

There are countless job-killing provisions in the healthcare law. But, the primary reason we are here today is to address the unprecedented individual mandate. We applaud and support any effort, including this committee's effort, to combat the overreach of the federal government. In fact, on behalf of small business owners nationwide, NFIB has filed a lawsuit with 20 states (now 26 states, including Kansas) challenging the constitutionality of the individual mandate provision in the healthcare law – which forces Americans to buy private health insurance or pay a penalty. We believe this is fundamentally unconstitutional.

Forcing Americans to purchase a private product, just because they are alive, is simply not a power granted to Congress. With this law, the federal government has attempted to stretch the authority granted to Congress through the Commerce and Necessary and Proper Clauses of the constitution. The government should not regulate citizens into action. If our decisions to do nothing can be regulated, then there will effectively be no limits on what Congress can force Americans to do.

Small business needs better access to affordable health insurance, but an unconstitutional law that sets a dangerous precedent for Congress with unlimited power, combined with an onslaught of new taxes, paperwork burdens and fewer health insurance options, is not reform that small businesses can accept.

NFIB wholeheartedly supports the Kansas Health Care Freedom Amendment and Act and urge you to pass the measures out favorably.

Greg Ward presented testimony in support of the bills. (Attachment 5) I am a small business owner in Lawrence, a real estate broker and developer - and last year, a grassroots organizer of a group called the Kansas Sovereignty Coalition. For the first time, many people like me, sacrificed time away from our businesses and got involved in the process of government. We were frustrated with those we elected – who we felt - were NOT representing our interests. We came to the Capitol as an overflowing presence at the Senate Judiciary committee hearing and later rallied at the Dillon House - in support of the Sovereignty Resolution that eventually was passed by both houses of the legislature.

I am here today - to say give Kansans the opportunity to make our own health care-related decisions. While we now are quite familiar with the 10th Amendment of the United States Constitution, those powers reserved to the States - only have value if the State acts to exercise its rights to use those powers not given to the federal government. Providing the people of Kansas with the opportunity to amend our State

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

Constitution and assert our 10th- Amendment right as a check and balance to an over-reaching federal government - is the duty we call upon you, our state legislators to uphold.

David J. Powell spoke in support of the bills. (Attachment 6) He stated he has been in the insurance business for thirty-four years and has read the nearly 4,000 pages of what is now called ObamaCare. Nothing in this law will improve health care in Kansas. Nothing in this law will reduce health care costs in Kansas, nor anywhere else in the U.S. This law will cause the loss of jobs and will, as it is already doing, increase the number of Kansans without health insurance coverage. Many employers are dropping the coverage because it is cheaper to pay the penalty. He sees this daily as he visits with the many agents licensed to do business with me. The law has been written for the convenience and the domination of the Federal Government, not for the people of this great nation. And, certainly not for the citizens of Kansas.

This summer at the state fair and at rallies he organized this fall in Wichita and Kansas City, Kansans were overwhelmingly opposed to the new law. They want it repealed. But while they wait for Congress to do that, they also want YOU, our legislators to pass what we are calling the Health Care Freedom Amendment to our state Constitution, because they want YOU to give them the **opportunity to VOTE** on this amendment.

If this legislation does not make it out of committee, then the citizens of Kansas will be denied their opportunity to make their voices heard. And I'm saying Democrats, Republicans and Independents. People from all parties signed the petitions he has with him. He presented the committee with copies of some of the petitions that were signed by residents of Kansas from all over the state who are simply asking you to allow them to vote on this Kansas Constitutional Amendment – not a resolution, but an Amendment letting the Federal Government know that we, as Kansans, believe they are exceeding their Constitutional powers and INTERFERING with powers reserved to the state. You may notice signatures from Sam Brownback, Pat Roberts, Derek Schmidt, and Kris Kobach. They all signed at the state fair in September.

He urged the committee to consider examining and moving forward on changes and additions to some of our current Kansas insurance statutes in anticipation of modifications, at the least, to ObamaCare. Should the Federal laws be changed to allow purchasing Health Insurance across state lines, as the Republicans in Congress are suggesting, Kansas is not ready to accommodate such a change. We must address this and a number of other issues during this legislative session or face the possibility that most of the health insurance purchased by Kansans will not be bought within our state. If this happens the state could loose in excess of \$100 million dollars in premium taxes, hurting our general fund when we can ill afford it.

He has a number of changes that he has worked with insurance companies to develop over the past several years, that could put Kansas in a better position to be the state where people come to buy their insurance. This could turn the \$100 million dollar loss into a \$100 million dollar GAIN. Action is needed NOW.

George R. Watson, D.O., Wichita, presented written testimony only in support of the bill. (Attachment 7) Obamacare is an utter failure to fulfill the laudable title of this monstrosity. The name itself is government fraud in the highest places. There is no Patient Protection. When all the sheep-like doctors load your information into the government approved electronic medical record, just wait until the bureaucrats and some hacker have their version of Medileaks, and your personal information is all over the internet! Hardly patient protection.

Affordable Care Act is an out and out lie! With patients reporting insurance premiums going up 30 to 50% to accommodate the mandates, this is only the beginning of another out of control government boondoggle. And how many signed up for the guaranteed issue provided under the “no pre-existing conditions” mandate? ONLY 8,000 people, all of whom could have received care under various safety-net programs already in place. So Obama justifies ruining the best medical care in the world to solve this non-issue. It is not about healthcare. It is about control.

The irony of it all is that Congresswoman Giffords survived, because of the high tech care that Obamacare will destroy as one in seven hospitals go bankrupt. We in Kansas don't need any of that. My patients don't want any of that. It is time to build a firewall against the unwarranted intrusion into Kansans' lives by the “ruling class” in Washington. Now is the time for the Health Care Freedom Amendment to preserve the right of all Kansans to freely contract with the doctor or THEIR choice; not the insurance company or the federal government.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber, provided written testimony in support of the Health Care Freedom Act and constitutional amendment which offers Kansans the chance to vote on whether their state should comply with the federally mandated health care legislation passed in 2010. (Attachment 8) Our neighboring state, Missouri, overwhelmingly supported a state constitutional amendment in November with 70% of voters supporting the measure.

The Kansas Chamber opposes the use of mandates to regulate the market and impose further cost on the health care system. The growing cost of health care is already prohibitive to employers. Managing health care costs ranked second behind lowering taxes on businesses when asked what has the largest impact on profitability in the 2011 Chamber CEO poll of 300 member AND non-member businesses across the state. Kansas business owners tell us that they want to provide health insurance and remain competitive, but the cost is too high. Already the cost of health care puts business owners at a competitive disadvantage. The Patient Protection and Affordable Care Act will actually result in higher health care costs and restrict individual's access to free choice according to testimony before the House Budget Committee last week, something businesses of all sizes cannot afford.

Business owners are forced to either spend investment capital to provide health benefits or risk the inability to attract top employees if they cannot meet the expectation of providing competitive benefits. As our economy remains weak, businesses are forced to make tough decisions and more and more small businesses are opting not to offer health insurance – because they can no longer afford coverage. The more mandates added on to our health care system, the more expensive it will become.

The Pacific Research Institute found that if the cost of insurance premiums rises by 1 percent, the number of uninsured people increases by 0.5 percent. This illustrates the detrimental impact of even minor increases in premium price on the market.

The Kansas Chamber supports the Health Care Freedom Act because mandates increase the cost of health care and reduce affordable options for those purchasing health benefits.

James J. O'Connell, concerned citizen, presented supportive testimony. (Attachment 9) As background, he is retired from law practice and previously spent 30 years in health care administration in military and civilian settings. He also served as Secretary of Health and Environment under Governor Bill Graves. He stated there are many reasons for the Legislature to enact the Health Care Freedom Act and to place the Amendment before the voters. They include both legal and constitutional issues and very serious concerns about deterioration in the quality and availability of health care services.

The media focus at the moment is largely on the legal issues and lawsuits challenging the constitutionality of the Patient Protection and Affordable Care Act (“Obamacare”). This focus is well-deserved because the legal challenges are very serious with twenty-eight states joining in one of these actions representing broad support and wide public interest. It is not an overstatement to say that the legal issues are so serious that they can permanently change the way this country is governed.

Supporters of Obamacare contend that Congress acted properly within its authority under the Commerce Clause of the Constitution. The enumerated powers of the Congress do not include the power to impose a financial obligation on its citizens by requiring the purchase of insurance. The Commerce Clause has been applied very broadly indeed since the 1930s so that almost nothing is beyond the control of the federal government. Any activity that even remotely relates to interstate commerce has come under the purview of the federal government. The key word here is “activity”. This is the first time Congress has attempted to impose financial obligations on citizens for inactivity, interstate or otherwise, solely because they are alive!

It is well established that it is unconstitutional for government to interfere in legal contracts made between persons and entities. What Obamacare attempts to do is the converse of that legal principle, i.e. it seeks to compel all of us to enter contracts of insurance against our will. In the ordinary course of events contracts require mutual consent to be valid. Indeed, another way to look at this is that Obamacare requires people to give their property---their money--- to someone else in a transaction coerced by the government. That is akin to the taking of private property without just compensation in violation of the 5th Amendment.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

Another serious constitutional issue is whether Congress has the power to impose a tax for the purpose of forcing people to act in a way that they may not voluntarily act. The Administration and the President had previously claimed this was not a tax, but was a fee. In legal briefs the Administration now acknowledges that it is a tax. The reason for the shift in positions is that while Congress has the power to tax, but does not have the power to impose a penalty. The question is whether it is constitutional for Congress to impose a tax, not for the purpose of raising revenue to run the government, but to compel the citizenry to act in a certain way.

While it is likely that the validity of the Obamacare statute will be determined in the courts, I believe it would be a mistake for this Legislature to withhold action on the Health Care Freedom Act and the Amendment counting on the outcome in court. As the elected representatives of the people of Kansas, you should give voice to the opposition of Kansans to this new power grab by the federal government. I believe that Obamacare is not only unconstitutional, it will be destructive to the quality and availability of health care services in Kansas and elsewhere.

It is against all common sense to claim that the cost of health care will be reduced when an additional 30 million people have a 3rd party to pay for health care. The argument is that the cost of care for the uninsured is being passed on to those with insurance or who pay directly for their care. That assertion is correct, but it does not take into account the additional costs of increased demand created by 3rd party payment for care. While some of that demand will be due to the proper and correct provision of needed care, the same critics of American health care and Obamacare supporters also complain that health care services are over-utilized. They recognize that when a third party pays for a product or service, the demand for them will increase. Some of that demand will be for unnecessary services and there is nothing in Obamacare that will influence people to avoid seeking unnecessary care. The inevitable outcome of all this will be unavoidable reduction in the availability of services in an attempt to control expenditures. It will not be panels looking at individual patients and deciding who gets care and who does not. It is more likely to be scarcity resulting from reductions in the capital available to providers and in the number of providers.

Supporters of Obamacare often contend that “rationing” is already practiced by insurance companies with respect to denying coverage for certain procedures or drugs. They usually don’t say so, but if insurers are “rationing” so are Medicare and Medicaid. The difference between the current situation and the likely outcome of Obamacare is that there are now competing and independent participants in health care and the standards of care and coverage benefit from this competition and independence. Once a monolithic program is fully in place, competition and independence are no more.

We are told that surveys by international organizations rank U.S. health care as low as 37th in the world. This is pure and utter nonsense. Where in the world do most of the breakthroughs in medicine occur? Where do people from all over the world come for health care? For example, recently King Abdullah of Saudi Arabia, who can certainly afford to go anywhere for care, came to New York. Several months ago, the Provincial Governor of Newfoundland, Canada, went to Tampa for heart surgery. When asked why he did not rely on the Canadian health system he said that though he was a government official, he still had a right to seek the best care possible!!!!!! Does it make sense to undercut this level of quality as Obamacare will unavoidably do?

I can give you a real life example of the likely results of Obamacare in the experience of my younger brother in the Obamacare-like Massachusetts system. He had a broken bone in his foot and was treated “conservatively “ for several months. When he needed an MRI to determine what was going on, the first appointment he could get was 10 days later, on Friday night, at 10 pm!!!! Why? Because the universal coverage plans have a financial impact that forces restraint on capital investments, training of medical personnel, etc. That is to say: “scarcity”.

When I was a hospital CEO in Kansas a good number of years ago, the Medicaid program announced a restriction on payment to hospitals for women who had experienced a miscarriage. The program would not pay for a hospital admission unless there were unusual circumstances and the woman was to be sent home immediately after initial treatment, even if the miscarriage occurred at 2 am. We did not send women home as the program demanded, but simply did not bill for the admission. I cite this only as one example of what can happen to quality of care.

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

The design of Obamacare does not reduce costs and it masks the “pass through” of the costs of uninsured care by transferring those costs to the insurance premiums paid by coerced purchasers of health insurance and in taxpayer subsidized insurance. The plan will, and is probably intended to, cause employers to drop health insurance for employees. In the long run, this will result in private health care and private insurance being declared a failure and a thing of the past. The unavoidable conclusion will be that we must have a single payer, i.e. federal government, health plan paid with tax dollars. That conclusion will make the limitations on availability and quality that exist today seem like the ideal circumstances that we will wish could return.

In our form of government, the people and the states have all the powers not specifically delegated to the federal government. I believe, and I hope that the Supreme Court will ultimately hold, that Obamacare is unconstitutional. However, the powers of the states under the 10th Amendment mean nothing unless they are asserted and claimed by the states. The Health Care Freedom Act and the Health Care Freedom Amendment are such an assertion and claim of the rights of Kansas and its people. Ultimately, that is the most important reason for you to enact the Act and to support the Amendment.

Christie Herrera, Director, Health and Humans Services Task Force, American Legislative Exchange Council, submitted written supportive testimony. (Attachment 10) ALEC is the nation's largest nonpartisan individual membership association of state legislators, with 2,000 state legislator members from all 50 states and more than 100 members of Congress. Since 2005, 38 states have enacted model legislation drafted by ALEC's Health and Human Services Task Force.

ALEC commends the Kansas Health Care Freedom Act, a statutory measure that would help shield Kansas individuals and businesses from a federal requirement to purchase health insurance, known as the “individual mandate” and the “employer mandate”, respectively.

ALEC also commends the Kansas Health Care Freedom Amendment, which would preserve in the Kansas Constitution the right of patients to pay directly for medical care, and would prohibit the government from penalizing Kansas individuals and businesses for failing to purchase health insurance.

In the 2010 session, 42 states have either filed or announced legislation similar to the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment – which are modeled after ALEC's *Freedom of Choice in Health Care Act* - and seven states have passed the measures via statute or constitutional amendment.

The Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment would accomplish two important things. First, the measures would help protect individuals who buy health insurance that the federal government doesn't like. In 2014, individuals who fail to purchase health insurance approved by the federal government – as well as those who are uninsured – will have to pay a \$95 fine, or 1 percent of their income, as a federal penalty. In 2015, the fine will be \$325 or 2 percent of income, and in 2016, the fine will be \$695, or 2.5 percent of income.

Similarly, the Act and Amendment would help protect employers who want to make their own health insurance decisions. Because of the ObamaCare's employer mandate, more than half of all employers, and as many as 80 percent of small businesses, will be forced to drop their current coverage and purchase more expensive health insurance for employees. The National Federation of Independent Business predicts that ObamaCare's employer mandate will result in a loss of 1.6 million jobs by 2014 – with 66 percent of those lost jobs coming from small businesses – and an economic shrinkage of approximately \$200 billion by 2013. These mandates will not only inflict terrible damage on our freedom to make our own health care choices, but they will also damage the American economy.

The Kansas Health Care Freedom Act would provide a state-level defense against ObamaCare's excessive federal power. Particularly, this statutory measure would provide standing to a state participating in current litigation against the federal individual mandate; allow a state to launch additional, 10th Amendment-based litigation if the current lawsuits fail; and empower a state attorney general to litigate on behalf of individuals harmed by the mandate once it goes into effect in 2014.

The Kansas Health Care Freedom Amendment would not only help defend against the federal individual

CONTINUATION SHEET

Minutes of the House Health and Human Services Committee at 1:30 p.m. on January 31, 2011 in Room 784 of the Docking State Office Building.

mandate as indicated above, but this constitutional measure would also prohibit a Canadian-style, single-payer system if ObamaCare is upheld by the courts. And if ObamaCare is repealed, it would also prevent a state-level requirement to purchase health insurance.

Even without the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment, ObamaCare is vulnerable to constitutional challenge in three major areas. First, as the U.S. Supreme Court ruled in *U.S. v Lopez* (1995) and *U.S. v Morrison* (2000), Congress does not have the authority to regulate inactivity under the Commerce Clause. Second, as the U.S. Supreme Court ruled in *New York v United States* (1992), Congress does not have the authority to penalize certain individuals – in this case, individuals who don't buy health insurance – and then call it a “tax” under Congress' taxing power.

The Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment would make ObamaCare even more constitutionally vulnerable. Objections that these measures would be trumped by the Supremacy Clause are unfounded. As affirmed recently by the U.S. Supreme Court in *Gonzalez v Oregon* (2006), states may go above and beyond the federal government in protecting individual rights, especially as related to health care choices. Enacting the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment would allow Kansas to pursue this kind of additional constitutional challenge – which is not present in any of the current lawsuits against ObamaCare – and would provide the state with an additional layer of legal protection if the current lawsuits fail.

There are a few misconceptions about the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment. Some say the measures would block all federal health reform, which is not true. The Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment would not attempt to block any part of federal health “reform” except for the individual and employer mandates. Citizens can still participate in a public option, the health insurance exchanges, and the Medicaid expansion. They just can't be forced into those choices.

Another misconception is that the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment would exacerbate the “free rider” problem. But the problem is that free riders will continue to show up in the emergency room (ER) with or without a requirement to purchase health insurance. Massachusetts, which has had an individual and employer mandate in place since 2006, has seen their ER usage jump by 17% after the mandate took effect. And even if a mandate did solve the “free rider” problem, we would still be paying for the newly-insured with subsidies to purchase the required insurance. Under the new federal law, a low-income family of four will qualify for more than \$20,000 in government subsidies through the new health insurance exchanges.

Lawmakers cannot artificially create a growing demand for care without other policies to encourage healthcare supply. And those reforms can be achieved without a bureaucratic, ineffective, and costly requirement to purchase health coverage.

ALEC applauds the Kansas Health Care Freedom Act and the Kansas Health Care Freedom Amendment because they ensure that the cornerstone of any reform is the preservation and protection of patients' rights. We look forward to working with the Kansas Legislature in the weeks ahead to develop this proposal.

There was no neutral or opposition testimony presented.

The Chair gave committee members the opportunity to ask questions and when all were answered, the hearing was closed.

The next meeting is scheduled for February 3, at which time the Chair plans to work both **HB 2129** and **HCR 5007**.

The meeting was adjourned at 3:20 p.m.