SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2520

As Recommended by House Committee on Health and Human Services

Brief*

HB 2520 would allow Kansas to join the Interstate Health Care Compact. The purpose of the Compact would be (a) to secure the right of Compact Member States to regulate health care within their boundaries, and (b) to secure federal funding for Member States that choose to invoke their authority under the funding provisions of the Compact. The U.S. Congress would have to consent to the Compact in order for it to be effective. If approved by Congress, the Compact would become effective on its adoption by at least two Member States. Pursuant to the bill, the Compact could be amended, and a state would be able to withdraw from the Compact.

The bill contains a preamble that includes statements on the importance of the separation of powers, including between federal and state authority, and the preservation of individual liberty and personal control over health care decisions. The bill then would establish the nine articles of the Compact, as follows:

Article I – Definitions

A number of terms would be defined, including the following:

- "Health Care" would include care, services, supplies, or plans related to an individual's health, with further detail specified in the bill. The

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

definition would exclude any care, services, supplies, or plans provided by the U.S. Department of Defense and the U.S. Department of Veterans Affairs, as well as those provided to Native Americans.

- A number of definitions related to a state's funding level. These would be used in Article V and would include "Member State Base Funding Level," which would mean a number equal to the total federal spending on Health Care in the Member State during federal fiscal year 2010. For Kansas, the preliminary estimate would be set at $6.985 billion. A number of other terms also would use the 2010 federal fiscal year as a base. (See Article V, below, for the application of several of the defined terms.)

Article II – Pledge

This Compact provision would require Member States (those states who sign and adopt the Compact) to take action to secure the consent of the U.S. Congress to return the authority to regulate health care to the Member States, consistent with the Compact's provisions. Article II also would require Member States to improve health care policy within their respective jurisdictions, according to each state's discretion.

Article III – Legislative Power

This provision would grant Member States' legislatures the primary responsibility to regulate health care in their respective states.

Article IV – State Control

Article IV would grant each Member State the authority to suspend by legislation the operation of all federal laws,

rules, regulations, and orders regarding health care that are inconsistent with the those adopted by the Member State based on the Compact. Those federal provisions that are not suspended would remain in effect, and the Member State in question would be responsible for the associated funding obligations.

Article V – Funding

The following provisions would be set forth:

- Each Member State would be granted the right to federal monies each federal fiscal year up to an amount equal to its "Member State Current Year Funding Level" (defined in Article I as the "Member State Base Funding Level" multiplied by the "Member State Current Year Population Adjustment Factor" and further multiplied by the "Current Year Inflation Adjustment Factor." This funding would come from Congress as mandatory spending and would not be subject to annual appropriation. It would not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

- Congress would be required to establish, by the start of each federal fiscal year, an initial "Member State Current Year Funding Level" based upon reasonable estimates. The final "Member State Current Year Funding Level" must be calculated, and funding must be reconciled by Congress based on information provided by the Member State and audited by the U.S. Government Accountability Office.

Article VI – Interstate Advisory Health Care Commission

This article would establish the Interstate Advisory Health Care Commission, set its membership to include not

more than two members from each Member State in a process to be determined by the Member State, authorize it to elect a chairperson from its membership and adopt bylaws and policies, and require it to meet at least once a year. Further, the Commission would be:

- Authorized to study health care regulation issues that are of concern to the Member States and make non-binding recommendations to the Member States; and

- Required to gather information to assist the Member States in their regulation of health care, with some detail specified in the bill, and make this information available to the Member States' legislatures. Member States would be prohibited from disclosing health information of any individual to the Commission, and the Commission likewise would be prohibited from disclosing an individual's health information.

The bill would require the Commission to be funded by the Member States, and it would prohibit the Commission from taking any action within a Member State that contravenes any state law in that state.

Article VII – Congressional Consent

This article would deem the Compact effective upon its adoption by at least two Member States and consent of Congress. The article also would set forth the purposes of the Compact and state the Compact is effective unless the Congress, in consenting to the Compact, alters its fundamental purposes. Those purposes are:

- To secure the right of the Member States to regulate health care within their boundaries pursuant to the Compact and to suspend the

operation of any conflicting federal laws, rules, regulations, and orders within their states; and

- To secure federal funding for Member States that choose to invoke their authority under Article V of the Compact.

Articles VIII and IX

These articles provide for mechanisms to amend the Compact and for a state to withdraw from the Compact. For withdrawal, the bill would allow a state to adopt a law to this effect; however, the law would not take effect until six months after the Governor has given notice of the withdrawal to the other Member States.

Background

At the hearing before the House Committee on Health and Human Services, proponents of the bill included John Federico, Federico Consulting, for the Health Care Compact Alliance, a representative of the Health Care Compact Alliance, and a Kansas resident and business owner. The proponents indicated the bill was for the purpose of health care governance and not policy reform. Opponents included a representative of the Kansas chapter of the American Association of Retired Persons and a private citizen. Opponents noted concerns that passage of the bill might put a number of Kansas citizens at risk, and that other states, such as Arizona and Montana, had vetoed their Compact bills.

According to the fiscal note, the fiscal effect has yet to be determined. At the time of the fiscal note's publication, the Kansas Department of Health and Environment had not yet provided fiscal information. However, the fiscal note stated, "If two Member States were to adopt the Interstate Health Care Compact and the United States Congress consents to its creation, Kansas would continue to receive federal

monies and Medicaid Program expenditures could change." Similarly, the fiscal effect of the identical Compact bill before the Senate (2012 SB 373) has not yet been determined.