

Regular Session, 2010

SENATE BILL NO.

BY SENATOR CROWE

HEALTH CARE. Prohibits state or local governmental coercion of any Louisiana employer, health care provider, or individual to compel participation in any health care system or health insurance plan. (8/15/10)

1 AN ACT

2 To enact R.S. 22:971.2, relative to preserving the freedom of all citizens of Louisiana to
3 provide for their own health care; to provide that no law or rule shall compel, directly
4 or indirectly, any person, employer or health care provider to participate in any
5 health care system or health insurance plan; to provide for legislative intent; to
6 provide criminal penalties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:971.2 is hereby enacted to read as follows:

9 **§971.2. Health care freedom**

10 **A. Legislative findings and intent.**

11 **The Louisiana Legislature hereby declares the following:**

12 **(1) The United States Congress is considering legislation which, if**
13 **passed, would require Louisiana to expand the income limits for the Medicaid**
14 **program and would, thereby, negatively impact the state general fund.**

15 **(2) The Supreme Court of the United States in Printz v. United States,**
16 **117 S.Ct. 2365, 521 U.S. 898, 138 L.Ed.2d 914 (1997), has declared that states**
17 **cannot be required by the federal government to provide services which are not**

1 compensated by the federal government.

2 (3) R.S. 40:1299.34.5 prohibits any public funds made available to any
3 institution, board, commission, department, agency, official, or employee of the
4 state of Louisiana, or any political subdivision thereof, whether such funds are
5 made available by the government of the United States, to pay for elective
6 abortions, except in certain limited cases.

7 (4) Proposed federal mandates would require Louisiana taxpayers to
8 pay for or subsidize all elective abortions and would be in conflict with state
9 law.

10 (5) To coerce individuals to enter into contracts with private companies,
11 particularly health insurers, would go beyond the authority of the Commerce
12 Clause in Article I, Section 8, of the Constitution of the United States of
13 America and, therefore, be unconstitutional.

14 (6) To require the citizens of Louisiana to pay for certain federally
15 mandated services while exempting the taxpayers of certain other states is a
16 violation of the Equal Protection Clause in the Fourteenth Amendment of the
17 Constitution of the United States of America.

18 (7) The Tenth Amendment of the Constitution of the United States of
19 America declares that "The powers not delegated to the United States by the
20 Constitution, nor prohibited by it to the states, are reserved to the states
21 respectively, or to the people." Issues regarding health care and health
22 insurance were never delegated to the federal government by the states and,
23 thus, are reserved to the states.

24 B. Prohibitions from mandated coverage; exemptions from payment of
25 penalties.

26 (1) No law or rule shall compel, directly or indirectly, any person,
27 employer or health care provider to participate in any health care system or
28 health insurance plan.

29 (2) An individual or employer may pay directly for lawful health care

1 services and shall not be required to pay penalties or fines for paying directly
2 for lawful health care services.

3 (3) Except as provided in Paragraph (2) of Subsection (D) of this
4 Section, no health care provider shall be required to pay penalties or fines for
5 accepting direct payment from a person or employer for lawful health care
6 services.

7 C. Right to purchase private health insurance; freedom to contract

8 (1) The purchase or sale of private health insurance from a private
9 health care system shall not be prohibited by law or rule.

10 (2) A health care provider may accept or refuse to participate in any
11 health care program or health care insurance plan operated by any government
12 entity and shall not be compelled to do so as a condition of licensure.

13 D. Exemptions.

14 This Section does not affect and shall have no impact on any of the
15 following:

16 (1) Emergency health care services a health care provider or hospital is
17 mandated to perform in 42 U.S.C.A. § 1395dd.

18 (2) Provider contracts, whether negotiated by private insurance
19 companies, Medicare or Medicaid, which prohibit providers from accepting
20 payments which are in excess of those allowed by the provider contracts.

21 (3) Health care services which are otherwise not permitted by law.

22 (4) Medical care provided pursuant to Title 23 of the Louisiana Revised
23 Statutes of 1950, or any statute enacted by the legislature relating to workers'
24 compensation.

25 E. Definitions.

26 As used in this Section, the following terms shall have the following
27 meanings:

28 (1) "Compel" means any action by government which coerces an
29 individual to participate in any health care system or health insurance plan and

1 for which the failure to comply will result in penalties or fines.

2 (2) "Direct payment" or "pay directly" means payment for lawful
3 health care services which are paid by any individual or employer other than
4 a government entity or private third party, private health plan.

5 (3) "Health care system" means any public or private entity whose
6 function or purpose is the management and enrollment of individuals for
7 payment, in full or in part, for health care services, health care data, or health
8 care information for its participants.

9 (4) "Lawful health care services" means any health related service or
10 treatment to the extent that the service or treatment is permitted or not
11 prohibited by law that may be provided by persons or businesses licensed or
12 permitted to offer such services.

13 (5) "Medicaid" means the program provided for in Subchapter XIX of
14 Chapter 7 of Title 42 of the United States Code which program provides federal
15 grants to the states for the purpose of providing health services to certain low
16 income individuals.

17 (6) "Medicare" means the federal health insurance program provided
18 for in Subchapter XVIII of Chapter 7 of Title 42 of the United States Code.

19 (7) "Penalties and fines" means any civil or criminal penalty or fine, tax,
20 salary or wage withholding or surcharge or any named fee with a similar effect
21 established by law or rule by a government established, created or controlled
22 agency that is used to punish or discourage the exercise of rights protected
23 under this Section.

24 E. Penalties.

25 Any institution, board, commission, department, agency, official, or
26 employee of the state of Louisiana, or of any political subdivision thereof, who
27 coerces, or attempts to coerce, any individual to purchase health insurance or
28 to participate in a particular health system shall be guilty of a misdemeanor
29 and shall be subject to a fine of not more than five hundred dollars or to being

1 **incarcerated for not more than five days.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law provides that individuals may purchase private insurance.

Present law provides that certain low income children and adults may participate in the Medicaid program, which is operated by the state in conjunction with a federal grant covering a portion of the cost of the program.

Proposed law provides the following legislative findings:

- A. Congress is attempting to enact proposed legislation which, if passed, would require Louisiana to expand the income limits for the medicaid program and would, thereby, negatively impact the state general fund.
- B. The U.S. Supreme Court in *Printz v. United States*, 117 S.Ct. 2365, 521 U.S. 898, 138 L.Ed.2d 914 (1997), has declared that states cannot be required by the federal government to provide services which are not compensated for by the federal government.
- C. Louisiana law prohibits any public funds made available to any institution, board, commission, department, agency, official, or employee of the state, or any political subdivision thereof, whether such funds are made available by the U.S. government, to pay for elective abortions, except in certain limited cases.
- D. Proposed federal mandates would require Louisiana taxpayers to pay for or subsidize all elective abortions and would be in conflict with state law.
- E. To coerce individuals to enter into contracts with private companies, particularly health insurers, would go beyond the authority of the Commerce Clause in Article I, Section 8, of the U.S. Constitution and, therefore, be unconstitutional.
- F. To require the citizens of Louisiana to pay for certain federally mandated services while exempting the taxpayers of certain other states is a violation of the Equal Protection Clause in the Fourteenth Amendment of the U.S. Constitution.
- G. The Tenth Amendment of the U.S. Constitution states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Issues regarding health care and health insurance were never delegated to the federal government by the states and, thus, are reserved to the states.

Proposed law provides that no law or rule shall compel, directly or indirectly, any person, employer or health care provider to participate in any health care system or health insurance plan.

Proposed law provides that an individual 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.

Proposed law provides that a health care provider shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services,

unless the health care provider has entered into a provider agreement with Medicare, Medicaid or a private insurance company, thereby limiting the amounts that can be charged to for services rendered to the patient.

Proposed law provides that a health care provider may accept or refuse to participate in any health care program or health care insurance plan operated by any government entity and shall not be compelled to do so as a condition of licensure.

Proposed law provides that it does not affect and shall have no impact on any of the following:

- A. Emergency health care services a health care provider or hospital is mandated to perform in the federal statute known as the "Examination and treatment for emergency medical conditions and women in Labor" which requires hospitals accepting Medicaid and Medicare payments to treat emergency medical conditions and pregnant women in labor, regardless of the patient's ability to pay.
- B. Provider contracts, whether negotiated by private insurance companies, Medicare or Medicaid, which prohibit providers from accepting payments which are in excess of those allowed by the provider contracts.
- C. Health care services which are otherwise not permitted by law.
- D. Medical care provided pursuant to laws related to worker's compensation which requires employers to provide health care for injured workers.

Proposed law provides for the following definitions:

- (1) "Compel" means any action by government which coerces an individual to participate in any health care system or health insurance plan and for which the failure to comply will result in penalties or fines.
- (2) "Direct payment" or "pay directly" means payment for lawful health care services which are paid by any person or entity other than a government entity or private third party, private health plan.
- (3) "Health care system" means any public or private entity whose function or purpose is the management and enrollment of individuals for payment, in full or in part, for health care services, health care data, or health care information for its participants.
- (4) "Lawful health care services" means any health related service or treatment to the extent that the service or treatment is permitted or not prohibited by law that may be provided by persons or business licenced or permitted to offer such services.
- (5) "Medicaid" means the program provided for in Subchapter XIX of Chapter 7 of Title 42 of the United States Code which program provides federal grants to the states for the purpose of providing health services to certain low income individuals.
- (6) "Medicare" means the federal health insurance program provided for in Subchapter XVIII of Chapter 7 of Title 42 of the United States Code.
- (7) "Penalties and fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created or controlled agency that is used to punish or discourage the exercise of rights protected under this Section.

Proposed law provides that any state or local institution, board, commission, department, agency, official or employee who coerces, or attempts to coerce, any individual to purchase

health insurance or to participate in a particular health system shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or to being incarcerated not more than five days.

Effective August 15, 2010.

(Adds R.S. 22:971.2)