Health Care Compact

HB 264 – Delegate Christopher K. Peace

Presented to the:

Joint Commission on Health Care

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Stephen W. Bowman
Senior Staff Attorney/Methodologist

Informational Study

Agenda

- Background
- Compacts Defined
- HCC Adoption in other States
- Health Care Compact (HCC)
- Remaining Questions

Background: House Bill 264 (Delegate Peace)

- HB 264 would establish the Interstate Health Care Compact (as *Code of Virginia,* Title 32.1, Chapter 17) to allow Virginia to join other member states in:
  - Regulating health care within state borders,
  - Suspending "the operation of any conflicting federal laws, rules, regulations, and orders within their states," and
  - Securing federal funding.
- HB 264 was continued in the House Rules Committee until 2013
- Delegate Peace requested that JCHC study the issue of joining the Interstate Health Care Compact

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What is a Compact?*

- "The U.S. Constitution (Article 1, Section 10) grants states the right to enter into agreements with other states for their common benefit."
- Compacts can "address common problems among states, such as border disputes, creating governmental commissions and establishing common guidelines for agencies in the member states."
- "Any compact that increases the political power of the member states must be approved by Congress."

Approximately 215 compacts are currently in force (2011)

Sources: National Conference of State Legislatures (NCSL) website, *Some States Pursue Health Care Compacts* at http://www.ncsl.org/issues-research/health/affordable-care-act-state-action-newsletter-11.aspx#Some
(* Compact explanation is verbatim from NCSL website) and Council of State Governments, *The Evolution of Interstate Compacts* at http://knowledgecenter.csg.org/drupal/content/evolution-interstate-compacts.

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Virginia Has Entered Into Over 50 Compacts

Examples of Compacts which Virginia Has Entered

Transportation

- Metropolitan Washington Airports Authority
- Woodrow Wilson Bridge and Tunnel Compact

Corrections and Crime

- Agreement on Detainers
- Interstate Compact for Juveniles
- Interstate Corrections Compact
- National Guard Mutual Assistance Counter-Drug Activities Compact

Boundaries

- Maryland and Virginia Boundary Agreement of 1785
- Virginia and West Virginia Boundary Agreement of 1863
- Virginia-Kentucky Boundary Compact
- Virginia-Maryland Boundary Agreement of 1878
- Virginia-North Carolina Boundary Agreement of 1791
- Virginia-Tennessee Boundary Agreement

Gaming

- Licensure of Participants in Horse Racing with Pari-Mutual Wagering

Sources: National Center for Interstate Compacts *at* http://apps.csg.org/ncic/ and *Code of Virginia* § 59.1-394.1. Live Horseracing Compact.

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Compacts Are Contracts, But More

- Compacts are "binding legal documents between member states that set forth certain terms and conditions, which must be construed and applied in accordance with the intent of the agreements…."
  - Intertwine considerations of contract law and statutory interpretation
  - "Contract principles generally inform and control the interpretation and remedies available in event of breach…."
- For compacts needing Congressional consent, Congress may modify the terms of the compact
  - U.S. Supreme Court: "The states who are parties to the compact by accepting it and acting under it assume the conditions that Congress under the Constitution attached." Petty v. Tennessee–Missouri Bridge Commission, 359 U.S. 275 (1959)

Source: Caroline Broun, et al., The Evolving Use and the Changing Role of Interstate Compacts: A Practitioner's Guide, American Bar Association, 2006.

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Overview: The Health Care Compact

- There is one "Health Care Compact" (HCC) to which states may join
  - A state is required to accept all obligations and responsibilities within the HCC
  - States may join over time
- HCC has not been introduced in Congress
  - Congressional consent is needed for the HCC to become operational

Note: The HCC has "no legal relation to compacts that are authorized by the Affordable Care Act, which include 'regional health compacts' (Sec. 1331) or 'health care choice compacts' for 2 or more states to offer insurance policies (Sec. 1333)."

Sources: Health Care Compact website at http://healthcarecompact.org/compact and "Note" is verbatim from NCSL website at http://www.ncsl.org/issues-research/health/affordable-care-act-state-action-newsletter-11.aspx#Some.

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Overview: The Health Care Compact (continued)

- HCC seeks to transfer primary responsibility to state governments for two health care areas:
  1. Policy
  2. Funding
- Each state would have primary responsibility for all health care regulation, administration, and government funding decisions

Sources: Health Care Compact website at http://healthcarecompact.org/compact.

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25 States Have Considered Joining the Health Care Compact

- 7 states enacted the HCC legislation
  - Georgia, Missouri, Oklahoma, Texas (2011)
  - Indiana, South Carolina, Utah (2012)
- 2 Governors vetoed HCC legislation
  - Governor Brewer in Arizona (2011)
  - Governor Schweitzer in Montana (2011)
- 16 states considered HCC legislation that was not enrolled (2011 & 2012)
  - Alabama, Colorado, Florida, Kansas, Louisiana, Michigan, Minnesota, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Virginia, Washington, and West Virginia.

Source: National Conference of State Legislatures (NCSL) website, *Some States Pursue Health Care Compacts* at http://www.ncsl.org/issues-research/health/affordable-care-act-state-action-newsletter-11.aspx#Some

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Health Care Compact Requirements

Pledge: Member states agree to work together to pass this Compact, and to improve the health care in their respective states.

State Control: In member states, states can suspend federal health care regulations. Federal and state health care laws, rules, regulations, and orders remain in force until the state enacts superseding laws or regulations.

Legislative Power: "Member states have primary responsibility to regulate health care in their respective states."

- Excludes "care, services, supplies, or plans provided by the U.S. Department of Defense and U.S. Department of Veterans Affairs, or provided to Native Americans"

Commission: An advisory commission is created to gather and publish health care cost data, study various health care issues, and make non-binding recommendations to member states. "The Commission may not take any action within a member state that contravenes any State law of the Member State."

Source: Health Care Compact website at http://healthcarecompact.org/compact and February 23, 2011 version of The Health Care Compact Sec. 6. (f).

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Health Care Compact Requirements

Funding: Member states get an amount of money from the federal government each year to pay for health care. The funding is mandatory spending, and not subject to annual appropriations. Each state's funding is based on the federal funds spent in their state on health care in 2010. This funding level will be adjusted annually for changes in population and inflation.

Congressional Consent: Compact becomes effective upon adoption by two or more member states and approval by the U.S. Congress.

Amendments: Member states can amend this Compact with approval of the members, and no further Congressional consent is needed.

Withdrawal: Any member state can withdraw from this Compact at any time by adopting a law to that effect.

- Member state must provide 6-month notice before withdrawal can become effective.

Source: Health Care Compact website at http://healthcarecompact.org/compact.

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HCC Would Provide Member States Primary Responsibility for Health Care

Member states would have primary responsibility for **all health care** regulation, administration, and government funding decisions

- Except for health care administered by "the U.S. Department of Defense and the U.S. Department of Veterans Affairs, or provided to Native Americans."

HB 264 defines "health care" as "care, services, supplies, and plans related to the health of the individual and includes but is not limited to:

i. the preventative, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, assessment, services, or procedures with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body;

ii. the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription; and

iii. the provision of or payment of the costs of care, services, or supplies related to the health of an individual pursuant to an individual or group plan."

Member states may choose to leave current federal health care laws in force.

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Examples: Health Care Areas and Laws that States Potentially Could Regulate Under the HCC

Pharmaceuticals and Medical Devices

Regulation of market access to drugs and medical devices

Advertising and labeling of prescription and non-prescription drugs

Hospitals, Facilities and Medical Staff

Emergency Medical Treatment and Active Labor Act (EMTALA)

Hospitals' conditions of participation to receive Medicare and Medicaid monies

Health Information Security and Privacy

HIPAA: Allowable uses for health information

Requirements regarding personal health information breaches

Source: JCHC analysis using Mercatus Policy Series, Federal Health Care Regulation at http://mercatus.org/publication/federal-health-care-regulation(2006).

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Examples: Health Care Areas and Laws that States Potentially Could Regulate Under the HCC (Cont'd)

Government Health Care Financing

Medicare: 1.2 million Virginians (2011)

- Part A – In-patient hospital care
- Part B – Physician and outpatient care
- Part C – Private health plans for Part A and B services
- Part D – Prescription drug benefit

Medicaid: 945,000 Virginians (2009)

- Medical care
- Long-term care

State Children's Health Insurance Program

- Family Access to Medical Insurance Security (FAMIS)

Sources: Kaiser Family Foundation's State Health Facts at http://www.statehealthfacts.org/profileind.jsp?cat=6&sub=74&rgn=48 & http://www.statehealthfacts.org/profileind.jsp?ind=198&cat=4&rgn=48

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Examples: Health Care Areas and Laws that States Potentially Could Regulate Under the HCC (Cont'd)

Private Health Insurance

Patient Protection and Affordable Care Act (PPACA)

Individual and group policies

Health Maintenance Organizations (HMOs)

COBRA benefits (Consolidated Omnibus Budget Reconciliation Act)

Mental Health Parity Act

HIPAA limits on use of pre-existing exclusion period

Employee Benefit Plans that are insurance (ERISA)

- might exclude self-funded plans

Note: HCC does not enumerate any authority regarding federal taxation policy, including pre-tax treatment of health related care.

Source: JCHC analysis using Mercatus Policy Series, Federal Health Care Regulation at http://mercatus.org/publication/federal-health-care-regulation (2006)

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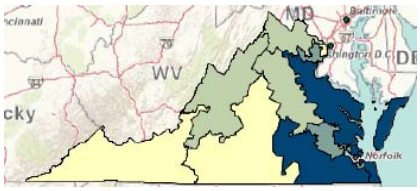
HCC Excludes Military Health Care Services

- HCC ***does not*** apply to health care, services, supplies, or plans provided by U.S. Departments of Defense or Veterans Affairs

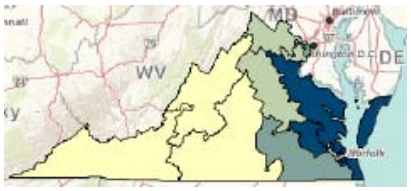
Civilian Veterans in Virginia
(737,000 in 2010)



Civilian Veterans by Congressional District

51,000 – 58,000
58,001 – 65,000
65,001 – 75,000
75,001 – 94.000

Active Duty Military in Virginia
(131,000 in 2010)



Active Duty Military by Congressional District

350 – 900
901 – 11,000
11,001 – 20,000
20,001 – 43,000

Sources: U.S. Census, Selected Social and Economic Characteristics in the United States 2008-2010 American Community Survey 3-Year Estimates and . Maps created by U.S. Census Factfinder using 2011 Congressional districts in quartiles.

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State Funding Obligations and Formula

- Obligation: State accepts all responsibility for funding obligations for any federal or state laws that remain in effect after passage of HCC by Congress
  - Would include Medicare & Medicaid programs and any other federal health care funding obligations if such programs were not superseded by state law
  - *HB 264: Art III(C) "A member state shall be responsible for the associated funding obligation in that state for any federal law, rule, regulation, or order that remains in effect in that member state after the effective date of this compact."*
- Initial base funding level is binding on member state

Funding Formula: Base funding x Inflation adjustment x Population adjustment

- *Base funding level: Total federal health care spending in Virginia during 2010 federal fiscal year*
  - *HCC Alliance Virginia estimate = $15.3 billion*
- *Factor 1 - Inflation adjustment: Current year gross domestic product (GDP) deflator ÷ 2010 GDP deflator* (GDP will be determined by the U.S. Bureau of Economic Analysis)
- *Factor 2 - Population adjustment: (Current population – 2010 population) ÷ 2010 population* (Population will be determined by the U.S. Census Bureau)

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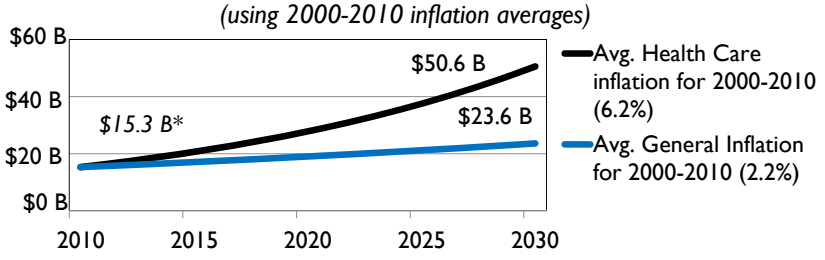
Factor 1: HCC Funding Formula Uses General Inflation

Illustration: General vs. Health Care Inflation

(using 2000-2010 inflation averages)



*Note: HCC Alliance estimates Virginia's 2010 base funding level =$15.3 billion

By indexing to general inflation, the states have a strong incentive to spend efficiently, and stretch their health care dollars; and when they find lower cost ways to deliver services, they can cause declining health care inflation.

- Eric O'Keefe, Chairman of HCC Alliance

Source: EconStats, World Economic Outlook data, IMPForum, http://www.econstats.com/weo/CUSA.htm , CMS Office of the Actuary, National Health Expenditures https://and JCHC staff email correspondence with Eric O'Keefe July 31, 2012..

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Factor 2: HCC Funding Formula Does Not Incorporate an Adjustment for an Aging Population

- Virginians over 65 years of age
  - 2010 –1 million
  - 2030 – 1.8 million
- Elderly accounted for 13% of the population but consumed 36% of total U.S. personal health care expenses (2002).

Source: (Inflation computations completed by JCHC staff), U.S Census Bureau http://www.census.gov/population/www/projections/projectionsagesex.html, Agency for Health Care Research and Quality, The High Concentration of U.S. Health Care Expenditures, , http://www.ahrq.gov/research/ria19/expendria.htm,

Examples: Federal Health Care Funding to Virginia

Virginia Agency		FY 2013 est.
Dept. for the Aging (health related)	$	8,327,562
DBHDS (Dept. of Behavioral Health and Developmental Services)	$	8,851,748
VDH	$	98,225,503
DMAS	$	3,891,053,592
Medical Assistance Program	$	*3,704,387,049*
Money Follows The Person Demonstration	$	*8,500,000*
State Children's Insurance Program (SCHIP)	$	*177,066,543*
Other programs	$	*1,100,000*
Other Agencies	$	12,067,813
Federal Health Care Funding to Virginia*	**$**	**4.2 billion**

Medicare Expenditures in Virginia (2009)	**$**	**9.7 billion**

*Note: JCHC staff analyzed non-general revenue projections for health related programs provided by agencies to the Department of Planning and Budget within the Health and Human Resources area. JCHC analysis of health related programs may or may not match any federal determination of whether program funding would be eliminated if Virginia received funding through the HCC.
Source: Centers for Medicare and Medicaid Services, National Health Expenditure Report, Health expenditures by state of residence: Summary Tables, 1991-2009 at http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/res-tables.pdf.

Remaining Legal, Policy and Funding Questions

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HCC Legal Questions

1. Will Congress pass the HCC?
2. What specific provisions and language would be included in a Congressionally passed compact?
   - Would state powers or responsibilities change from existing HCC language?
   - What state funding amounts would be included?
3. What state actions would be required to accept a compact as passed by Congress?
4. How quickly conflicts of HCC interpretation would be resolved administratively and in federal courts?

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HCC Policy Questions

5. If the HCC is enacted, what federal laws, regulations, or programs would be changed to improve the administration of health care in Virginia? How would any changes be implemented?

6. Would Virginia manage health care benefits for Medicare beneficiaries in a more efficient and effective manner than the federally-run Medicare program?

7. Does Virginia have the infrastructure necessary to administer a State-based Medicare program?

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HCC Funding Questions

8. What would be Virginia's base funding level?
9. How would general inflation compare to health care inflation over time?
10. What would be the financial impact on Virginia's budget for assuming responsibility for funding health-related services in the Commonwealth?
    - Possible examples include health care for Virginians that may be low-income, aged, blind, disabled, or in need of in-home care or nursing facility care.
11. Would the federal government continue funding some health-related programs or would that be included in the HCC funding allotment?
    - Examples include: public health activities, communicable disease surveillance and epidemiology, AIDS Drug Assistance Program, and health-related grants to states.

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