

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on February 3, 2011 in Room 784 of the Docking State Office Building.

All members were present.

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:

None

Others attending:

See attached list.

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

Chairperson Landwehr proceeded to work **HCR 5007**.

Representative Denning made a motion to make an amendment to the resolution. It would add the words “nor prohibited from gaining state medical licensure” after the word “fines” on line 21 of the resolution. A copy of the amendment (Attachment 1) was provided to the committee members. The motion was seconded by Representative Bollier.

Representative Ward raised a concern about the two freedom of health care bills being worked when they were listed on the agenda as an informational hearing. Representative Landwehr explained that when she verbally announced the hearing on the House floor, that she made it clear the language of the bill was the same as last year. We did not have a statutory piece last year so that was a new item. Because of some of the time constraints of the Revisors, both with the computer system and the tight calendar, she visited with the Revisors and was informed she could do an informational hearing, seeing as she would not have a number until the later part of the week for the bill, and that it would suffice as the hearing. When she opened up the meeting on Monday, she opened it up as a hearing with the bill numbers and then she closed the hearing upon adjournment of the meeting.

Representative Ward explained he did not think those in opposition had been given ample time to express their concerns and there was confusion concerning the informational hearing versus a normal hearing. The Chair responded it had the same name as the constitutional amendment last year; it was well stated in a number of newspapers that the health care freedom act was coming back; and there was only one opponent last year, Senator David Haley. Normally, when people hear there is a bill out there, they will call to indicate their interest in testifying. She stated she believes the public had ample time and notice about the bill coming back again.

Representative Denning closed on the amendment. The motion carried.

Representative Trimmer made a motion to make an amendment to the resolution as outlined in (Attachment 2). He stated the reason he is making the amendment is because all this constitutional amendment does is continue to allow the same right that you already have to purchase health insurance. It does not protect us from unwanted federal intrusion. Voting no does not leave you open to that federal intrusion. He indicated he has a long list of constitutional professors who have indicated the states do not have the right to nullify a federal law through their constitutions. There have been over one hundred years of precedent to establish that, including pre-Civil War precedent. The Florida law that was going to be put on the ballot was struck down by the Florida Supreme Court because the explainer in their law was misleading to the voters. It gave them the false sense of perception that they would be protected from federal intervention. He stated he did not want to tread on people's beliefs that we should have freedoms or their belief that the federal health care system might be wrong.

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It's their right to believe that. He said what he's saying is that if we tell the voters of Kansas that they're going to be protected by this constitutional amendment, we're not telling them the truth, because in every single court case since before the Civil War, courts have not been able to nullify federal law with a state constitution. The Supreme Court and the current court suit over the health care system will decide that issue on the basis of the federal constitution and their interpretation of that and not on what the state constitutions say. That is why this constitutional amendment will do nothing more than mislead the voters of Kansas. He realizes there's a good chance of this constitutional amendment passing. But, if we put an explainer in there that tells people this will protect their right and it doesn't, then they'll be asking questions as to why are we still under a federal system if that's held constitutional. And this is why he took out the language that says they'll be protected from unwanted federal intrusion. The motion was seconded by Representative Flaherty.

Representative Mast indicated this is something she cares very passionately about. Acknowledging the fact that the majority of our citizens seem to be opposed to the federal mandate that has come down, and the fact we are sent here to represent the majority of our constituents who are saying they think the federal government has stepped over the boundaries of the freedoms that were intended by our founding fathers, plus the fact that she agrees with their position and is in favor of protecting them from a lot more federal government control than was ever intended, she stated her opposition to the Trimmer amendment.

Representative Mah stated passion is good but lying is bad. She thinks Representative Mast is right in that most folks believe they do not like the federal health care bill but she thinks to tell them that they get to vote on it is a lie. What are we going to do if the Supreme Court finds the law constitutional, we put in our constitution they're protected from it and they wind up being fined, what are we going to do? Representative Mah stated she supports the Trimmer amendment.

Representative Donohoe stated he thinks it can be sufficiently explained to the voters that this is an opportunity to vote, with the understanding we don't know where this thing is going to end up. He thinks we need to be on record and give the people the opportunity to vote on the issue.

Chairperson Landwehr responded to the statement that the language is a lie. The entire health care bill is being written each day since the details were not spelled out exactly in the bill. She sees a lot of lies in the language that was in the bill and she hears a lot of lies about what the bill will do and what the bill will not do. One of the biggest ones is that people will not lose their current insurance. The lie there is they will lose their current insurance because they won't qualify. There are lot of exemptions being given. One of the most disturbing lies is the increased expense to seniors. Seniors will lose their choice of a Medicare Advantage Plan. For those of you who don't know what a Medicare Advantage Plan is, or the benefit it provides a senior, it provides them choice to decide what insurance plan they want, and until this year, it had no premium but did have a higher deductible. This year the federal government decided to put a premium on it and reduce some of the co-pays. When the Medicare Advantage Plans go away completely, seniors on fixed income, will see an increase of hundreds of dollars per month for Medicare insurance. Representative Landwehr stated she takes a direct affront to the statement that the language she supported in the amendment is a lie.

Representative Trimmer stated it was not his intent to call anyone a liar. He stated his point is simply that constitutional scholars from pre-Civil War time and the Supreme Courts of the United States have ruled that state constitutions cannot nullify federal law. If we tell people our state constitutional change will nullify federal law and they vote for it, then when they find out it's not true, the people will be upset and he is trying to protect the state from that situation.

Chairperson Landwehr commented there have been different situations where states have overridden federal law and gave the example of the issue of marijuana. There are states that have legalized marijuana but the federal law says it's illegal. States have rights and have sovereignty. If we did not, we would be under a dictatorship versus the government we were founded on and operate under today. The people can stand up to the federal government.

Representative Mah commented her statement about the bill being a lie was not intended to be personal. She was addressing the language of the bill and not the people who wrote it.

Representative Donohoe stated one of the things that's different with this law is the number of exemptions

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that have been given out. It brings up the point of how can you have a law when so many people have been exempted from having to comply with the law? Shouldn't the citizens of Kansas have the same opportunity to be exempted from the law?

Representative Ward stated federal government does have the ability to pass laws that supersede states and gave the example of air traffic control, civil rights, voting age and military service. He supports Representative Trimmer's motion in that it is absolutely clear that it is not permissible for states to nullify federal law and preempt it.

Representative Flaharty commented most of the discussion is about the relative merits of the national health care bill. The question today is not whether we like the bill or not but whether we have the right to nullify at a state level. Federal law is supreme over state law.

After additional discussion, Representative Trimmer closed on his amendment. The motion failed. Division was requested with the result of 12 in opposition and 5 in favor.

Representative Ward indicated he would be voting against the amendment because of he feels strongly about the nullification language.

Representative Mast made a motion to pass out HCR 5007 as amended. The motion was seconded by Representative Mosier. The motion carried. Representatives Flaharty, Trimmer and Winn requested their no votes to be recorded.

HB 2129 – Enacting the health care freedom act.

Chairperson Landwehr proceeded to work the bill.

Representative Mast made a motion to pass HB 2129. The motion was seconded by Representative Weber. The motion carried. Representative Flaharty requested her no vote to be recorded.

Chairperson Landwehr asked if there were any bill introductions.

Representative Mast made a motion to introduce a bill concerning a standard of practice for physical therapists. The motion was seconded by Representative Hermanson. The motion carried.

Representative Bethell made a motion to introduce a bill that would create a registered dental practitioner in Kansas at the mid-level. The motion was seconded by Representative Hermanson. The motion carried.

Representative Bethell made a motion to introduce a bill in the area of dental hygiene to remove the mandate of a scaling hygienist. The motion was seconded by Representative Hermanson. The motion carried.

The next meeting is scheduled for February 7, 2011.

The meeting was adjourned at 2:40 p.m.

DATE: 2-3-11

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House Concurrent Resolution No. 5007

By Representatives Landwehr, Mosier, Denning, Rubin, Alford, Arpke, Boman, Bruchman, Brunk, Calloway, Carlson, Cassidy, Collins, Crum, DeGraaf, Donohoe, Fawcett, Garber, Goico, Gonzalez, Goodman, Gordon, Gregory, Grosserode, Hayzlett, Hermanson, Hildabrand, Hoffman, M. Holmes, Howell, Huebert, Johnson, Kelley, Kerschen, Kiegerl, Kinzer, Kleeb, Mast, McLeland, Meigs, Mesa, Montgomery, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Powell, Prescott, Rhoades, Ryckman, Scapa, Schwartz, Seiwert, Siegfried, Smith, Suellentrop, Vickrey, Weber and B. Wolf

1-31

Proposed Amendments to HCR 5007

February 3, 2011

For Committee on Health and Human Services
Office of Revisor of Statutes

Health & Human Services

Date: 2-3-11

Attachment: 1

1 A PROPOSITION to amend the constitution of the state of Kansas by
2 adding a new article 16 thereto, concerning health care.

3 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
4 *members elected (or appointed) and qualified to the House of*
5 *Representatives and two-thirds of the members elected (or appointed)*
6 *and qualified to the Senate concurring therein:*

7 Section 1. The following proposition to amend the constitution of
8 the state of Kansas shall be submitted to the qualified electors of the state
9 for their approval or rejection: The constitution of the state of Kansas is
10 amended by adding a new article 16 thereto to read as follows:

11 "Article 16. – HEALTH CARE

12 "§1. Health care. (a) To preserve the freedom of Kansans to
13 provide for their health care:

14 "(1) A law or rule shall not compel, directly or indirectly, any
15 person, employer or health care provider to participate in any
16 health care system or purchase health insurance.

17 "(2) A person or employer may pay directly for lawful health
18 care services and shall not be required to pay penalties or fines for
19 paying directly for lawful health care services. A health care
20 provider may accept direct payment for lawful health care services
21 and shall not be required to pay penalties or fines, for accepting
22 direct payment from a person or employer for lawful health care
23 services.

24 "(b) Subject to reasonable and necessary rules that do not
25 substantially limit a person's options, the purchase or sale of
26 private health insurance or the participation in private health care
27 systems shall not be prohibited by law or rule.

28 "(c) This section does not:

29 "(1) Affect which health care services a health care provider
30 or hospital is required to perform or provide.

nor prohibited from gaining state medical licensure,

1 benefit programs; would not affect laws or rules in effect as of
2 August 1, 2009; or would not affect the terms or conditions of
3 any health care system to the extent that those terms and
4 conditions do not have the effect of punishing a person or
5 employer for paying directly for lawful health care services.
6 Nothing in this amendment is meant to discourage anyone from
7 purchasing health insurance.

8 "A vote for this proposition would preserve constitutionally the
9 right of a person, employer or health care provider to be free
10 from laws or rules compelling participation in any health care
11 system; preserve constitutionally the right of a person or
12 employer to purchase lawful health care services directly from a
13 health care provider; preserve constitutionally the right of a
14 health care provider to accept direct payment from a person or
15 employer for lawful health care services; and preserve
16 constitutionally the right to have the ability to purchase or sell
17 health insurance in private health care systems.

18 "A vote against this proposition would provide for no
19 constitutional right of a person, employer or health care
20 provider to be free from laws and rules compelling participation
21 in any health care system; would provide for no constitutional
22 right of a person or employer to purchase lawful health care
23 services directly from a health care provider; would provide for
24 no constitutional right of a health care provider to accept direct
25 payment from a person or employer for lawful health care
26 services; and would provide for no constitutional right to have
27 the ability to purchase or sell health insurance in private health
28 care systems."

29 Sec. 3. This resolution, if approved by two-thirds of the members
30 elected (or appointed) and qualified to the House of Representatives, and
31 two-thirds of the members elected (or appointed) and qualified to the
32 Senate shall be entered on the journals, together with the yeas and nays.
33 The secretary of state shall cause this resolution to be published as
34 provided by law and shall cause the proposed amendment to be submitted
35 to the electors of the state at the general election in November in the year
36 2012 unless a special election is called at a sooner date by concurrent
37 resolution of the legislature, in which case it shall be submitted to the
38 electors of the state at the special election.

Health & Human Services

Date: 2-3-11

Attachment: 2