

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (10-10)**

Subject

HB1764 with a referendum clause. (Received May 25, 2010)

Date

June 7, 2010

Description

This proposal would repeal Section 375.1175, RSMo, and enact in lieu thereof two new sections relating to insurance.

The proposal is to be voted on in August, 2010.

Public comments and other input

The State Auditor's Office requested input from the **Attorney General's Office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's Office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's Office**, the **Office of the State Public Defender**, the **Office of the State Treasurer**, **Boone County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **St. Louis County**, the **City of Jefferson**, the **City of Kansas City**, the **City of St. Louis**, the **City of Springfield**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Rockwood R-VI School District**, **Linn State Technical College**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**.

Senator Joan Bray provided information to the State Auditor's Office.

The Missouri Health Advocacy Alliance provided information to the State Auditor's Office.

Assumptions

The **Attorney General's Office** indicated they assume the costs of this proposal are unknown, but can be absorbed with existing resources.

The **Department of Economic Development** indicated this proposal would have no impact on their department.

The **Department of Higher Education** indicated that this bill would have no direct, foreseeable fiscal impact on their department.

The **Department of Insurance, Financial Institutions and Professional Registration** indicated the impact on the Department is unknown. If approved by the voters, this statutory change may have an unknown negative fiscal impact because the interaction of these state statutory changes with future federal government implementation, including federal regulations, is uncertain.

The Patient Protection and Affordable Care Act will provide federal funding for health care to Missourians. This funding includes, but is not limited to: Missouri's share of \$5 billion to provide health insurance coverage for Missourians with pre-existing medical conditions; Missouri's share of \$5 billion to establish a temporary reinsurance subsidy for Missouri businesses to continue to offer health insurance to early retirees; Missouri's share of \$30 million to provide health insurance consumer assistance and Missouri's share of \$250 million to establish meaningful health insurance rate review.

The **Department of Mental Health** indicated the impact on the Department is unknown.

If approved by the voters, this statutory change may have an unknown negative fiscal impact because the interaction of these state statutory changes with future federal government implementation, including federal regulations, is uncertain.

The Patient Protection and Affordable Care Act will provide federal funding to expand health care coverage to Missourians currently not insured by private or public insurance plans. This funding includes, but is not limited to:

1. An estimated \$21.4 billion from 2014 to 2023 to expand physical and mental health care coverage to thousands of currently uninsured Missourians, for example an individual whose income is at or below \$14,400 or a Missouri family of four whose income is at or below \$29,327;
2. In addition to general medical care, this coverage could include the following types of services for those who need them:
 - a. Early diagnosis and treatment for children with developmental disabilities, including children with Autism,

- b. Ongoing treatment for children and adults with serious, ongoing mental illnesses, and
- c. Treatment for children and adults affected by alcohol and other drug addictions.

The **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

The **Department of Corrections** indicated this proposal will have no impact on the department.

The **Department of Revenue** indicated this has no fiscal impact on their department.

The **Department of Public Safety** indicated they defer to Missouri Consolidate Health Care Plan's response to this proposal.

The **Department of Social Services** indicated the impact on the Department is unknown. If approved by the voters, this statutory change may have an unknown negative fiscal impact because the interaction of these state statutory changes with future federal government implementation, including federal regulations, is uncertain.

The Patient Protection and Affordable Care Act will provide federal funding for services to Missourians. This funding includes, but is not limited to an estimated \$21.4 billion from 2014 to 2023 to provide health care coverage to more uninsured Missourians and increased Medicare Part D coverage for seniors by closing the donut hole by 2020.

The **Governor's Office** indicated there should be no added costs or savings to the Governor's Office if this statutory change is passed by the voters.

Officials from the **Missouri House of Representatives** indicated the proposal has no fiscal impact to the operations budget of their agency.

The **Department of Conservation** indicated no adverse fiscal impact to their department would be expected as a result of this legislation and referendum proposal.

The **Office of Administration** indicated that if approved by the voters this statutory change will not result in any cost or savings to the Office of Administration. However, it may have a statewide negative fiscal impact (amount unknown) because of the uncertain interaction of these statutory changes with future federal government implementation, including federal regulations.

The Patient Protection and Affordable Care Act provides federal funding for services to Missourians. This funding includes, but is not limited to:

- Health care coverage to more uninsured Missourians—\$21.4 billion from 2013-2024.
- Health insurance coverage for Missourians with pre-existing medical conditions—Missouri's share of \$5 billion.
- Temporary reinsurance subsidy for Missouri businesses to continue to offer health insurance to early retirees—Missouri's share of \$5 billion.
- Increased Medicare Part D coverage for seniors.

The **Office of State Courts Administrator** indicated there is no cost to the courts for this proposal.

Officials from the **Missouri Senate** indicated this proposal appears to have no fiscal impact as it relates to their agency.

Officials from the **Secretary of State's Office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article I, Section 26, 27, 28 of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2009, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$1.35 million to publish (an average of \$270,000 per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements.

Officials from the **Office of the State Public Defender** indicated this proposal will not have any significant impact on their office.

Officials from the **Office of the State Treasurer** indicated this proposal will have no impact on their office.

Officials from the **City of Jefferson** indicated the City does not anticipate any fiscal impact should this proposal become law.

Officials from **Linn State Technical College** indicated that based on the information presented, there appears to be no fiscal impact to their organization.

Metropolitan Community College indicated currently, this legislation would have no significant fiscal impact on their organization, although it could be quite significant in the future.

Senator Joan Bray provided information in opposition to this proposal. Below is a summary of her information:

Fiscal Comment

This initiative petition contains language that is designed to enable the State of Missouri to opt out of the federal health care reform law, the Patient Protection and Affordable Care Act (PPACA). More specifically, the legislation would opt out of the "individual mandate" of PPACA. Assuming this provision could legally be implemented in Missouri, it would have a substantial negative fiscal impact on our state. And in assessing the fiscal impact, we have to assume that the bill could actually take effect.

A. Consequences of Opting Out of the Individual mandate

Taken literally, this language would opt out of just one provision - the individual mandate - of the federal health care law. Thus, all of the federal law's "private market insurance reforms" would still go into effect, including reforms requiring insurance companies to serve people regardless of any pre-existing conditions. As noted by Congress in PPACA, the impact of such market reforms without an individual mandate would result in individuals making "an economic and financial decision to forego health insurance coverage" until they get sick, thereby causing health care premiums to skyrocket in our state.¹ Thus, PPACA provisions encouraging healthy individuals to purchase insurance are "essential to creating effective health insurance markets."

Furthermore, the individual mandate is intertwined with the "guaranteed issue" requirements and the health care exchange provisions of the Act. In order to receive a premium subsidy, an individual must purchase insurance through the health insurance exchange. Under this legislation, Missouri would not be able to operate an exchange under the terms of PPACA, thus Missourians would be denied the opportunity to receive premium subsidies. If Missouri votes against health reform, billions of dollars in help with the costs of purchasing insurance for hard-working Missourians is lost. The loss of these dollars would of course have an additional economic impact on our state through lost jobs, economic activity and tax revenue that would be generated by these health insurance premiums.

The Department of Insurance and the State Auditor's office must calculate the fiscal impact of implementing federal "guaranteed issue" requirements of the PPACA law without an individual mandate on the cost of health care premiums in our state, its economy and the state budget. The Congressional Budget Office has estimated that average premiums would be 7 percent to 10 percent lower because of the influx of enrollees with below average spending for health care who would purchase coverage because of the new subsidies to be provided and the individual mandate. The State Auditor should take this into account and assume that Missouri health insurance premiums would be at least 7 percent to 10 percent higher under the proposed ballot

¹ Patient Protection and Advocacy Act of 2010, § 1501(a)(2)(A).

measure.² In fact, other studies show an even greater impact from implementing insurance reforms without an individual mandate. An analysis by Wellpoint indicated that the impact of guaranteed issue without an effective individual mandate would be premium increases ranging from 20 percent to 80 percent.³ In New Jersey, premiums rose by 24 percent in the employment based larger group market and between 112 percent and 155 percent in the non-group indemnity insurance market between 1996 and 2000 when that state implemented community rating and guaranteed issue without an individual mandate - which is what would happen under the literal language of this bill.⁴

Of course, this would affect not only private insurance premiums but the Missouri Consolidated Health Care Plan and Medicaid as well. This change would affect the cost of all state and local government employees' health insurance benefits. Moreover, to the extent that the state purchases or subsidizes goods and services from many firms that offer health insurance to their workers, it would raise the price of goods purchased by the state and diminish the impact of state grants for education by raising the price of health insurance received by school employees.

In addition, the lack of an individual mandate would simply cause fewer people to purchase health care insurance such as private health insurance or employer-sponsored health insurance. With fewer people covered, Missouri health providers would receive fewer payments for services, have less income and, thereby, limit state revenue. The State Auditor's office must analyze the negative fiscal impact this decrease in the number of insured and insurance premiums collected would have on our state.

B. Other Related Fiscal Consequences

In addition to the specific negative impact of opting out of the individual mandate, the real intent of the proposed ballot measure is to opt out of federal health care reform entirely, which could cost Missouri billions of federal dollars in low-income subsidies and Medicaid funds, not to mention access to many other funding streams created by PPACA. For example, one estimate by the Missouri Department of Social Services indicated that Missouri would receive more than \$21 billion in federal Medicaid funds over a ten-year period starting in 2014. The State Auditor, with assistance from the relevant state departments, should analyze the financial impact of opting out entirely from federal health care reform. Even if we were to assume that this legislation is not intended to opt out of federal reform entirely, the lack of a mandate would surely have a negative impact on the number of Missourians that enroll in all forms of insurance, including Medicaid, thereby reducing the flow of federal funds to our state.

² Congressional Budget Office, *An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act*, at 6, November 30, 2009.

³ Wellpoint, *Health Care Reform Premium Impact in Missouri*, at 8, undated (available at: http://www.politico.com/static/PPM143_091023_missouri_premium_impacts_analysis.html).

⁴ Uwe E. Reinhardt, *The Case for Mandating Health Insurance*, October 23, 2009 (available at: <http://economix.blogs.nytimes.com/2009/10/23/the-case-for-mandating-health-insurance/>).

The legislation would also undoubtedly have a substantial negative financial impact on state services. More people would be uninsured and would go without medically necessary treatment until they were at the point of requiring more expensive emergency room care, which would also have a negative impact on premiums for all Missourians. More people would become sick, lose their jobs and rely on state-funded health care services instead of the private insurance market at the point at which they are healthy.

The specific language in the bill also would have unintended consequences well beyond opting out of federal health care reform. The bill would limit government's ability to mandate that anyone participate in any type of health insurance system, not just the system created by the federal health care reform law. The ballot measure would, for example, prohibit the state from making legislative changes to enroll more individuals in Medicaid (MO HealthNet) managed care programs, such as those recommended by the Senate's "Reboot Government" working group in which I participated. While the bill exempts from its prohibition any laws or regulations already in place as of January 1, 2010, it does not exempt future efforts to expand mandatory risk-based managed care, which would require new state legislation. Arizona's Medicaid managed care program identified substantial state costs in response to a similar proposal in that state.⁵ Missouri's Medicaid program should undertake a similar analysis of the consequences of such language in Missouri. The State Auditor's fiscal note must take into account the financial impact of limiting the state's options to mandate participation in a managed care system.

C. Unintended Litigation Costs

Finally, the legislation would place Missouri squarely in conflict with federal law, leading to unnecessary, burdensome and costly litigation with the federal government, including the Department of Justice. The costs of this litigation may also include attorneys' fees awarded against the state - given the obvious conflict with federal law and the lack of any legal merit to the State's position in such litigation in light of the federal supremacy clause.

The multitude of unintended consequences of this radical measure are impossible to foresee, but doubtless would include substantial negative fiscal consequences for Missouri. Insofar as other states are already pursuing lawsuits contesting the constitutionality of the federal law, Missouri need not expend resources to test this issue under either a ballot issue or a lawsuit. This would simply drive up state costs with no apparent benefit to the state. If other states' lawsuits are successful, the federal law will be declared illegal and the goal will have been realized. If they are unsuccessful, then the state costs for this ballot and for a lawsuit will have been wasted.

To conclude, it is critical that the state analyze what would happen if this measure were actually implemented rather than simply assume that this measure will go away

⁵ Public Letter from Anthony D. Rodgers, Director of The Arizona Health Care Cost Containment System, at 2-3, dated September 18, 2008.

with litigation. This requires a careful analysis of all of the fiscal consequences of the measure, including the unintended consequences.

The Missouri Health Advocacy Alliance provided information in opposition to this proposal. Below is a summary of their information:

The fiscal impact of the adoption of the ballot measure outlined in HB 1764 would be seen in at least three areas:

Referencing House Bill 1764

Section 1.330.1. No law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

Section 1.330.2. A person or employer may pay directly for lawful health care services and shall not be required by law or rule to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required by law or rule to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

The effect of Section 1.330.1 of House Bill 1764 would be to exempt Missouri residents from the requirements of the federal law, entitled the Patient Protection and Affordability Act (PPACA), that requires citizens to carry health insurance or face an IRS imposed penalty, commonly called the “individual mandate.”

Increases in the cost of State and Local Employees’ Health Plans:

PPACA will require Missouri to adopt a policy of guaranteed issue, a requirement that insurers provide insurance to any person who applies for coverage regardless of health status, but the ballot initiative would preclude *requiring* all individuals to purchase insurance. Studies have demonstrated¹ that states with “guarantee issue” and no “individual mandate” have seen increases as much as 24% in premium costs for large group market insurance². (New Jersey between 1994-2000 saw an increase of 24% in this market after the 1993 implementation of guaranteed issue)

It is reasonable to assume, based on other states’ experiences, the cost of providing employer-sponsored health insurance coverage for state and local government employees will rise by a significant percentage as a result of not implementing the federally mandated requirement for individuals to purchase insurance.

This increase in rates would impact all state and local employees’ health plans. The fiscal impact on Missouri Consolidated Health Care Plan, the state employees’ plan, could be a 24% increase in the cost of their health plans similar to the experience in New Jersey.

¹ Health Affairs 23, no.4 (2004)165-167. <http://content.healthaffairs.org/cgi/content/full/23/4/167>

² Uwe E. Reinhardt PhD Princeton, *The Case for Mandating Health Insurance*: October 23, 2009. Available at <http://economix.blogs.nytimes.com/2009/10/23/the-case-for-mandating-health-insurance/>

Small businesses, small political subdivisions and sole proprietors that rely on the individual or small group market, according to industry analysis³, should see a greater impact of guaranteed issue in the absence of an effective mandate ranges from an increase of 20% to 80%, and thus we show the midpoint increase of 50%.

Decreases in premium taxes collected by the state:

Two factors must be considered when estimating premium taxes collected as a result of PPACA and HB 1764.

PPACA would require all Missourians to purchase health insurance policies. The ballot initiative put forward by HB 1764 would exempt Missouri from such a requirement, thereby decreasing the number of people who will choose to purchase insurance and therefore fewer policies will result in decreases in premium taxes.

Wellpoint conducted an industry analysis⁴ on the cost of insurance in Missouri if PPACA's "guaranteed issue" and "community rating" provisions are implemented without an "individual mandate" to carry insurance. Under such a scenario (which would happen under HB 1764) the cost of health insurance, especially for younger, healthier persons in the individual and small group markets, will rise dramatically. Estimated increases in premium cost for this group are 80 to 120%. The effect of higher premiums, experienced in other states,⁵ is a significant increase in the number of persons deciding to drop coverage, further depriving the state of premium tax revenue.

The estimated loss of Premium Tax is unknown, but could be a significant percentage of the premium tax amount collected (\$56.6 million was collected in CY 08). Premium tax revenue is split 50/50 between state General Revenue and the County Foreign Insurance Fund except for domestic Stock Property and Casualty Companies that pay premium tax to the County Stock Fund. The County Foreign Insurance Fund is later distributed to school districts throughout the state. County Stock Funds are later distributed to the school district and county treasurer of the county in which the principal officer of the insurer is located. It is unknown the extent to which each of these funds may be impacted, but it is predictable they will see some loss in revenue.

The disruption of Managed Care and Provider Networks:

There is a serious risk of unintended consequences posed by potential interpretations of the phrase "health care system" as stated HB 1764 Section 1.330.1. *No law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.*

³ Wellpoint, *Health Care Reform Impact in Missouri*, undated. Available at http://www.politico.com/static/PPM143_091023_missouri_premium_impacts_analysis.html

⁴ Wellpoint, *Health Care Reform Impact in Missouri*, undated. Available at http://www.politico.com/static/PPM143_091023_missouri_premium_impacts_analysis.html

⁵ Health Affairs 23, no.4 (2004)165-167. <http://content.healthaffairs.org/cgi/content/full/23/4/167>

The law could prohibit Missouri from enrolling people into MoHealthNet or MCHCP managed care plans. This would have the effect of implementing a system commonly referred to as “Any Willing Provider” (AWP)

A Bush Administration Council of Economic Advisors⁶ study done in 2004 concluded that AWP provisions in practice can raise insurance cost as high as 5.3%.

This increase in rates would impact all state and local employees’ health plans. The fiscal impact of a 5.3% increase in the cost of the health plans on Missouri Consolidated Health Care Plan could be as high as \$26 million dollars per year (based on the \$540 per month per member cost⁷ of insuring MCHCP membership of an estimated 107,000 lives with an average of 75% state/employer contribution per covered life.)

The managed care portion of the state’s MoHealthNet program for pharmacy, physician services, chronic care risk management and major medical are funded with hundreds of millions of dollars in Missouri General Revenue and the Federal Medicaid Match, which accounts for almost twice as much as the State’s obligations. Increases in costs associated with restrictions to the state’s ability to enter into future managed care or other network-based contracts are difficult to estimate but evidence suggests it would be significant. Managed care rates are discounted from what would otherwise be paid under fee-for-service and the Mercer company indicated 2.7% in savings over fee-for-service. These savings would be lost if this legislation is implemented. The State Auditor should seek input from the MOHealthNet Division on the financial cost of restricting its ability to require participation in managed care plans.

In addition to increased costs in these three areas, the State would experience significant litigation costs and likely have to pay attorney’s fees should it have to defend the position expressed in HB 1764. If the provisions of HB 1764 become law, the State would also lose access to low-income subsidies or premium credits that Missourians would otherwise receive when they enroll in health insurance plans through the newly required and later implemented insurance exchanges. This loss in premium credits would result in a loss of economic activity and tax revenue for the state.

The State Auditor's Office did not receive a response from the **Department of Agriculture, the Department of Elementary and Secondary Education, the Department of Health and Senior Services, the Department of Labor and Industrial Relations, the Department of Transportation, Boone County, Cole County, Greene County, Jackson County Legislators, St. Louis County, the City of Kansas City, the City of St. Louis, the City of Springfield, Cape Girardeau 63 School District, Hannibal 60 School District, Rockwood R-VI School District, University of Missouri, St. Louis Community College.**

⁶ Council of Economic Advisors, *Effect of State Regulations on the Price of Health Insurance Policies*: July 23, 2004 based on Showalter Study; William J. Congdon, Amanda Kowalski, Mark H. Showalter. Available at <http://www.jonmckane.com/Health%20Insurance/Showalter%20Study.pdf>

⁷ Missouri Consolidated Health Care Plan 2009 Annual Report: http://www.mchcp.org/About%20Us/aboutus_AnnualReport.asp

Fiscal Note Summary

It is estimated this proposal will have no immediate costs or savings to state or local governmental entities. However, because of the uncertain interaction of the proposal with implementation of the federal Patient Protection and Affordable Care Act, future costs to state governmental entities are unknown.