

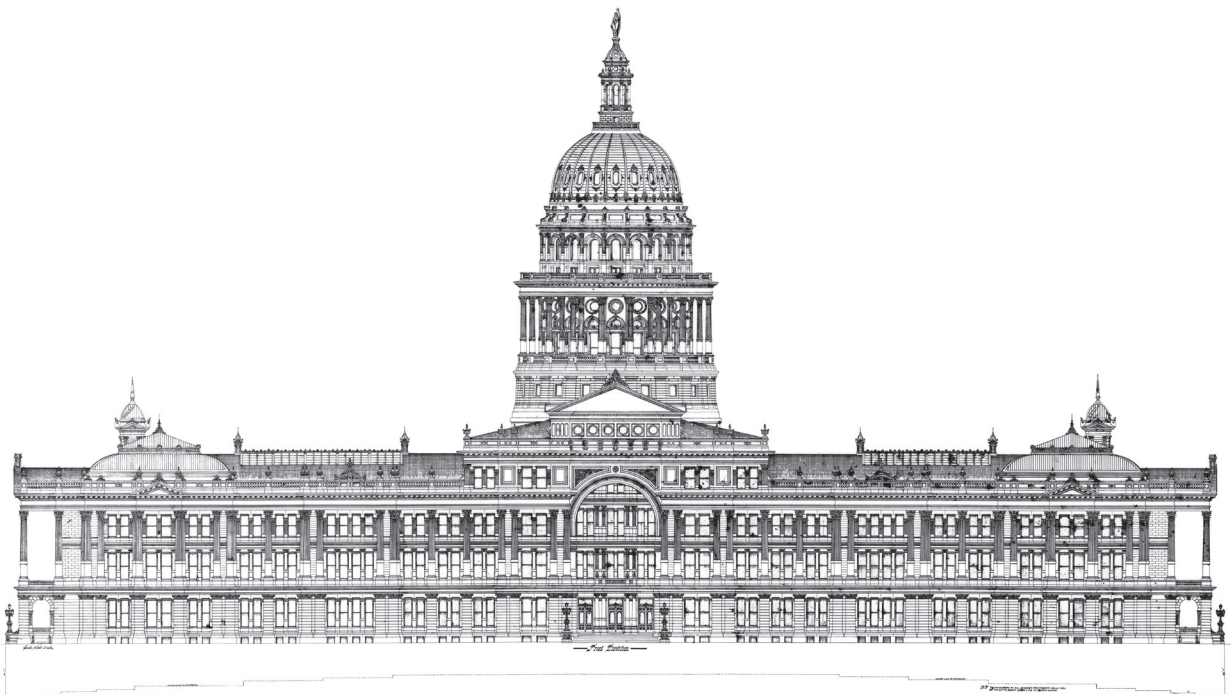


INTERIM REPORT

TO THE

82ND TEXAS LEGISLATURE

House Select Committee on
FEDERAL LEGISLATION
December 2010



**HOUSE SELECT COMMITTEE ON FEDERAL LEGISLATION
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2010**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
82ND TEXAS LEGISLATURE**

**JOHN ZERWAS
CHAIRMAN**

**COMMITTEE CLERK
HUNTER HUGHES**



Select Committee On
Federal Legislation

December 22, 2010

John Zerwas
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Select Committee on Federal Legislation of the Eighty-first Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-second Legislature.

Respectfully submitted,

John Zerwas M.D.

Garnet Coleman, Vice Chair

Dan Branch

Warren Chisum

Ellen Cohen

Donna Howard

Susan King

Lois Kolkhorst

Trey Martinez Fischer

Tommy Merritt

Geanie Morrison

Elliott Naishtat

Solomon Ortiz Jr.

Tara Rios Ybarra

Mark Shelton M.D.

Garnet Coleman
Vice-Chairman

Members: Dan Branch, Warren Chisum, Ellen Cohen, Donna Howard, Susan King, Lois Kolkhorst, Trey Martinez Fischer, Tommy Merritt, Geanie Morrison, Elliott Naishtat, Solomon Ortiz Jr., Tara Rios Ybarra, Mark Shelton M.D.

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INTRODUCTION

On January 12th, 2010, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed fifteen members to serve on the House Select Committee on Federal Legislation during the interim session of the 81st Legislature. The following members were named to the committee: Chairman John Zerwas, M.D., Vice-Chairman Garnet Coleman, Dan Branch, Warren Chisum, Ellen Cohen, Donna Howard, Susan King, Lois Kolkhorst, Trey Martinez Fischer, Tommy Merritt, Geanie Morrison, Elliott Naishtat, Solomon Ortiz, Jr., Tara Rios Ybarra, and Mark Shelton, M.D.

The committee was directed by Speaker Straus to track pending federal legislation with federal health care reform as a priority. The committee's primary objective was to relay all information regarding the impact that any enacted federal legislation will have on the state and its citizens. After passage of federal health care reform, the committee held two formal hearings. The committee and its members received a wealth of information regarding the implementation cycle for the Patient Protection and Affordable Care Act (ACA) and Texas' progress in conforming to the various stages of implementation. The committee found there were a multitude of state and private entities reviewing the provisions of the legislation and the impact to Texas. Also, specific details regarding the potential creation of a health insurance exchange in Texas were discussed. The state's insurance exchange must be fully operational by January 2014. Testimony also showed the initial cost estimates to the state and the level of preparedness that existed within the various state agencies.

The committee held two hearings, one on April 22nd, 2010 and another on October 7th, 2010. The committee's first hearing was designed to give the members an overview of the ACA provisions, the potential fiscal impact to the state and the implementation cycle through 2018. The members heard testimony from various state agencies including HHSC and TDI. The October 7th hearing was called to provide the members with an update on the state's adherence to the various stages of implementation. Testimony was provided by various state agencies and stake-holders.

The committee would like to express its gratitude to all of the individuals involved that made a contribution to our interim hearings. Along with the members of Chairman Zerwas' staff, the committee would also like to thank the leadership and staff of the Health and Human Services Commission, the Texas Department of Insurance, the Employees Retirement System of Texas, the Teachers Retirement System of Texas, the Legislative Budget Board, the Texas Medical Association, the Texas Association of Health Plans, the Texas Association of Life and Health Insurers, Parkland Health and Hospital System, the National Conference of State Legislatures, the National Federation of Independent Business and Trustmark Insurance.

HOUSE SELECT COMMITTEE ON FEDERAL LEGISLATION
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

Charge 1: *Closely monitor significant pending federal legislation with a specific emphasis on health care reform efforts*

Charge 1

Closely monitor significant pending federal legislation with a specific emphasis on health care reform efforts

Background

The Patient Protection and Affordable Care Act was signed into law on March 23rd, 2010. This legislation will bring many significant changes to the health care infrastructures of all fifty states. Designed to provide greater access to health care coverage, the provisions of the federal health care reform range from prohibiting the denial of coverage for an individual with a pre-existing condition to the creation of a health insurance exchanges. This legislation will increase dependence on state and local programs such as CHIP and Medicaid.

The implementation cycle for ACA began on June 21st, 2010 and continues through 2018. During that period, many different provisions of the legislation must be adopted by the states. 2014 appears to be the most significant date due to its mandate that the state health insurance exchange must be fully operational and the expansion for Medicaid eligibility to 133% of FPL. HHSC and TDI have already begun to prepare in order to strengthen their ability to implement health care reform. Below is a full layout of the implementation cycle by date. (*Implementation timeline provided by HHSC*)

Major Themes

Patient Protection and Affordable Care Act

¹Key Provisions Timeline

2010

Exchange planning and Federal grants. HHS Secretary will award grants to states no later than March 2011. Grants are renewable by HHS Secretary through the end of 2014.

Ombudsman Program. Established for people with private coverage in individual and small group markets.

Premium Review. Establishment of an annual insurance premium review process
–Grants available beginning 2010.

High-Risk Pool. HHS Secretary may contract with states by June 2010.

Family Planning Services. Options offered through Medicaid State Plan.
Face-to-Face encounter with patient required for certification of eligibility for home health services or durable medical equipment.

Money Follows the Person. Rebalancing demonstration extended through 2016.

Increase in federal prescription drug rebates.

Prevention and Public Health Fund. Funding begins in 2010 and increases incrementally in FY 2015.

Optional Medicaid Expansion up to 133% of FPL. Expand Medicaid to non-pregnant individuals under 65.

Pharmacy reimbursement limits.

Funding for Aging and Disability Resource Centers. \$10 million for each of fiscal years 2010 through 2014.

Postpartum condition grants.

Medicare Part D. \$250 rebate for all Part D enrollees who enter coverage gap (donut hole).
–Phase down from 100% to 25% by 2020.

Elimination of pre-existing conditions for children.

Elimination of lifetime limits on benefits.

Medicaid coverage for freestanding birth center services.

Extended coverage of young adults up to 26 years of age on parent’s health insurance plan.

Rating areas for small and individual markets.

School-Based Health Center Grants. Preference given to centers that serve a large population of children and families eligible for Medicaid and CHIP. Could require changes to Medicaid and CHIP provider enrollment and claims payment.

Collection period for overpayments due to fraud. Extends period to repay overpayments to one year.

Trauma care services grants. States may not use more than 20% of the federal funds for administration of the program.

Emergency care response grants.

Personal responsibility grants.

Maternal, Infant, and Early Childhood Home Visitation Program. Must conduct new statewide needs assessment no later than 6 months after date of enactment. After completing new needs assessment, could apply for new home visiting program grant as early as FY10.

New option to provide Home and Community-Based Services through the Medicaid State Plan.

Mandatory use of National Correct Coding Initiative.

Tobacco Cessation for Pregnant Women.

Expansion of the recovery audit contractor program.

Web Portal. Secretary of HHS to establish an Internet website providing information on affordable health insurance coverage options.

2011

Community Health Centers. Increase funding by \$11 billion.

Medicaid Emergency Psychiatric Demonstration Project.

Primary Care Extension Program (workforce). Increases training programs for primary care and nursing workforce.

Health IT Grant to facilitate enrollment in health subsidy programs. HHS Secretary will establish standards, with grants available in 2011.

Elimination of Medicaid for certain adults above 133% of FPL. January 1, 2011 – December 31, 2013.

Health homes for enrollees with chronic conditions. Allows the HHS Secretary to award \$25 million in planning grants.

Community Living Assistance Services and Supports (CLASS). Long-term care insurance program that provides a cash benefit to adults who develop functional impairments for the purchase of community-based supports and services.

NPI on enrollment applications and claims.

Beginning January 1, 2011, or later if legislation is required:

- Termination of provider participation under Medicaid if terminated under Medicare or other state plan
- Provider exclusion from participation
- Alternate payees required to register under Medicaid
- Reporting of data elements under MMIS to detect fraud and abuse
- Prohibition on payments to entities located outside of the USA

Healthy Lifestyles Grants (Incentives for prevention of chronic diseases).

Medicaid preventive and obesity-related services public awareness campaign begins March 1, 2011.

Enhanced screening for new health care providers.

Provider disclosure requirements.

Health Care Acquired Conditions. Tracking of hospital readmission rates. Effective September 1, 2010, Texas is applying Medicare regulations on payment for health care-acquired conditions to Medicaid.

Community First Choice Option.

Incentives for Home and Community-based Services.

Elder Justice Act. Authorization for \$100 million in funding for 2011-2014. Texas would receive approximately \$6 million in 2011.

2012

Pediatric Accountable Care Organization Demonstration Project.

Demonstration Project to evaluate integrated care around a hospitalization.

Medicaid payment bundling Demonstration Project.

Screening of existing providers. Requires enhanced screening procedures for health care providers to eliminate fraud and waste in the health care system.

2013

Enhanced reimbursements for certain primary care services.

Federal evaluation of State Exchange implementation status. States evaluated for significant progress toward having the exchange operational by 2014.

Coverage of prevention services for adults in Medicaid.

2014

Reduction of DSH allocations.

State Exchanges begin January 1, 2014.

Reinsurance program for plan in the individual market.

Medicaid Expansion to 133% of FPL. Expand Medicaid to non-pregnant individuals under age 65. For 2014-2016, the federal government will pay 100% of costs for coverage for newly eligible individuals in Medicaid. States have option to expand Medicaid above 133% FPL.

Use of Modified Gross Income for Medicaid and CHIP income eligibility.

Medicaid for Former Foster Care Children.

Health Insurance Mandate.

Premium assistance tax credits. Prohibits state from requiring an individual to apply for employer-sponsored family coverage as a condition of Medicaid eligibility.

Premium Assistance. Extends CHIPRA premium assistance option to adults.

Elimination of exclusion of coverage of certain drugs.

Hospitals permitted to make presumptive eligibility determinations.

2015

Annual Medicaid Enrollment Report.

Hospital Contracting Requirements for Qualified Health Plans Offering Coverage in the Exchange.

Extension of CHIP Funding. Federal funding expires on September 30, 2015.

Increase the CHIP Match Rate. States eligible for a 23% point increase in regular CHIP match rate from October 1, 2015 through September 30, 2019.

2016

Health insurance plans may be offered in more than one state.

2017

Medicaid FMAP decreases to 95%.

2018

Medicaid FMAP decreases to 94%.

Premium Taxes on “Cadillac Plans.”

2019

Medicaid FMAP decreases to 93%.

2020

Medicaid FMAP decreases to 90%.

Legislative Priorities

There are many decisions to be made by the legislature in order to implement ACA. Some key decisions include the creation of an insurance exchange, enforcement and regulatory provisions at TDI, and conforming changes to current state law. The legislature has a great opportunity to protect current markets and expand consumer choice through the creation of an exchange.

The legislature must consider what will be the oversight body of the exchange, the establishment of the “physical” exchange and the enabling legislation needed for the creation of a state exchange. Currently, Utah and Massachusetts have operational insurance exchanges, and California was the first state to pass legislation creating an exchange as a result of the passage of ACA. For Texas, each of these state exchanges possess qualities that are applicable to our state and can help guide us as we move forward with its creation. The Secretary of HHS has identified nearly 150 requirements for a state exchange to be eligible. Recently, HHS has stated a 90/10 match rate for implementation of an exchange and up to a 75/25 match rate for continued operation if certain requirements are met.

The exchange will require various decision points to be addressed around adverse selection in and out of the exchange, on the structure and governance, exchange functions, eligibility determination functions, and compatibility with existing eligibility programs at HHSC. Regarding HHSC, the legislature must also address additional system capacity needs through budget allocations.

Many of the provisions laid out in ACA require additional regulatory oversight and enforcement. At this time, TDI does not have clear authority to assume those new responsibilities. The legislature should consider granting TDI additional authority to enforce provisions of ACA or simply leave those responsibilities to the federal government.

Estimated Cost of Implementation and Grant Funding Opportunities

²HHSC and TDI have conducted initial cost estimates as to the fiscal impact that the reform legislation will have on the state over the next ten years. Currently, HHSC has established that the potential cost to build system capacity through 2014 could cost HHSC \$24 million in general revenue and \$71.6 million in all funds. *(These figures are an initial estimate and are subject to change.)*

³HHSC estimates the cost to general revenue for the expansion of Medicaid and CHIP through 2023 at \$27 billion. (*This figure is an initial estimate and may be subject to change.*)

⁴ERS has found the estimated cost of reform for the 2012-2013 biennium to be \$47 million. This cost includes the expansion of coverage to dependents up to age 26 and covering 100% of preventative care. ERS has received \$22 million, allocated through ACA, to reimburse those that apply for insurance coverage before they are Medicare eligible. They currently do not have a model to project future costs as they continue to receive guidance at the federal level.

⁵The legislation has provided multiple grant opportunities of which the states may take advantage. HHSC is currently looking at 44 potential grant options and TDI has already been awarded with three grants. Below are the current grant items available and received:

Received:

- \$2.7 million for a Consumer Assistance Program – Designed to help educate consumers about insurance options available to them
- \$1 million Exchange Planning Grant – Created to help states research and plan for the creation of an insurance exchange
- \$1 million for Premium Review Grants – Research and planning stage

Pending:

- Phase 2 – Premium Review Grants – Establish infrastructure and active rate review and data collection systems
- Phase 2 – Implementation of the Exchange

Committee Hearings and Testimony

On April 22nd, 2010 the Select Committee called its first hearing to address passage of the federal healthcare reform. The goal of this hearing was to provide the membership with an overview of the potential impact of the recently passed health care reform legislation.

Joy Wilson, Health Policy Director at the National Conference of State Legislatures

Ms. Wilson was invited to provide testimony before the committee due to her knowledge of the initial analysis of the legislation. Ms. Wilson was particularly helpful in explaining how legislative tools like the reconciliation process were used and the effect this had on the passage of the reform. She also provided a general overview of the various statutory provisions that affected all fifty states and potential grant opportunities of which states can take advantage.

Thomas Suehs, Executive Commissioner of the Texas Health and Human Services Commission

Commissioner Suehs and his staff began the analysis of the legislation before it was formally signed into law. With a focus on the direct impact to Texas, the Commissioner touched upon the various administrative functions that would need to be created in order to accommodate the bill's various provisions. The expansion of Medicaid up to 133% of FPL in 2014 is one of the larger provisions for which HHSC is preparing. Commissioner Suehs also informed the members as to what steps HHSC was taking to prepare for the implementation cycle and establishment of the health exchange.

Mike Geeslin, Executive Commissioner of the Texas Department of Insurance

Commissioner Geeslin's presentation was focused on the major provisions of the reform and he stressed the importance of having accurate interpretations of the legislation; baseless and poorly researched summaries can undermine TDI's ability to accurately implement these provisions. TDI has been following many of the same reforms as HHSC and other state agencies. Commissioner Geeslin discussed several grant items that TDI has applied for and received. The Commissioner also stressed the importance that consumer education will have with a potential two million new eligible insurance consumers. He stated, "Texas is a multilingual state with many regional and generational differences that will affect how to properly educate new consumers."

Ann Fuelberg, Executive Director of the Employees Retirement System of Texas

Ms. Fuelberg explained that the primary concern for ERS was the impact to the group benefits programs and flexible spending accounts. They continue to receive rules for adoption by the Secretary of the Health Human Services Commission and are following the potential increased cost that various provisions will have on the GDP and spending accounts. ERS projects increased costs with regards to prohibiting the denial of coverage for an individual and children under 19 with a pre-existing condition. Provisions allowing for dependent coverage up to 26 years of age, coverage waiting periods of no longer than ninety days and coverage for certain preventative services without a co-pay or deductible may also incur increased costs to ERS.

Ronnie Jung, Executive Director of the Teacher Retirement System of Texas

Mr. Jung focused his presentation on the potential impact that reform would have on TRS-Care and TRS-ActiveCare. The specific provisions that have a direct impact to TRS are no lifetime or annual limits of coverage, prohibiting denial of coverage for pre-existing conditions, closing of the Medicare D (prescription drug coverage) "donut hole" by 2020, coverage for dependents of up to 26 years of age, and reinsurance of retirees subsidized to 80% of claims between \$15,000 and \$95,000 aged 55-64 years old.

Lea Isgur, Federal Funds Analyst at the Texas Legislative Budget Board

Ms. Isgur provided a detailed overview of various provisions of the legislation that impact the state and local entities. Please refer to the link at the end of the report for Ms. Isgur's presentation.

On October 7th, 2010, the Select Committee called a second hearing. Its goal was to provide the membership with an update from state agencies and industry stakeholders as to the state's progress with regards to the implementation cycle.

Kay Ghahremani, Deputy Medicaid/CHIP Director for Policy Development - Health and Human Services Commission

Ms. Ghahremani's testimony focused on the provisions of the legislation that become effective in 2014. She touched upon the fact that Texas will need to begin preparing for the decrease in federal participation in FMAP in the future. There may also be issues with the strict timetable for effective dates and pending guidance at the federal level on many key provisions of the

legislation. HHSC's ability to move forward with implementation may be restricted because of this uncertainty. With an influx of newly insured individuals, a larger health care workforce will need to be created.

Mike Geeslin, Commissioner - Texas Department of Insurance

Commissioner Geeslin provided the committee with an update on the grant opportunities TDI has applied for, progress on exchange research and planning, and active provisions to date. The commissioner stressed that implementation has been challenging due to a slow and somewhat unpredictable rulemaking process by the Secretary of the Federal Health and Human Services Commission. Although there is pending rulemaking at the federal level, TDI has been proactive in the grant process. To date, they have received \$4.7 million worth of planning grants for consumer assistance, premium review and insurance exchange planning.

Sara Austin, M.D., Texas Medical Association - Council on Legislation

TMA has been conducting numerous informational sessions to inform their members about the provisions of the legislation. Dr. Austin touched upon three challenges that TMA has in conjunction with reform implementation: establishment of ACO pilots (Accountable Care Organizations), the Consumer Ombudsman Program and the health insurance exchange.

Ron Anderson, M.D., President and CEO - Parkland Health and Hospital System

Dr. Anderson discussed several key points that the individual health and hospital systems can take advantage of to adjust to a new health care network. He stated, "The need for delivery reform is as important as the need for insurance reform." Preventative, community-based primary care medical homes have proven beneficial in reducing emergency room visits and promoting disease and chronic illness prevention. Dr. Anderson emphasized that community based initiatives are a way to offset the potential impact that 32 million newly insured individuals may have on hospital systems.

Jared Wolfe, Texas Association of Health Plans

Mr. Wolfe provided testimony from the perspective of the private insurance market. There are a multitude of changes with regards to the denial of coverage and the industry's discretion in determining denial. Mr. Wolfe stressed the importance of creating a state insurance exchange that would be beneficial to the private insurance market, as they must also provide different insurance packages through the exchange by 2014.

Charles Harris, former President - National Health Company, and Catherine Bresler, Vice President and Government Relations - Trustmark Insurance Company

Mr. Harris and Ms. Bresler gave testimony on the potential impact that the reform may have on smaller insurance providers. There is a growing concern that smaller insurance carriers may not be able to meet the requirements of the reform due to their smaller economies of scale compared to those of larger carriers. These smaller carriers often have higher administrative expenses that can limit their ability to adhere to the mandates of reform. They are concerned that new medical loss ratio requirements may not be met by the smaller carriers.

Kathy Barber, National Federation of Independent Business

Ms. Barber provided the membership with the concerns that the small business community had regarding the reform and their compliance with certain provisions. NFIB represents 25,000 small and independent businesses in Texas and has 350,000 members nationally. NFIB feels that small businesses are faced with three choices: stay with their current policies at a higher cost, purchase new plans that meet the requirements of the federal legislation at a high cost or drop coverage all together. The reform legislation provides for a Small Business Tax Credit, but it is still too early to determine what cost savings small businesses may receive. Small business owners are continuing to wait for guidance from the federal level as to the options that are available to them.

Conclusions and Recommendations

The Select Committee on Federal Legislation recommends that the legislature should work in conjunction with state agencies when considering plans for a state-run insurance exchange. During the 82nd legislative session, the legislature should examine potential legislation that may create a Texas health insurance exchange. Also, the committee recommends that HHSC, TDI and all applicable state agencies begin preparations for the possible stages of implementation. They should begin planning to increase their administrative functions to prepare for the increase in newly insured individuals. These agencies may also consider taking advantage of the multitude of grant opportunities created through ACA.

Acronyms

HHSC – Health and Human Services Commission
TDI – Texas Department of Insurance
ERS – Employees Retirement System of Texas
TRS – Teachers Retirement System of Texas
LBB - Legislative Budget Board
TMA – Texas Medical Association
TAHP – Texas Association of Health Plans
TALHI – Texas Association of Life and Health Insurers
NFIB – National Federation of Independent Business
NCSL – National Conference of State Legislatures
ACA – Patient Protection and Affordable Care Act
Exchange – State-run health insurance exchange
CHIP – Children’s Insurance Health Program
FPL – Federal Poverty Level
FMAP - Federal Medical Assistance Percentages

Supporting Materials

April 22nd Presentation by Lea Isgur - Legislative Budget Board

http://www.lbb.state.tx.us/Federal_Funds/Other_Publications/Federal_Healthcare%20Reform_Presentation_0410.pdf

April 22nd Hearing

<http://www.house.state.tx.us/video-audio/committee-broadcasts/committee-archives/player/?session=81&committee=274&ram=00422afl>

October 7th Hearing

<http://www.house.state.tx.us/video-audio/committee-broadcasts/committee-archives/player/?session=81&committee=274&ram=01007aFL>

Appendix



December 16, 2010

The Honorable John Zerwas
Chairman
House Select Committee on Federal Legislation
Capitol, E2.316
Austin, TX

Dear Chairman Zerwas:

We thank you for your leadership, expertise and guidance over the last year as the committee has reviewed the implementation of the Affordable Care Act (ACA) in Texas. We understand the importance of prudent planning and policy development that must occur in order to follow federal law. Further, we share your concerns that no implementation will further empower the scope and reach of the federal government.

However, we hold deep reservations offering our signatures for this report considering the unresolved legal and constitutional questions of implementing federal healthcare reform in Texas. Therefore, we believe any future legislation pertaining to the implementation of federal healthcare reform must at minimum contain the following provisions:

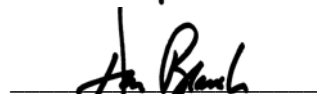
- *A negation clause of state implementation of ACA if the entire law or parts of that law are repealed by Congress or if provisions of ACA are declared unconstitutional by the courts.*
- *The Legislature should not appropriate spending for any unfunded mandates required by ACA considering the very large estimated budget deficit.*
- *The Health and Human Services Commission (HHSC) and the Texas Department of Insurance (TDI) should monitor and report the ongoing impact and cost of ACA implementation and compliance in Texas to the Legislature.*
- *The Office of the Attorney General (OAG) should monitor state laws passed by the Texas Legislature related to federal healthcare reform and be prepared to defend those laws in court.*

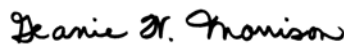
We believe that the above principles are reasonable and will best protect the constitutional rights of the people of Texas, especially as the federal government moves forward to enforce federal healthcare mandates and requirements. Furthermore, we believe that the Affordable Care Act (ACA) will likely be found to be in violation of the U.S. Constitution, and that health policy decisions should be retained by each state instead of the federal government.

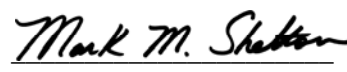
We thank you for your consideration of our requests and ask for submission of this letter into the committee report.

Respectfully Submitted,

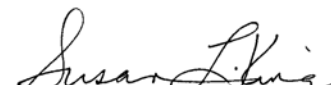

Rep. Lois Kolkhorst


Rep. Dan Branch


Rep. Geanie Morrison


Rep. Mark Shelton


Rep. Warren Chisum


Rep. Susan King

ENDNOTES

¹ *Timeline information provided by Commissioner Suehs to the Select Committee on April 22nd, 2010*

² *HHSC Consolidated Budget overview for FY 2012-2013*

³ *Fiscal information provided by Commissioner Suehs to the Select Committee on April 22nd, 2010*

⁴ *ERS LAR (Legislative Appropriations Request) for 2012-2013*

⁵ *<http://www.healthcare.gov/center/states/tx.html> and Nov. 9th TDI Grant Update*