

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

790T0107

### HOUSE BILL NO. 1191

Introduced by: Representatives Hubbel, Deelstra, Greenfield, Jensen, Kopp, Liss, Miller, Nelson (Stace), Olson (Betty), Russell, Schaefer, Tulson, and Venner and Senators Lederman, Begalka, and Maher

1 FOR AN ACT ENTITLED, An Act to provide for an interstate compact on public health care,  
2 to establish an interstate advisory health care commission, to specify the relationship  
3 between the member states and the federal government, and to assert the right to federal  
4 funding in lieu of certain federally funded incentives.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. The following interstate health care compact, which is hereby agreed to, for the  
7 reasons expressed in the preamble, shall govern the provision of health care in this state to the  
8 extent of the provisions enacted in this compact and any subsequent amendments in this  
9 compact, notwithstanding any conflicting state or federal statutes to the contrary:

10 Whereas, the separation of powers, both between the branches of the federal government and  
11 between federal and state authority, is essential to the preservation of individual liberty;

12 Whereas, the Constitution creates a federal government of limited and enumerated power,  
13 and reserves to the states or to the people those powers not granted to the federal government;

14 Whereas, the federal government has enacted many laws that have preempted state laws with



1 respect to health care, and placed increasing strain on state budgets, impairing other  
2 responsibilities such as education, infrastructure, and public safety;

3 Whereas, the member states seek to protect individual liberty and personal control over  
4 health care decisions, and believe the best method to achieve these ends is by vesting regulatory  
5 authority over health care in the states;

6 Whereas, by acting in concert, the member states may express and inspire confidence in the  
7 ability of each member state to govern health care effectively; and

8 Whereas, the member states recognize that consent of congress may be more easily secured  
9 if the member states collectively seek consent through an interstate compact:

10 NOW THEREFORE, the member states hereto resolve, and by the adoption into law under  
11 their respective state constitutions of this health care compact, agree, as follows:

12 Section 1. Terms, as used in this compact, unless the context clearly indicates otherwise,  
13 mean:

14 (1) "Commission," the Interstate Advisory Health Care Commission;

15 (2) "Effective date," the date upon which this compact shall become effective for  
16 purposes of the operation of state and federal law in a member state, which shall be  
17 the later of:

18 (a) The date upon which this compact shall be adopted under the laws of the  
19 member state; or

20 (b) The date upon which this compact receives the consent of congress pursuant  
21 to Article I, Section 10, of the United States Constitution, after at least two  
22 member states adopt this compact;

23 (3) "Health care," care, services, supplies, or plans related to the health of an individual  
24 and includes, but is not limited to:

- 1 (a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative  
2 care and counseling, service, assessment, or procedure with respect to the  
3 physical or mental condition or functional status of an individual or that  
4 affects the structure or function of the body; and
- 5 (b) Sale or dispensing of a drug, device, equipment, or other item in accordance  
6 with a prescription; and
- 7 (c) An individual or group plan that provides, or pays the cost of, care, services,  
8 or supplies related to the health of an individual, except any care, services,  
9 supplies, or plans provided by the United States Department of Defense and  
10 United States Department of Veteran Affairs, or provided to Native  
11 Americans;
- 12 (4) "Member state," a state that is signatory to this compact and has adopted it under the  
13 laws of that state;
- 14 (5) "Member state base funding level," a number equal to the total federal spending on  
15 health care in the member state during federal fiscal year 2010. On or before the  
16 effective date, each member state shall determine the member state base funding  
17 level for its state, and that number shall be binding upon that member state. The  
18 preliminary estimate of member state base funding level for the state of South Dakota  
19 is \$1,922,000,000;
- 20 (6) "Member state current year funding level," the member state base funding level  
21 multiplied by the member state current year population adjustment factor multiplied  
22 by the current year inflation adjustment factor;
- 23 (7) "Member state current year population adjustment factor," the average population of  
24 the member state in the current year less the average population of the member state

1 in federal fiscal year 2010, divided by the average population of the member state in  
2 federal fiscal year 2010, plus one. Average population in a member state shall be  
3 determined by the United States Census Bureau; and

4 (8) "Current year inflation adjustment factor," the total gross domestic product deflator  
5 in the current year divided by the total gross domestic product deflator in federal  
6 fiscal year 2010. Total gross domestic product deflator shall be determined by the  
7 Bureau of Economic Analysis of the United States Department of Commerce.

8 Section 2. The member states shall take joint and separate action to secure the consent of  
9 the United States Congress to this compact in order to return the authority to regulate health care  
10 to the member states consistent with the goals and principles articulated in this compact. The  
11 member states shall improve health care policy within their respective jurisdictions and  
12 according to the judgment and discretion of each member state.

13 Section 3. The legislatures of the member states have the primary responsibility to regulate  
14 health care in their respective states.

15 Section 4. Each member state, within its state, may suspend by legislation the operation of  
16 all federal laws, rules, regulations, and orders regarding health care that are inconsistent with  
17 the laws and regulations adopted by the member state pursuant to this compact. Federal and  
18 state laws, rules, regulations, and orders regarding health care will remain in effect unless a  
19 member state expressly suspends them pursuant to its authority under this compact. For any  
20 federal law, rule, regulation, or order that remains in effect in a member state after the effective  
21 date, that member state shall be responsible for the associated funding obligations in its state.

22 Section 5. Each federal fiscal year, each member state shall have the right to federal moneys  
23 up to an amount equal to its member state current year funding level for that federal fiscal year,  
24 funded by Congress as mandatory spending and not subject to annual appropriation, to support

1 the exercise of member state authority under this compact. This funding shall not be conditional  
2 on any action of or regulation, policy, law, or rule being adopted by the member state.

3 By the start of each federal fiscal year, Congress shall establish an initial member state  
4 current year funding level for each member state, based upon reasonable estimates. The final  
5 member state current year funding level shall be calculated, and funding shall be reconciled by  
6 the United States Congress based upon information provided by each member state and audited  
7 by the United States Government Accountability Office.

8 Section 6. The Interstate Advisory Health Care Commission is established. The Commission  
9 consists of members appointed by each member state through a process to be determined by  
10 each member state. A member state may not appoint more than two members to the commission  
11 and may withdraw membership from the commission at any time. Each commission member  
12 is entitled to one vote. The commission shall not act unless a majority of the members are  
13 present, and no action shall be binding unless approved by a majority of the commission's total  
14 membership.

15 The commission may elect from among its membership a chairperson. The commission may  
16 adopt and publish bylaws and policies that are not inconsistent with this compact. The  
17 commission shall meet at least once a year, and may meet more frequently.

18 The commission may study issues of health care regulation that are of particular concern to  
19 the member states. The commission may make nonbinding recommendations to the member  
20 states. The legislatures of the member states may consider these recommendations in  
21 determining the appropriate health care policies in their respective states.

22 The commission shall collect information and data to assist the member states in their  
23 regulation of health care, including assessing the performance of various state health care  
24 programs and compiling information on the prices of health care. The commission shall make

1 this information and data available to the legislatures of the member states. Notwithstanding any  
2 other provision in this compact, no member state shall disclose to the commission the health  
3 information of any individual, nor shall the commission disclose the health information of any  
4 individual.

5 The commission shall be funded by the member states as agreed to by the member states.  
6 The commission shall have the responsibilities and duties as may be conferred upon it by  
7 subsequent action of the respective legislatures of the member states in accordance with the  
8 terms of this compact.

9 The commission shall not take any action within a member state that contravenes any state  
10 law of that member state.

11 Section 7. This compact shall be effective on its adoption by at least two member states and  
12 consent of the United States Congress. This compact shall be effective unless the United States  
13 Congress, in consenting to this compact, alters the fundamental purposes of this compact, which  
14 are:

- 15 (1) To secure the right of the member states to regulate health care in their respective  
16 states pursuant to this compact and to suspend the operation of any conflicting federal  
17 laws, rules, regulations, and orders within their states; and  
18 (2) To secure federal funding for member states that choose to invoke their authority  
19 under this compact, as prescribed by section 5 of this compact.

20 Section 8. The member states, by unanimous agreement, may amend this compact from time  
21 to time without the prior consent or approval of Congress and any amendment shall be effective  
22 unless, within one year, the Congress disapproves that amendment. Any state may join this  
23 compact after the date on which Congress consents to the compact by adoption into law under  
24 its state constitution.

1       Section 9. Any member state may withdraw from this compact by adopting a law to that  
2       effect, but no such withdrawal shall take effect until six months after the Governor of the  
3       withdrawing member state has given notice of the withdrawal to the other member states. A  
4       withdrawing state shall be liable for any obligations that it may have incurred prior to the date  
5       on which its withdrawal becomes effective. This compact shall be dissolved upon the  
6       withdrawal of all but one of the member states.