Initiative Measure No. 1066

FILED
JAN 28 2010
SECRETARY OF STATE
STATE OF WASHINGTON

AN ACT Relating to establishing the Washington state health insurance freedom act of 2010; adding a new chapter to Title 48 RCW; and creating a new section.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state health insurance freedom act of 2010.

NEW SECTION. **Sec. 2.** The tenth amendment to the United States Constitution reserves powers not explicitly delegated to the federal government to the states. Health insurance is an area that has traditionally been regulated by the states and most plans are state specific. There is often little to no interstate commerce involved in health care insurance. As a result, any attempt by the federal government to regulate or provide mandates on state-specific health insurance plans is a clear violation of the United States Constitution unless it pertains to a federal program like Medicare. It is the purpose of this act to protect Washington health insurers and consumers and potential consumers of health care insurance from illegal and abusive mandates from the federal government which would threaten the quality and availability of health care for Washingtonians. It is declared that the public policy of Washington is to prevent any and all forms of coercion applied to persons in the state that might be utilized to compel them to comply with federal regulations nullified by this act. This shall include any such coercive action by the federal government to the extent such violates standards enumerated in the ninth and tenth amendments to the United States Constitution or any other constitutional standards which might apply to a specific public law.

NEW SECTION. **Sec. 3.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Compel" includes penalties or fines.

(2) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants.

(3) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created, or controlled

agency that is used to punish or discourage the exercise of rights protected under this section.

(4) "Lawful health care services" means any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency, or the state of Washington.

(6) "Washington plan" refers to any health insurance plan or health care system administered in the state of Washington for the benefit of Washington persons with the exception of those which:

(a) Service a federally mandated program such as medicare or medicaid;

(b) Service federal employees;

(c) Service entities created under a federal mandate;

(d) Has a substantial nexus of business with the federal government; or

(e) Has insurance operations in states or countries outside of Washington.

NEW SECTION. Sec. 4. Any law, code, mandate, or regulation by the federal government is null and void and of nor force or effect in Washington if it:

(1) Compels the coverage of certain procedures, treatments, drugs, or other lawful health care services by a Washington plan;

(2) Proscribes the manner in which a Washington plan can select patients;

(3) Compels a Washington plan to accept any individual into a plan with certain or all pre-existing conditions;

(4) Compels a Washington plan to price their plans in a certain manner;

(5) Restricts a Washington plan's access to any lawful health care services;

(6) Regulates a Washington plan in any manner, shape, or form aside from those lawful and Constitutional aspects of the federal code which apply to other industries outside of health care insurance and that have not been nullified by the state of Washington;

(7) Compels a Washington plan to ration care in a certain manner;

(8) Restricts a Washington plan from providing services to certain persons or classes or persons living in Washington; or

(9) Requires a Washington plan to pay penalties or fines which would incentivize companies to modify business practices in manner described by (1) through (8) of this section.

NEW SECTION. Sec. 5. (1) Any federal law, code, or mandate to the contrary of the provisions of this act is null and void and of no force or effect in Washington.

(2) Any federal employee or agent of the federal government who actively attempts to enforce laws nullified by this act or commits a violation pursuant to

section 7 of this act is subject to the penalties and prosecution described in section 8 of this act.

NEW SECTION. Sec. 6. Any legislation, code, or administrative action whose enforcement or threatened enforcement might have the indirect effect of violating the prohibitions of this act shall also be null and void and of no force or effect in Washington. For example, if there existed a requirement for an individual or business to file income tax returns and the effect of filing those tax returns according to the instructions given under penalty of perjury would have the same economic effect of penalties or fines for not covering pre-existing conditions in a Washington plan, that requirement of filing would be null and void in the state of Washington and no civil or criminal enforcement actions for failure to file such income tax returns could take place in Washington.

NEW SECTION. Sec. 7. If any individual attempts to compel a person in Washington into surrendering a right or property guaranteed by this act by directly or indirectly threatening such person with the enforcement of a law or code which would be nullified by this act, the individual or individuals attempting to compel shall be subject to penalties as detailed in section 8 of this act.

NEW SECTION. Sec. 8. (1) An arrest, search, or seizure or attempted arrest or seizure in violation of this act is unlawful, and individuals involved can be prosecuted by the county attorney or attorney general's office for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life occurred. The individuals involved can also be charged with any other applicable criminal offenses in Titles 9 and 9A RCW.

(2) Any individuals involved with violations of section 7 of this act can be prosecuted by the county attorney or attorney general's office for extortion as described by RCW 9A.56.110 through 9A.56.130. The individuals involved can also be charged with any other applicable criminal offenses in Title 9 RCW.

(3) Victims of crimes prosecutable under this section shall also be entitled to independently pursue concomitant civil action against the perpetrators of these crimes.

NEW SECTION. Sec. 9. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Sec. 10. Sections 2 through 9 of this act constitute a new chapter in Title 48 RCW.

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