



# PRACTICE GROUP

*email alert*

To: Healthcare Reform Educational Task Force Members

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## **South Carolina Healthcare Reform Legislative Update**

By Elizabeth Thomas and Carolyn Campbell\*

Governor Mark Sanford (R) released his 2010-2011 Executive Budget for South Carolina on January 7, 2010. In an effort to balance the state's budget without raising taxes, Sanford proposes a number of program cuts that he considers necessary in light of the current economic climate and cessation of federal stimulus funds in 2011. Among these cuts is a substantial reduction in Medicaid funds, primarily affecting available funding for Managed Care Organizations, inpatient and outpatient hospital care, prescription drugs, and others. The budget also proposes a one-year cap on the total number of children enrolled in the expanded State Children's Health Insurance Program, starting July 1, 2010. The General Assembly is now taking up this year's budgetary issues and cuts in what are expected to be lengthy and intense deliberations, which likely will stall discussions on other legislative matters.

The General Assembly reconvened for its 2010-2011 session on January 12, 2010, and has resumed consideration of the pending legislation summarized in [our last update](#), as well as other legislation carried over from 2009-2010. Since January, a number of new healthcare-related bills have also been introduced before the General Assembly. The following is a summary of legislation and resolutions recently passed by the General Assembly and an update on legislation pending in South Carolina.

### **Legislation and Resolutions Passed**

#### *Regulation of Individual Healthcare Insurance Providers--Passed March 2, 2010*

The General Assembly enacted legislation carried over from last year that regulates healthcare providers and issuers of individual healthcare insurance under circumstances where the issuer negotiates rates with a provider for covered healthcare services and then terminates or otherwise does not renew the provider's contract. Under such circumstances, SC law now requires the provision of in-network level

benefits for services rendered by certain out-of-network providers in order to ensure continuity of care for covered persons with serious medical conditions. Each provider contract will be required to include a continuation of care provision whereby: (1) the issuer accepts liability for covered benefits rendered in the continuation of care by a provider to a covered person at the contract's or policy's regular benefit limits; and (2) the provider accepts as payment in full for services rendered in the continuation of care the negotiated rate under the provider contract.

*Concurrent Resolution on State's Rights--Adopted March 10, 2010*

In response to the ongoing debate over healthcare reform, this resolution claims state sovereignty under the Tenth Amendment to the U.S. Constitution over all powers not otherwise enumerated and granted to the federal government, but without any force of law. In its final form, the resolution instructs Congress to cease and immediately desist all healthcare mandates that are beyond the scope of its constitutionally delegated powers, including the following: (1) the right to be treated by or receive services from a healthcare provider of that person's choice; (2) the freedom of choice of private healthcare systems or private healthcare plans of any type; (3) the right to pay directly for lawful medical services; and (4) the imposition of a tax, penalty, or fine of any type for choosing a healthcare provider, obtaining, or declining healthcare coverage, or participating in any particular healthcare system or plan. The resolution also resolves that the SC attorney general (AG) will challenge the constitutionality of any legislation enacted by Congress that would violate the policies established by the General Assembly's resolution.

*Secret Ballot in Union Elections--Joint Resolution to Amend the SC Constitution--Adopted March 10, 2010*

The General Assembly has adopted a joint resolution intended to override the federal Employee Free Choice Act (EFCA). The Joint Resolution means that SC voters will decide in the next general November election whether to amend the SC Constitution to guarantee that a SC employee could vote by secret ballot with regard to union organization.

### **Legislation Pending**

*Cigarette Tax Passed by House, Sent to Senate*

The Cigarette Tax is among legislation before the Senate which is expected to pass in 2010. Various lobbyist groups are advocating the cigarette tax be increased to the national average (\$1.34 per pack), whereas the bill now pending before the Senate increases the tax from its current rate of \$0.07 cents per pack to \$0.50 per pack. Senate debate on the bill has been delayed repeatedly, and thus far no date has been set on the Senate calendar.

*Freedom of Choice in Health Care Act--Introduced in Senate and Referred to Senate Judiciary Subcommittee*

Echoing the resolution on state sovereignty above, this bill would establish the right of state citizens to enter into private contracts with healthcare providers for healthcare services and to purchase healthcare coverage. It would also prohibit the legislature from: (1) requiring any person to participate in any healthcare system or plan; or (2) imposing any type of fine or penalty with respect to choosing or declining healthcare coverage or participating in any particular healthcare system or plan. The bill directs the SC AG to challenge the constitutionality of any provision enacted by the U.S. Congress that would require SC citizens to participate in any healthcare system or plan, or impose fines related to their choice or decline of coverage or participation in a particular healthcare system or plan.

*Public Option Opt-Out--Introduced in House and Referred to House Committee on Labor, Commerce, and Industry*

This bill would require South Carolina to opt out of any federal law mandating that citizens purchase or secure health insurance through a range of options, including a public plan underwritten by the federal government, if such law permits a state to opt out.

*The Affordable Health Insurance Act--Pre-Filed in Senate and Referred to Senate Committee on Banking and Insurance*

This bill would permit health insurers to operate wellness and health promotion programs without violating the Unfair Trade Practices Act. The bill would exempt from insurance laws certain "Health Reimbursement Arrangement-Only Plans" offered by employers. The bill would provide for a state income tax credit equal to the premium for a high-deductible health plan maintained by an individual in conjunction with a health savings plan. Finally, the bill provides that there is no required relationship between preferred provider and non-preferred provider plan reimbursements for high-deductible plans used in conjunction with health savings accounts so long as certain standards are met.

*Insurance Coverage for Cancer Clinical Trials--Approved by Senate Medical Affairs Subcommittee and Senate Banking and Insurance Committee; Pending Before Senate*

This bill would require that a health insurance plan provide coverage for an insured who has had coverage under the plan for routine patient care costs incurred for cancer treatment and is referred for participation in an approved cancer clinical trial. In order for coverage to be mandatory, the referral of the insured must be made by two physicians who specialize in oncology, and the cancer clinical trial must meet certain criteria enumerated in the bill. The required coverage would be subject to dollar limits, deductibles, and co-insurance provisions not less favorable than those that apply routine patient care costs incurred for cancer treatment generally under the insured's health insurance plan. The bill would also prohibit the restriction, non-renewal, non-reissuance, or termination of individual coverage by a health insurance plan solely because the individual insured entered an approved cancer clinical trial. A similar bill is pending in the House and has been referred to House Committee on Labor, Commerce, and Industry.

*Michelle's Law--Introduced in Senate and Referred to Senate Committee on Banking and Insurance*

This bill would expand health insurance coverage to dependent children during a medically necessary leave of absence from a post-secondary educational institution. The bill also enacts federal requirements set forth in the Genetic Information Nondiscrimination Act of 2008. A similar bill is pending before the House and has been referred to the Committee on Labor, Commerce, and Industry.

*South Carolina Health Information Exchange--Introduced in House and Referred to House Committee on Labor, Commerce, and Industry*

This bill proposes the establishment of a governing board, or "health information organization," to oversee the statewide health information exchange (SCHIE), which will be funded in part by federal grant monies issued to South Carolina under the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). This governing board (SCHIE Council) would oversee the electronic exchange of health information by and between the state and SC healthcare organizations, including the telepsychiatry program, in accordance with HITECH and state and federal privacy and security laws.

*Health Information Technology and Electronic Records--Introduced in House and Senate; Approved by Senate Committee on Medical Affairs; Pending Before Senate*

This bill would create a joint electronic health information study committee to examine the feasibility of increasing the use of health information technology and electronic personal health records.

*Tort Reform--Approved by House; Sent to Senate*

This bill contains numerous tort reform provisions, including a cap on the award of noneconomic and punitive damages in all personal injury actions equal to three times the compensatory damages award or \$350,000, whichever is higher. The punitive-damages cap would not apply to situations involving: (1) intentional conduct; (2) conviction of a felony criminal charge in the course of conduct that gives rise to damages; or (3) intoxication. The bill would permit any defendant against which punitive damages are sought to have a bifurcated trial before the same jury, and would establish eleven factors to be considered by the finder of fact in awarding punitive damages. The proposed bill expands upon SC's current medical malpractice reform statute, which imposes caps on the award of noneconomic damages against healthcare providers and institutions in a medical malpractice claim. See § 15-32-200 *et seq.*, S.C. Code Ann.

*\*We would like to thank Elizabeth T. Thomas, Esquire, and Carolyn A. Campbell, Esquire (Haynsworth Sinkler Boyd PA, Charleston, SC), for providing this update.*

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Member benefit educational opportunity:

Participate in the [webinar](#) on why health insurance markets don't work like other markets. Or do they (April 27, 2010)?

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