



AN ACT AUTHORIZING AN INTERSTATE HEALTH CARE COMPACT; DIRECTING THE GOVERNOR TO JOIN THE COMPACT; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Interstate Health Care Compact.** This state enacts into law and enters into the Interstate Health Care Compact with all states that enact the compact in the form substantially contained in [section 3].

**Section 2. Authority to join Interstate Health Care Compact.** The governor of the state of Montana is authorized and directed to enter into the Interstate Health Care Compact provided for in [sections 1 through 3] on behalf of the state with any state that has lawfully joined in the compact in the form substantially contained in [section 3].

**Section 3. Text of compact.** The Interstate Health Care Compact referred to in [sections 1 and 2] reads as follows:

#### ARTICLE I

##### FINDINGS AND DECLARATION OF POLICY

(1) The separation of powers, both between the branches of the federal government and between federal and state authority, is essential to the preservation of individual liberty.

(2) The United States constitution creates a federal government of limited and enumerated powers and reserves to the states or to the people those powers not granted to the federal government.

(3) The federal government has enacted many laws that have preempted state laws with respect to health care and placed increasing strain on state budgets, impairing other responsibilities such as education, infrastructure, and public safety.

(4) The member states seek to protect individual liberty and personal control over health care decisions and believe that the best method to achieve these ends is by vesting regulatory authority over health care in the

states.

(5) By acting in concert, the member states may express and inspire confidence in the ability of each member state to effectively govern health care.

(6) The member states recognize that the consent of congress may be more easily secured if the member states collectively seek consent through an interstate compact.

(7) The member states resolve and, by the adoption into law under their respective state constitutions of this health care compact, agree as follows.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Commission" means the interstate advisory health care commission created in Article VII.

(2) (a) "Current year inflation adjustment factor" means the total gross domestic product deflator in the current federal fiscal year divided by the total gross domestic product deflator in federal fiscal year 2010.

(b) The total gross domestic product deflator is the deflator determined by the bureau of economic analysis of the U.S. department of commerce.

(3) "Effective date" means the date upon which this compact is effective for purposes of the operation of state and federal law in a member state and is the later of:

(a) the date upon which the compact is adopted under the laws of the member state; or

(b) the date upon which the compact receives the consent of congress pursuant to Article I, section 10, of the United States constitution, after at least two member states adopt the compact.

(4) (a) "Health care" means care, services, supplies, or plans related to the health of an individual that are provided through the children's health insurance program, medicaid, or medicare, including but not limited to:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body;

(ii) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription; and

(iii) an individual or group plan that provides or pays the cost of care, services, or supplies related to the health of an individual.

(b) The term does not apply to any care, services, supplies, or plans provided by the U.S. department of defense, the U.S. department of veterans affairs, or the Indian health service.

(5) "Member state" means a state that has signed this compact and adopted it under the laws of the state.

(6) (a) "Member state base funding level" means a number equal to the total federal spending on health care in the member state during federal fiscal year 2010. On or before the effective date, each member state shall determine the member state base funding level for its state, and that number is binding upon the member state.

(b) The preliminary estimate of member state base funding level for the state of Montana is \$2,330,000,000.

(7) "Member state current year funding level" means the member state base funding level multiplied by the member state current year population adjustment factor multiplied by the current year inflation adjustment factor.

(8) (a) "Member state current year population adjustment factor" means the average population of the member state less the average population of the member state in federal fiscal year 2010, divided by the average population of the member state in federal fiscal year 2010, plus 1.

(b) Average population in a member state must be determined by the U.S. census bureau.

### ARTICLE III

#### PLEDGE

Each member state pledges to take joint and separate action to secure the consent of congress to this compact in order to return the authority to regulate health care to the member states consistent with the goals and principles articulated in this compact. Each member state further pledges to improve health care policy within its respective jurisdiction and according to the judgment and discretion of the member state.

### ARTICLE IV

#### LEGISLATIVE POWER

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

### ARTICLE V

#### STATE CONTROL

Each member state, within its state, may suspend by legislation the operation of all federal laws, rules,

regulations, and orders regarding health care that are inconsistent with the laws and regulations adopted by the member state pursuant to the compact. Federal and state laws, rules, regulations, and orders regarding health care remain in effect unless a member state expressly suspends them pursuant to its authority under the compact. For any federal law, rule, regulation, or order that remains in effect in a member state after the effective date, that member state is responsible for the associated funding obligations in its state.

#### ARTICLE VI

##### FUNDING

(1) Each federal fiscal year, each member state has the right to federal monies up to an amount equal to its member state current year funding level for that federal fiscal year, funded by congress as mandatory spending and not subject to annual appropriation, to support the exercise of member state authority under this compact. This funding may not be conditional on any action of or regulation, policy, law, or rule being adopted by the member state.

(2) By the start of each federal fiscal year, congress shall establish an initial member state current year funding level for each member state, based upon reasonable estimates. The final member state current year funding level must be calculated, and funding must be reconciled by congress based upon information provided by each member state and audited by the U.S. government accountability office.

#### ARTICLE VII

##### INTERSTATE ADVISORY HEALTH CARE COMMISSION

(1) The member states create the interstate advisory health care commission.

(2) (a) The commission shall consist of members appointed by each member state through a process to be determined by the laws of the member state. No state may appoint more than two members to the commission.

(b) A member state may withdraw its members from the commission at any time.

(c) Each commission member is entitled to one vote. The commission may not act unless a majority of the members are present.

(d) No action is binding on the commission unless approved by a majority of the total members.

(3) The commission may elect a chairman from among its members and adopt and publish bylaws and policies that are consistent with this compact. The commission shall meet at least annually and may meet more frequently if the bylaws allow.

(4) The commission may study issues related to health care regulation of concern to the member states. The commission may make nonbinding recommendations to the member states for consideration by the legislatures of the member states in determining appropriate health care policy in their respective states.

(5) The commission shall collect information and data to assist the member states in the regulation of health care, including but not limited to assessing the performance of various state health care programs and compiling information on the prices of health care. The commission shall make the information and data available to the legislatures of the member states. Notwithstanding any other provision in the compact, no member state may disclose to the commission the health information of any individual, nor shall the commission disclose the health information of any individual.

(6) The commission may undertake additional responsibilities and duties if those responsibilities and duties are conferred upon the commission by the legislatures of the member states in accordance with the terms of the compact.

(7) Member states shall fund the commission as provided by the member states.

(8) The commission may not take any action within a member state that contravenes any state law of the member state.

ARTICLE VIII

CONGRESSIONAL CONSENT

This compact is effective upon its adoption by at least two member states and consent of congress in a form that is consistent with the purposes of this compact to secure:

(1) the right of the member states to regulate health care in their respective states pursuant to this compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their states; and

(2) federal funding for member states that choose to invoke their authority under this compact pursuant to the mandatory formula provided for in Article VI.

ARTICLE IX

AMENDMENTS

(1) This compact may be amended by unanimous agreement among the member states without the prior consent or approval of congress.

(2) Any amendment is effective unless, within 1 year, congress disapproves the amendment.

(3) Any state may join the compact after the date on which congress consents to the compact by adopting the compact into law under its state constitution.

ARTICLE X

WITHDRAWAL OR DISSOLUTION

(1) Any member state may withdraw from this compact by adopting a law authorizing withdrawal.

(2) Withdrawal may not take effect until 6 months after the governor of the withdrawing member state has given notice of the withdrawal to the other member states.

(3) A withdrawing state is liable for any obligations that it may have incurred prior to the date its withdrawal becomes effective.

(4) This compact is dissolved upon the withdrawal of all but one of the member states.

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 3].

**Section 5. Contingent effective date.** [This act] is effective on the date that the governor certifies to the code commissioner that the requirements of Article VIII have been met. The governor shall submit certification within 15 days of the occurrence of the contingency.

- END -

I hereby certify that the within bill,  
HB 0266, originated in the House.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

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Chief Clerk of the House

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

HOUSE BILL NO. 266  
INTRODUCED BY N. BALLANCE

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