

FINANCIAL IMPACT OF THE HEALTHCARE FREEDOM PROTECTION ACT INITIATIVE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

The Healthcare Freedom Protection Act Initiative (Initiative) proposes to amend Article 15 of the *Nevada Constitution* by adding a new section, designated Section 17, that would prohibit the creation, operation, or maintenance of a health insurance exchange, as defined in the Initiative, by the state or a local government. The provisions of the Initiative also prohibit the state or a local government from entering into a contract or agreement with any person to create, operate, or maintain a health insurance exchange on behalf of the state or a local government.

FINANCIAL IMPACT OF THE INITIATIVE

Pursuant to Article 19, Section 4 of the *Nevada Constitution*, an initiative proposing to amend the *Nevada Constitution* must be approved by the voters at two successive general elections in order to become a part of the *Constitution*. If this Initiative is approved by voters at the November 2014 and November 2016 General Elections, the provisions of the Initiative would become effective on the fourth Thursday of November 2016 (November 29, 2016), when the votes are canvassed by the Supreme Court pursuant to NRS 293.395.

Under current law, the State of Nevada has created the Silver State Health Insurance Exchange as the agency to operate Nevada Health Link (Nevada Exchange) in accordance with the provisions of the federal Patient Protection and Affordable Care Act, Public Law 111-148 (ACA) and the decision made by the Governor and the Legislature to develop and operate a state-based exchange in lieu of utilizing the federal exchange. If the provisions of the Initiative are approved by the voters and become effective in November 2016, the State would be prohibited from operating the Nevada Exchange after the effective date.

If enacted by the voters, the provisions of the Initiative do not eliminate the requirement for individuals to purchase health insurance or pay the required penalty under the ACA if health insurance is not purchased. Thus, consumers who wish to purchase health insurance would need to find insurance coverage through the federal exchange or alternative means.

The Nevada Exchange is intended to be wholly funded beginning in calendar year 2015 by fees charged to insurance companies that offer health insurance through the Nevada Exchange. This fee is currently imposed at a rate of \$4.95 per health plan member per month enrolled through the Nevada Exchange and \$0.36 per dental plan member per month enrolled through the Nevada Exchange. Therefore, although the elimination of the Nevada Exchange would eliminate the operating expenditures associated with running the Nevada Exchange, there would be no decrease in expenditures that are funded by the State.

Under current law, the state levies a tax of 3.5 percent upon the amount of net premiums written by insurance companies in the state of Nevada. The tax applies to insurance policies offered by companies through the Nevada Exchange or the federal exchange. Any fees that are charged to insurance companies by the Nevada Exchange or the federal exchange and that are included in the premium cost are subject to the insurance premium tax.

Based on information received from the Nevada Exchange, policies that are currently purchased through the federal exchange are subject to a fee of 3.5 percent of the monthly premium. Based on enrollment information available from the Nevada Exchange at the time that this fiscal note was prepared, the fees of \$4.95 per health plan member per month and \$0.36 per dental plan member per month currently charged by the Nevada Exchange equates to an average fee of approximately 1.3 percent of the monthly premium amount. Thus, the Nevada Exchange estimates that a policy sold through the federal exchange would have a premium approximately 2.2 percent higher than the same policy purchased through the Nevada Exchange, assuming that all other factors remain constant. The increased premium would be subject to the state's insurance premium tax and would result in higher revenue for this tax dedicated to the State General Fund.

However, the Fiscal Analysis Division cannot estimate the fees that would be charged by either the Nevada Exchange or the federal exchange, the cost differences that may exist between similar policies, or other factors that may affect the premium cost of health plans offered in Nevada beginning in November 2016. Thus, the estimated change in revenue generated from the insurance premium tax in Fiscal Year 2017 (the first fiscal year for which the provisions of the Initiative can become effective) and future years as a result of passage of the Initiative cannot be determined with any reasonable degree of certainty.

Based on information received from the Division of Welfare and Supportive Services of the Department of Health and Human Services (DWSS), approval of the Initiative would require the modification of existing systems in order to maintain compliance with the ACA. These modifications include, but are not limited to, the construction of an enrollment interface between the state's Medicaid eligibility system and the federal health insurance exchange, the construction of a billing system for the Children's Health Insurance Program, and the modification of the DWSS system to allow for electronic application for medical assistance programs. These functions are currently performed by the Nevada Exchange.

DWSS has estimated that the current cost to comply with the provisions of the Initiative and to maintain compliance with the ACA is approximately \$9.9 million in the first year, and \$1.8 million per year in subsequent fiscal years. DWSS has indicated that a portion of the one-time and ongoing maintenance costs may be covered by federal funds, based on an application to the appropriate federal agencies; however, neither DWSS nor the Fiscal Analysis Division can predict whether the application would be approved or estimate the amount of federal funds that would be made available for this purpose if the application is approved. Although the maximum impact based on current costs would be approximately \$9.9 million in the first year and \$1.8 million per year in subsequent fiscal years, the Fiscal Analysis Division cannot estimate the actual costs that would be incurred to comply with these provisions in November 2016 if the Initiative were approved by the voters. Thus, the actual fiscal impact on the State General Fund cannot be determined with any reasonable degree of certainty.

Based on information received from the Division of Insurance of the Department of Business and Industry (DOI), enactment of the provisions of the Initiative would have no financial impact upon the DOI.

The Public Employees' Benefits Program (PEBP), as a means of providing cost savings to the state, implemented changes to its plan in 2011 to provide health insurance for Medicare-eligible retirees through an individual market exchange, beginning in Fiscal Year 2012. The exchange model utilizes a contractor to assist Medicare-eligible retirees in selecting a Medicare supplement or Medicare Advantage health insurance plan through the individual market exchange.

PEBP has determined that the provisions of the Initiative that define a health insurance exchange, if enacted, would prohibit PEBP from providing access to health insurance for Medicare-eligible retirees through the existing individual market exchange model. PEBP would be required to find an alternative health insurance plan design for Medicare-eligible retirees. Based on information provided by PEBP, given current enrollment information, if the plan design chosen were similar to the design utilized prior to Fiscal Year 2012, state expenditures from the State General Fund would increase by approximately \$3.7 million per year, and state expenditures from non-General Fund sources would increase by approximately \$2.4 million per year. However, the Fiscal Analysis Division cannot determine whether PEBP would choose the plan design for Medicare-eligible retirees that was used prior to Fiscal Year 2012 or some other option, nor can it estimate enrollment, inflation, or utilization changes that may affect health care-related expenditures by PEBP. Thus, the actual increase in expenditures to state government as a result of this change in coverage beginning in November 2016 cannot be determined with any reasonable degree of certainty.

PEBP has additionally indicated that the provisions of the Initiative may have an impact on local governments whose Medicare-eligible retirees are covered under the PEBP individual market exchange model or who may utilize a similar health insurance exchange for their Medicare-eligible retirees. The Fiscal Analysis Division is currently contacting local governments to determine whether the provisions of the Initiative would have an effect on local government expenditures. If any local government responds that the passage of the Initiative may have an effect on local government expenditures, the Fiscal Analysis Division will provide a revised fiscal note to the Secretary of State's Office.

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