

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT
RESOLUTION NO. 5007**

As Amended by House Committee on
Health and Human Services

Brief*

HCR 5007 would amend the *Kansas Constitution* and add a new article 16 concerning health care. The new article would state that:

- No law or rule can compel any person, employer or health care provider to participate in any health care system or to purchase health insurance;
- A person or employer could pay directly for lawful health care services and would not be required to pay a penalty or fine;
- A health care provider may accept direct payment from a person or employer for lawful health care services without penalty or fine, and the provider may not be prohibited from gaining state licensure as a result of this payment; and
- No law or rule may prohibit the purchase or sale of private health insurance or participation in private health care systems, except for those reasonable and necessary rules that do not substantially limit options.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The proposed constitutional amendment would not:

- Affect which health care services a health care provider or hospital is required to perform or provide;
- Affect which health care services are permitted by law;
- Prohibit care provided through the Workers Compensation Program or state employee benefit programs;
- Affect laws or rules in effect as of August 1, 2009; or
- Affect the terms or conditions of any health care system provided they do not punish or penalize a person or employer for paying directly for lawful health care services, or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

Background

The process by which this Concurrent Resolution would become a part of the *Kansas Constitution* is as follows. If the Concurrent Resolution is approved by two-thirds of the members of the House of Representatives, and two-thirds of the members of the Senate, the proposed constitutional amendment would be submitted to the electors of the state at the November 2012 general election unless a special election is called at a sooner date by a concurrent resolution of the Legislature. Language to be included on the election ballot is included in the resolution.

In March 2010, Congress enacted the federal health reform law. Referred to as the Affordable Care Act, the law contains a provision requiring certain individuals to have a minimum level of health insurance. Covered individuals who fail to maintain sufficient coverage would be subject to a financial penalty beginning in 2014.

The resolution incorporates model language from the American Legislative Exchange Council's (ALEC) model legislation, "Freedom of Choice in Health Care Act." It is similar to 2010 HCR 5032 and 2010 SCR 1626.

The proponents of the concurrent resolution were Senator Mary Pilcher-Cook; representatives of the National Federation of Independent Business, the American Legislative Exchange Council, the Kansas Chamber, and the Kansas Sovereignty Coalition; three practicing physicians; one retired lawyer; and one insurance agent.

Written testimony opposing the proposed constitutional amendment was distributed after the hearing by the Kansas Health Consumer Coalition.

The House Committee on Health and Human Services amended the resolution to state that a health care provider may not be prohibited from gaining state medical licensure because the provider accepted direct payment for lawful health care services.

No fiscal note was available at the time of the Committee hearing.