May 28, 2010

State Auditor Susan Montee
301 West High Street, Office 880
Jefferson City MO 65102

Dear Auditor Montee,

This letter is to provide comments in opposition to the ballot measure proposed by House Bill 1764 which the General Assembly submitted to the Secretary of State on May 25, 2010. The proposal would require Missouri to opt out of the "individual mandate" provision of the federal health care reform law by implementing the following requirements:

> **Section 1.330.1.** No law or rule shall compel, directly or indirectly, any person, employer or health care provider to participate in any health care system.
>
> **Section 1.330.2.** A person or employer may pay directly for lawful health care services and shall not be required by law or rule to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

As a state Senator in Missouri, I would like to offer the following comments on the fiscal impact of the proposed initiative. I am the contact on this matter and can be reached at:

State Capitol, Room 431
Jefferson City, Missouri 65101
Phone: (573) 751-2514
FAX: (573) 526-2612
E-Mail: jbray@senate.mo.gov

Fiscal Comment

This initiative petition contains language that is designed to enable the State of Missouri to **opt out** of the federal health care reform law, the Patient Protection and Affordable Care Act (PPACA). More specifically, the legislation would opt out of the "individual mandate" of PPACA. Assuming this provision could legally be implemented in Missouri, it would have a substantial negative fiscal impact on our state. And in assessing the fiscal impact, we have to assume that the bill could actually take effect.

A. Consequences of Opting Out of the Individual mandate

Taken literally, this language would opt out of just one provision – the individual mandate – of the federal health care law. Thus, all of the federal law's "private market insurance reforms" would still go into effect, including reforms requiring insurance companies to serve people regardless of any pre-existing conditions. As noted by Congress in PPACA, the impact of such market reforms without an individual mandate would result in individuals making "an economic and financial decision to forego health insurance coverage" until they get sick, thereby causing health care premiums to skyrocket in our state.[1] Thus, PPACA provisions encouraging healthy individuals to purchase insurance are "essential to creating effective health insurance markets."

Furthermore, the individual mandate is intertwined with the "guaranteed issue" requirements and the health care exchange provisions of the Act. In order to receive a premium subsidy, an individual must purchase insurance through the health insurance exchange. Under this legislation, Missouri would not be able to operate an exchange under the terms of PPACA, thus Missourians would be denied the opportunity to receive premium subsidies. If Missouri votes against health reform, billions of dollars in help with the costs of purchasing insurance for hard-working Missourians is lost. The loss of these dollars would of course have an additional economic impact on our state through lost jobs, economic activity and tax revenue that would be generated by these health insurance premiums.

The Department of Insurance and the State Auditor's office must calculate the fiscal impact of implementing federal "guaranteed issue" requirements of the PPACA law without an individual mandate on the cost of health care premiums in our state, its economy and the state budget. The Congressional Budget Office

[1] Patient Protection and Advocacy Act of 2010, § 1501(a)(2)(A).

has estimated that average premiums would be 7 percent to 10 percent lower because of the influx of enrollees with below average spending for health care who would purchase coverage **because of the new subsidies to be provided and the individual mandate**. The State Auditor should take this into account and assume that Missouri health insurance premiums would be at least 7 percent to 10 percent higher under the proposed ballot measure.[2] In fact, other studies show an even greater impact from implementing insurance reforms without an individual mandate. An analysis by Wellpoint indicated that the impact of guaranteed issue without an effective individual mandate would be premium increases ranging from 20 percent to 80 percent.[3] In New Jersey, premiums rose by 24 percent in the employment based larger group market and between 112 percent and 155 percent in the non-group indemnity insurance market between 1996 and 2000 when that state implemented community rating and guaranteed issue without an individual mandate - which is what would happen under the literal language of this bill.[4]

Of course, this would affect not only private insurance premiums but the Missouri Consolidated Health Care Plan and Medicaid as well. This change would affect the cost of all state and local government employees' health insurance benefits. Moreover, to the extent that the state purchases or subsidizes goods and services from many firms that offer health insurance to their workers, it would raise the price of goods purchased by the state and diminish the impact of state grants for education by raising the price of health insurance received by school employees.

In addition, **the lack of an individual mandate would simply cause fewer people to purchase health care insurance** such as private health insurance or employer-sponsored health insurance. With fewer people covered, Missouri health providers would receive fewer payments for services, have less income and, thereby, limit state revenue. The State Auditor's office must analyze the negative fiscal impact this decrease in the number of insured and insurance premiums collected would have on our state.

B. Other Related Fiscal Consequences

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[2] Congressional Budget Office, *An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act*, at 6, November 30, 2009.

[3] Wellpoint, *Health Care Reform Premium Impact in Missouri*, at 8, undated (available at: http://www.politico.com/static/PPM143_091023_missouri_premium_impacts_analysis.html).

[4] Uwe E. Reinhardt, *The Case for Mandating Health Insurance*, October 23, 2009 (available at: http://economix.blogs.nytimes.com/2009/10/23/the-case-for-mandating-health-insurance/).

In addition to the specific negative impact of opting out of the individual mandate, the real intent of the proposed ballot measure is to opt out of federal health care reform entirely, which could cost Missouri billions of federal dollars in low-income subsidies and Medicaid funds, not to mention access to many other funding streams created by PPACA. For example, one estimate by the Missouri Department of Social Services indicated that Missouri would receive more than $21 billion in federal Medicaid funds over a ten-year period starting in 2014. The State Auditor, with assistance from the relevant state departments, should analyze the financial impact of opting out entirely from federal health care reform. Even if we were to assume that this legislation is not intended to opt out of federal reform entirely, the lack of a mandate would surely have a negative impact on the number of Missourians that enroll in all forms of insurance, including Medicaid, thereby reducing the flow of federal funds to our state.

The legislation would also undoubtedly have a substantial negative financial impact on state services. More people would be uninsured and would go without medically necessary treatment until they were at the point of requiring more expensive emergency room care, which would also have a negative impact on premiums for all Missourians. More people would become sick, lose their jobs and rely on state-funded health care services instead of the private insurance market at the point at which they are healthy.

The specific language in the bill also would have unintended consequences well beyond opting out of federal health care reform. The bill would limit government's ability to mandate that anyone participate in any type of health insurance system, not just the system created by the federal health care reform law. The ballot measure would, for example, prohibit the state from making legislative changes to enroll more individuals in Medicaid (MO HealthNet) managed care programs, such as those recommended by the Senate's "Reboot Government" working group in which I participated. While the bill exempts from its prohibition any laws or regulations already in place as of January 1, 2010, it does not exempt future efforts to expand mandatory risk-based managed care, which would require new state legislation. Arizona's Medicaid managed care program identified substantial state costs in response to a similar proposal in that state.[5] Missouri's Medicaid program should undertake a similar analysis of the consequences of such legislative language in Missouri.

[5] Public Letter from Anthony D. Rodgers, Director of The Arizona Health Care Cost Containment System, at 2-3, dated September 18, 2008.

The State Auditor's fiscal note must take into account the financial impact of limiting the state's options to mandate participation in a managed care system.

C. Unintended Litigation Costs

Finally, the legislation would place Missouri squarely in conflict with federal law, leading to unnecessary, burdensome and costly litigation with the federal government, including the Department of Justice. The costs of this litigation may also include attorneys' fees awarded against the state – given the obvious conflict with federal law and the lack of any legal merit to the State's position in such litigation in light of the federal supremacy clause.

The multitude of unintended consequences of this radical measure are impossible to foresee, but doubtless would include substantial negative fiscal consequences for Missouri. Insofar as other states are already pursuing lawsuits contesting the constitutionality of the federal law, Missouri need not expend resources to test this issue under either a ballot issue or a lawsuit. This would simply drive up state costs with no apparent benefit to the state. If other states' lawsuits are successful, the federal law will be declared illegal and the goal will have been realized. If they are unsuccessful, then the state costs for this ballot and for a lawsuit will have been wasted.

To conclude, it is critical that the state analyze what would happen if this measure were actually implemented rather than simply assume that this measure will go away with litigation. This requires a careful analysis of all of the fiscal consequences of the measure, including the unintended consequences.

Thank you for paying attention to these important issues.

Sincerely,

Joan Bray

Joan Bray

JB:jr