TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 1888 - HB 1770

February 3, 2014

SUMMARY OF BILL: Prohibits any state entity from establishing, administering or assisting in the establishment or administering any specific regulatory scheme to operate the federal Patient Protection and Affordable Care Act (PPACA) or any subsequent amendment to the act. The bill does not in any way prohibit any person from purchasing insurance from a federal health care exchange nor does it invalidate any existing or future health insurance policies purchased from a federal health care exchange.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – If the federal government makes a determination that the state is noncompliant with federal law, there could be a number of fiscal implications. Due to a number of unknown factors, including the federal government's determination and when any penalties or fund revocations would occur, the exact fiscal impact cannot be determined. Federal funds in the amount of $6,511,750,000 could be jeopardized. The state could incur penalties of $32,869,785,000. The state could reduce fee expenditures ranging from $9,322,540 in calendar year 2014 to $300,000 in calendar year 2019. Local governments could incur penalties of $28,072,642,500. The federal government could ask for reimbursement of approximately $10,277,300 for funds already received by the state related to PPACA provisions.

Assumptions:

- According to the Bureau of TennCare, the provisions of the bill will prohibit the state from complying with federal law. If a determination is made that the state is in noncompliance, it could jeopardize federal financial participation (FFP) funds. According to the Bureau, FFP for FY14-15 is estimated to be $6,500,000,000.
- According to the Department of Commerce and Insurance (TDCI), the provisions of the bill could have a significant impact on the operations of the department including but not limited to the department's review of qualified health plans (QHPs) on the federal exchange, approval of rates for QHPs not on the federal exchange, and approval of any policy forms that include PPACA reforms. While the operations of the department may be affected, any fiscal impact to TDCI is estimated to be not significant.

- According to the Department of Health (DOH), the provisions of the bill could impact programs receiving funds through provisions of the PPACA. The state receives approximately $11,000,000 in funding for the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program. This funding was established as part of the PPACA.
- DOH also receives approximately $750,000 per year for the Strengthening Public Health Data Systems Through Performance Improvement grant which was incorporated into the PPACA. This grant funding could also be jeopardized.
- If the operation of the state-sponsored public sector plans falls under the interpretation of specific regulatory schemes to operate the PPACA, there could be several penalties that the state would have to pay for noncompliance with the PPACA.
- According to the Department of Finance and Administration, Division of Benefits Administration, the state's penalty for calendar year 2014 under the Shared Responsibility for Employers requirement could be at least $126,000,000 estimated for over 63,000 full-time employees (FTEs) covered in the plan with a penalty of either $2,000 or $3,000 ($2,000 minimum x 63,000 FTEs = $126,000,000). This penalty will rise each year because it is tied to medical inflation.
- The PPACA requires plans to distribute a summary of benefits and coverage explanation (or SBC) that meets 12 standards specified in the act. If the SBC that Benefits Administration provided to enrollees prior to the PPACA standards were included, the state could receive a penalty of $1,000 per enrollee resulting in expenditures of $148,336,000 (148,336 members x $1,000).
- According to Benefits Administration, there are six mandates in various sections of the PPACA that the state-sponsored health plans would not be in compliance with and could receive a $100 per member per day penalty resulting in penalties of at least $32,485,584,000 (148,336 members x $100 per day x 6 mandates x 365 days).
- In addition to the previous $100 per member per day penalties, the state could incur an additional per member per day penalty for dependents ages 24 and 25 who would no longer be covered. In January 2014, there were approximately 3,010 dependents that would fall into this category resulting in penalties of $109,865,000 (3,010 x $100 x 365 days).
- Total penalties that could be assessed against the state for the state-sponsored health plans noncompliance with the PPACA are estimated at $32,869,785,000 ($126,000,000 + $148,336,000 + $32,485,584,000 + $109,865,000).
- According to Benefits Administration, the state paid fees in 2013 for the Patient Centered Outcome Research Institute ($150,599). This fee is based on the number of enrollees in a plan year and will be $2 per enrollee this year. The fee is estimated to be $296,672 (148,336 x $2). The fee will continue through 2019, but the amount of the fee may fluctuate each year. It is assumed that the fee payments in future years will be at least $300,000.
- According to Benefits Administration, the state is required to pay a declining Traditional Reinsurance fee starting in 2014. The amounts estimated for this fee are $9,025,868 (2014), $6,017,246 (2015), and $3,724,962 (2016). Pursuant to the proposed legislation, the state could decrease expenditures by not paying this fee and be out of compliance with the PPACA.

- According to Benefits Administration, the state collected $10,277,266.77 pursuant to the Early Retiree Reinsurance Program. The federal government could seek reimbursement of these funds for noncompliance with the PPACA.
- The fees and penalties associated with the state health plans will also be incurred by the local education agencies (LEAs) and the local governments participating in the state-sponsored health plans.
- Based on the information provided by Benefits Administration, the penalties for the LEAs could exceed $23,954,749,500 which includes the Shared Responsibility for Employers ($2,000 x 50,000 FTEs = $100,000,000), the SBC (108,178 members x $1,000 = $108,178,000), the six mandates (108,178 members x $100 x 6 mandates x 365 days = $23,690,982,000), and the dependents ages 24 and 25 (1,523 members x $100 x 365 days = $55,589,500).
- The exact numbers of local government employees that are enrolled through the local government option are unknown; however, and according to information provided by Benefits Administration, there are approximately 18,633 members in the local government option. It is assumed that penalties for the local governments in the state-sponsored health plans will incur similar penalties as the LEA and the state. The state penalties are estimated at approximately $221,545 per member. The LEA penalties are estimated at approximately $221,438 per member. It is estimated that local governments who opt into the state-sponsored health plans could incur penalties which exceed $4,117,893,000 ($221,000 x 18,633).
- Local governments that do not opt into the state-sponsored health plans could incur penalties as well, but due to a number of unknown factors including what type of plan, if any is offered, this impact cannot be reasonably quantified.

IMPACT TO COMMERCE:

Other Impact to Commerce and Jobs – If the provisions of the bill jeopardize $6,511,750,000 in federal funds coming into the state, various facets of the health care industry would see a decrease in revenue, which would impact services and result in a subsequent decrease in the number of Tennessee jobs available.

Assumptions:

- According to the Bureau of TennCare, $6,500,000,000 in federal financial participation could be eliminated. This extent of funding not going into the economy could have an adverse impact and could decrease the number of jobs in both the short and long term.
- According to the Department of Health, the department uses the federal grant money that could be jeopardized to contract with numerous vendors across the state. These vendors would incur a negative fiscal impact if the funds were not available for the contracted services.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

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