

SUBJECT: Requiring agency reports before implementing health reform provisions

COMMITTEE: State Sovereignty, Select — favorable, without amendment

VOTE: 5 ayes — Creighton, Branch, Darby, S. Miller, Pitts

0 nays

2 absent — Martinez Fischer, Thompson

WITNESSES: For — (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Business; Andrew Kerr, Texans for Fiscal Responsibility; Dustin Matocha, Empower Texans; Lee Spiller, Citizens Commission on Human Rights; Thomas Wolfe, Texas Conservative Coalition; Gareth Ellzey; Maria Martinez)

Against — (*Registered, but did not testify:* Miryam Bujanda, Methodist Healthcare Ministries; Anne Dunkelberg, Center for Public Policy Priorities; Laura Guerra-Cardus, Children’s Defense Fund - Texas; Bee Moorhead, Texas Impact)

On — Deeia Beck, Office of Public Insurance Counsel

BACKGROUND: The federal Patient Protection and Affordable Care Act of 2010 (ACA) will require individuals to obtain health insurance or face a penalty, require employers with at least 50 full-time-equivalent employees to provide health insurance coverage if a full-time employee applies and qualifies for a premium subsidy or risk a penalty, and expand Medicaid to most citizens and legal permanent residents with income up to 133 percent of the federal poverty level.

DIGEST: HB 335 would stipulate that a state agency could not implement certain provisions of federal health care reform law unless the state agency submitted a report to the Legislative Budget Board (LBB).

A state agency would be required to submit a report of an expenditure incurred in implementing a provision of a federal health care reform law if the provision:

- required a person to purchase health insurance or similar health coverage;
- required an employer to provide health insurance or similar health coverage to or for employees;
- imposed a penalty on an employer who did not provide health insurance or similar health coverage to or for employees;
- expanded eligibility for the state Medicaid program or state child health plan program;
- created a health insurance coverage mandate affecting a person; or
- created a new health insurance or similar health coverage program that was administered by the state or a political subdivision of the state.

A state agency also would be required to submit a report of an expenditure incurred in implementing a provision of a federal health care reform law if the LBB determined that it was necessary to a comprehensive and continuing review of a program or operation of a state agency.

The report would be required to:

- cite the specific federal statute or regulation that required the state to implement the provision;
- state whether the provision required or allowed a state waiver or option;
- describe the state action required to implement the provision;
- identify the individuals, legal entities, and state agencies that could be impacted by the implementation of or refusal to implement the provision;
- estimate the cost to be incurred by the state to implement the provision; and
- describe the consequences that could be imposed on the state for refusing to implement the provision.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

HB 335 would provide government transparency to better inform Texans of the impact of the ACA or any other federal health care mandates, protect Texans' individual rights, and create a tool for communication between state agencies and the legislative branch. Texans have a right to

know how health care is changing and how state resources are being adapted to comply with federal law. With the current uncertainty in the health care field, Texas must have a vehicle to monitor the federal law's implications on state managed health care.

The agency reports would function much like a fiscal note. The reports would inform agencies how much of their budgets would need to be directed toward health reform, allowing agencies to better budget for other functions.

It would be left to the discretion of each agency how to identify the individuals who would be impacted by health reform provisions. However, this task could be accomplished easily without violating privacy rights or HIPAA protections.

Agencies already evaluate the cost of compliance with federal law. HB 335 would simply ensure that this information was shared outside the agency. Sharing this information is warranted for a health care overhaul of this magnitude. Texas has been consistently working to improve health care in the state, and it would be prudent to make sure that federal mandates aided in these efforts.

**OPPONENTS
SAY:**

Under this bill, agency reports to the LBB would have to “identify the individuals” who could be impacted by the health reform provision, raising concerns that the bill could infringe on a person’s privacy or violate HIPAA protections for personal health information.

The reporting requirement would place an unnecessary and costly burden on state agencies. With recent cuts to agencies and larger cuts on the way, state agencies lack the staff and resources needed to produce these reports. While the cost of compliance with federal law is routinely analyzed, there does not appear to be an adequate rationale for singling out this federal law for this level of reporting.