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Health care compacts aimed against Obamacare point to a revival of federalism

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By: Kevin Mooney 05/23/11 10:01 AM Special To The Examiner

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One of the great unintended consequences of the Obama Administration that is sure to occupy presidential historians has been a revival of federalism. This is true not just in a theoretical sense, but in terms of states actually reasserting their authority in the realm of public policy.

Take for example, the growing movement that has built up around Health Care Compacts (HCC), which are state-level agreements that have the power and authority to negate the insurance mandates included within the Patient Protection and Affordable Health Care Act, also known as ObamaCare.

While the U.S. Constitution requires congressional approval under Article One Section 10, states have previously entered into these agreements with federal consent. There is a strong precedent here.

Moreover, judges have broadly interpreted this provision to allow for any activity that does not infringe on the national government's authority. Over 200 compacts are now in force including one between the Port Authorities of New York and New Jersey and the Washington Metropolitan Area Transportation Authority.

HCC's would shift responsibility and authority for regulating health care away from the federal government back to state officials, according to the Health Care Compact Alliance (HCCA). The compacts would involve two or more states and must secure approval from the House and Senate.

The idea behind HCC is to allow for states to be laboratories and to serve as platforms for experimentation, Michael Barnhart, national coordinator for the Alliance, said.

"They are regulatory shields," he explained. "They answer the question of who decides health care — it's the individual citizen and the state governments, not Washington D.C. bureaucrats thousands of miles away. HCCs bring authority for health care policy closer to home and they will help to restore self-government."

Thus far, supporters have successfully introduced HCCs in 14 states and one bill was signed into law in Georgia. Legislation has also passed the state House of Representatives in Montana, Missouri, Arizona and Texas. In addition, in more than 36 states, citizen groups and state legislators are actively considering legislation, according to the Alliance.

"There's a real hunger in the country right now to restore constitutional limits on federal power," Mario Loyola, director of the Center for Tenth Amendment Studies at the Texas Public Policy Foundation (TPPF) said. "Interstate compacts have a lot of potential as a device to re-establish an effective boundary between federal government and the states... I'm glad Louisiana is part of the effort. Louisiana's exploration of the interstate compact is a good sign that this sentiment is spreading across the country."

The Alliance hopes to include about 25 to 30 states in its effort before going to Congress.

Last week Oklahoma became the second state to sign an HCC into law following Georgia. The Tennessee State Senate has also passed an HCC law. Up next is the Louisiana State Senate, which will consider an HCC bill this coming Wednesday.

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