FINANCIAL IMPACT OF THE HEALTHCARE FREEDOM PROTECTION ACT INITIATIVE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

The Healthcare Freedom Protection Act Initiative (Initiative) proposes to amend Article 15 of the *Nevada Constitution* by adding a new section, designated Section 17, that would prohibit the creation, operation, or maintenance of a health insurance exchange, as defined in the Initiative, by the state or a local government. The provisions of the Initiative also prohibit the state or a local government from entering into a contract or agreement with any person to create, operate, or maintain a health insurance exchange on behalf of the state or a local government.

FINANCIAL IMPACT OF THE INITIATIVE

Pursuant to Article 19, Section 4 of the *Nevada Constitution*, an initiative proposing to amend the *Nevada Constitution* must be approved by the voters at two successive general elections in order to become a part of the *Constitution*. If this Initiative is approved by voters at the November 2016 and November 2018 General Elections, the provisions of the Initiative would become effective on the fourth Thursday of November 2018 (November 27, 2018), when the votes are canvassed by the Supreme Court pursuant to NRS 293.395.

Under current law, the State of Nevada has created the Silver State Health Insurance Exchange as the agency to operate Nevada Health Link (Nevada Exchange) in accordance with the provisions of the federal Patient Protection and Affordable Care Act, Public Law 111-148 (ACA). Based on a decision made by the Silver State Health Insurance Exchange Board in 2014, the Nevada Exchange is currently operated as a federally supported state-based marketplace, which allows a state exchange to interface with the federal exchange for eligibility and enrollment functions, but requires the state exchange to assume other functions related to the sale of health insurance plans.

If the provisions of the Initiative are approved by the voters and become effective in November 2018, the State would be prohibited from operating the Nevada Exchange after the effective date. However, if enacted by the voters, the provisions of the Initiative do not eliminate the federal requirement for individuals to purchase health insurance or pay the required penalty under the ACA if health insurance is not purchased. Thus, consumers who wish to purchase health insurance would need to find insurance coverage through the federal exchange or through alternative means.

The Nevada Exchange is intended to be funded by fees charged to insurance companies that offer health insurance through the Nevada Exchange. For Plan Year 2016, this fee will be imposed at a rate of 3 percent of the premium for each person enrolled through the Nevada Exchange. Therefore, although the elimination of the Nevada Exchange would eliminate the operating expenditures associated with running the Nevada Exchange, there would be no decrease in expenditures that are funded by the State, assuming that the fees that are collected fully fund the operation of the Nevada Exchange.

Under current law, the state levies a tax of 3.5 percent upon the amount of net premiums written by insurance companies in the state of Nevada. The tax applies to insurance policies offered by companies through the Nevada Exchange or the federal exchange. Any fees that are charged to insurance companies by the Nevada Exchange or the federal exchange and that are included in the premium cost are subject to the insurance premium tax.

Based on information received from the Nevada Exchange, policies that are currently purchased through the federal exchange are subject to a fee of 3.5 percent of the monthly premium, or 0.5 percent higher than the 3 percent fee that is effective for policies purchased through the Nevada Exchange for Plan Year 2016. Thus, had the provisions of the Initiative become effective during Plan Year 2016, insurance sold through the federal exchange would have been 0.5 percent more expensive than that identical plan sold through the Nevada Exchange. The increased premium would be subject to the state's insurance premium tax and would result in higher revenue for this tax dedicated to the State General Fund.

However, the Fiscal Analysis Division cannot estimate the fees that would be charged by either the Nevada Exchange or the federal exchange, the cost differences that may exist between similar policies, or other factors that may affect the premium cost of health plans offered in Nevada beginning in November 2018. Thus, the estimated change in revenue generated from the insurance premium tax in Fiscal Year 2019 (the first fiscal year for which the provisions of the Initiative can become effective) and future years as a result of passage of the Initiative cannot be determined with any reasonable degree of certainty.

The Division of Welfare and Supportive Services of the Department of Health and Human Services (DWSS) has indicated that the enactment of the provisions of the Initiative would have no financial impact upon DWSS, due to the decision by the Silver State Health Insurance Exchange Board in 2014 to transition the Nevada Exchange to a federally supported state-based marketplace. Although the transition to the federally supported state-based marketplace required DWSS to modify existing systems and build an enrollment interface between the federal exchange and Nevada's Medicaid eligibility system, those modifications have been completed and no further modifications would be necessary were the Initiative to become effective.

Based on information received from the Division of Insurance of the Department of Business and Industry (DOI), enactment of the provisions of the Initiative would have no financial impact upon the DOI.

The Public Employees' Benefits Program (PEBP), as a means of providing cost savings to the state, implemented changes to its plan in 2011 to provide health insurance for Medicare-eligible retirees through an individual market exchange, beginning in Fiscal Year 2012. The exchange model utilizes a contractor to assist Medicare-eligible retirees in selecting a Medicare supplement or Medicare Advantage health insurance plan through the individual market exchange. Based on information provided by PEBP, the exchange model that is utilized currently results in an average savings to the state of approximately $11.4 million per year.

PEBP has determined that the provisions of the Initiative that define a health insurance exchange, if enacted, would prohibit PEBP from providing access to health insurance for Medicare-eligible

retirees through the existing individual market exchange model. PEBP would be required to find an alternative health insurance plan design for Medicare-eligible retirees, which may result in an increase of state government expenditures. However, the Fiscal Analysis Division cannot determine the option that PEBP would choose to provide coverage for Medicare-eligible retirees, nor can it estimate enrollment, inflation, or utilization changes that may affect health care-related expenditures by PEBP. Thus, the actual increase in expenditures to state government as a result of any changes in coverage beginning in November 2018 cannot be determined with any reasonable degree of certainty.

PEBP has additionally indicated that the provisions of the Initiative may have an impact on local governments whose Medicare-eligible retirees are covered under the PEBP individual market exchange model or who may utilize a similar health insurance exchange for their Medicare-eligible retirees. However, the Fiscal Analysis Division cannot determine the number of local government retirees that may be affected by these provisions, nor can it determine the method by which any affected local government may choose to provide coverage for these affected retirees. Thus, the Fiscal Analysis Division cannot determine the resultant effect on expenditures that may be incurred by these local governments with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – September 15, 2015