



The Bell Policy Center

Health Exchange Voter Approval to Impose Tax

Senate Bill 16-002

Testimony to the House State, Veterans and Military Affairs Committee
 Rich Jones, Director of Policy and Research
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Thank you for the opportunity to present this testimony.

I am Rich Jones, the Director of Policy and Research with the Bell Policy Center. The Bell is a non-partisan, nonprofit research and advocacy organization founded on progressive values and dedicated to making Colorado a state of opportunity for all.

The Bell Policy Center and the Colorado Fiscal Institute oppose SB16-002 because the administrative fee charged to insurance companies by Connect for Health Colorado, our state's health benefit exchange, is a fee as defined by the Colorado State Supreme Court. As such, it is not subject to the required elections under Article X, Section 20 of the Colorado Constitution, and does not need to be approved by Colorado voters.

The Colorado Supreme Court in *Barber v. Ritter*, determined that, "a charge is a 'fee,' and not a 'tax' when the express language of the charge's enabling legislation explicitly contemplates that its primary purpose is to defray the cost of services provided to those charged."¹ The statutes creating the exchange authorize it to "assess special fees against insurers in an amount necessary to provide funding for the exchange." The statute further directs the fees to be used "for the operating expenses of the exchange, the reserves of the exchange, and related agreements."² The fee is also authorized by the federal Affordable Care Act, which directed the states to ensure their exchanges were self-sustaining and allowed them to "charge assessments or user fees to participating health insurance issuers."³

Colorado's fee is charged to insurance companies based on the volume of insurance premiums sold on the exchange with the purpose of defraying the costs of the services provided by the exchange to those insurance companies that use it. Because it is used "to finance a particular service utilized by those who must pay the charge, then the charge is a 'fee,'" according to the Colorado Supreme Court.⁴

In addition, Connect for Health Colorado is a "nonprofit unincorporated public entity" whose debts and liabilities "do not constitute the debts and liabilities of the State, and neither the exchange nor the board is an agency of the state."⁵ As a result, Connect for Health Colorado is not a state or a local government and is not a district as defined by Article X, Section 20 of the Colorado Constitution. It has no authority

to levy taxes and is not subject to the required elections to obtain voter approval under Article X, Section 20(4)(a) of the Colorado Constitution.

Finally, requiring voters to approve fees, something not required by Article X, Section 20 of the Colorado Constitution, would set a bad precedent. Elected officials must deal with a wide range of changing economic conditions and existing constraints on their ability to meet the policy challenges facing the state. It makes no sense to further limit their authority to deal with these challenges by requiring voter approval of fees.

The fees charged by Connect for Health Colorado clearly meet the definition of a “fee” under Section X, Article 20 of the Colorado Constitution as defined by the Colorado Supreme Court and therefore are not subject to a vote of the people.

We respectfully urge a no vote on SB16-002.

Thank you for the opportunity to present this testimony. I am happy to answer questions that you may have.

¹ Barber v. Ritter, 196 P.3d 238 (Colo. 2008)

² C.R.S. 10-22-109

³ 42 U.S.C. Sec. 18031(d)(5)(A)

⁴ Barber v. Ritter, 196 P.3d 238 (Colo. 2008)

⁵ C.R.S. 10-22-104