

HJR 1

2011

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article I of the State Constitution, relating to health care services.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 28 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Health care services.—

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule may not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or an employer may pay directly for lawful health care services and may not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and may not be required to pay penalties or fines for accepting direct payment from a person or an employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not

HJR 1

2011

29 substantially limit a person's options, the purchase or sale of
30 health insurance in private health care systems may not be
31 prohibited by law or rule.

32 (c) This section does not:

33 (1) Affect which health care services a health care
34 provider is required to perform or provide.

35 (2) Affect which health care services are permitted by
36 law.

37 (3) Prohibit care provided pursuant to general law
38 relating to workers' compensation.

39 (4) Affect laws or rules in effect as of March 1, 2010.

40 (5) Affect the terms or conditions of any health care
41 system to the extent that those terms and conditions do not have
42 the effect of punishing a person or an employer for paying
43 directly for lawful health care services or a health care
44 provider for accepting direct payment from a person or an
45 employer for lawful health care services, except that this
46 section may not be construed to prohibit any negotiated
47 provision in any insurance contract, network agreement, or other
48 provider agreement contractually limiting copayments,
49 coinsurance, deductibles, or other patient charges.

50 (6) Affect any general law passed by a two-thirds vote of
51 the membership of each house of the legislature after the
52 effective date of this section, if the law states with
53 specificity the public necessity that justifies an exception
54 from this section.

55 (d) As used in this section, the term:

56 (1) "Compel" includes the imposition of penalties or

HJR 1

2011

57 finer.

58 (2) "Direct payment" or "pay directly" means payment for
59 lawful health care services without a public or private third
60 party, not including an employer, paying for any portion of the
61 service.

62 (3) "Health care system" means any public or private
63 entity whose function or purpose is the management of,
64 processing of, enrollment of individuals for, or payment, in
65 full or in part, for health care services, health care data, or
66 health care information for its participants.

67 (4) "Lawful health care services" means any health-related
68 service or treatment, to the extent that the service or
69 treatment is permitted or not prohibited by law or regulation,
70 which may be provided by persons or businesses otherwise
71 permitted to offer such services.

72 (5) "Penalties or fines" means any civil or criminal
73 penalty or fine, tax, salary or wage withholding or surcharge,
74 or named fee with a similar effect established by law or rule by
75 an agency established, created, or controlled by the government
76 which is used to punish or discourage the exercise of rights
77 protected under this section. For purposes of this section only,
78 the term "rule by an agency" may not be construed to mean any
79 negotiated provision in any insurance contract, network
80 agreement, or other provider agreement contractually limiting
81 copayments, coinsurance, deductibles, or other patient charges.

82 BE IT FURTHER RESOLVED that the following title and
83 statement be placed on the ballot:

84 CONSTITUTIONAL AMENDMENT

Page 3 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hjr0001-00

HJR 1

2011

ARTICLE I, SECTION 28

HEALTH CARE SERVICES.—Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying directly or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two-thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be

HJR 1

2011

113 | construed to prohibit negotiated provisions in insurance
114 | contracts, network agreements, or other provider agreements
115 | contractually limiting copayments, coinsurance, deductibles, or
116 | other patient charges.