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2011

House Joint Resolution

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

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 freedom.—

(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 or employer to purchase, obtain, or otherwise provide for health care coverage.

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

(b) The private market for health care coverage of any

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29 lawful health care service may not be abolished by law or rule.

30 (c) This section does not:

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

33 (2) Affect which health care services are permitted by
34 law.

35 (3) Prohibit care provided pursuant to general law
36 relating to workers' compensation.

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

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

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

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

54 (1) "Compel" includes the imposition of penalties or
55 taxes.

56 (2) "Direct payment" or "pay directly" means payment for

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57 lawful health care services without a public or private third
58 party, not including an employer, paying for any portion of the
59 service.

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

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

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

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

83 CONSTITUTIONAL AMENDMENT

84 ARTICLE I, SECTION 28

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

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85 HEALTH CARE FREEDOM.—Proposing an amendment to the State
86 Constitution to prohibit laws or rules from compelling any
87 person or employer to purchase, obtain, or otherwise provide for
88 health care coverage; permit a person or an employer to purchase
89 lawful health care services directly from a health care
90 provider; permit a health care provider to accept direct payment
91 from a person or an employer for lawful health care services;
92 exempt persons, employers, and health care providers from
93 penalties and taxes for paying directly or accepting direct
94 payment for lawful health care services; and prohibit laws or
95 rules from abolishing the private market for health care
96 coverage of any lawful health care service. Specifies that the
97 amendment does not affect which health care services a health
98 care provider is required to perform or provide; affect which
99 health care services are permitted by law; prohibit care
100 provided pursuant to general law relating to workers'
101 compensation; affect laws or rules in effect as of March 1,
102 2010; affect the terms or conditions of any health care system
103 to the extent that those terms and conditions do not have the
104 effect of punishing a person or an employer for paying directly
105 for lawful health care services or a health care provider for
106 accepting direct payment from a person or an employer for lawful
107 health care services; or affect any general law passed by two-
108 thirds vote of the membership of each house of the Legislature,
109 passed after the effective date of the amendment, provided such
110 law states with specificity the public necessity justifying the
111 exceptions from the provisions of the amendment. The amendment
112 expressly provides that it may not be construed to prohibit

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