

By Senator Haridopolos

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Senate 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 substantially limit a person's options, the purchase or sale of

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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 law.

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

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

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

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

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

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

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

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59 service.

60 (3) "Health care system" means any public or private entity
 61 whose function or purpose is the management of, processing of,
 62 enrollment of individuals for, or payment, in full or in part,
 63 for health care services, health care data, or health care
 64 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,
 68 which may be provided by persons or businesses otherwise
 69 permitted to offer such services.

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

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

82 CONSTITUTIONAL AMENDMENT

83 ARTICLE I, SECTION 28

84 HEALTH CARE SERVICES.—Proposing an amendment to the State
 85 Constitution to prohibit laws or rules from compelling any
 86 person, employer, or health care provider to participate in any
 87 health care system; permit a person or an employer to purchase

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88 lawful health care services directly from a health care
89 provider; permit a health care provider to accept direct payment
90 from a person or an employer for lawful health care services;
91 exempt persons, employers, and health care providers from
92 penalties and fines for paying directly or accepting direct
93 payment for lawful health care services; and permit the purchase
94 or sale of health insurance in private health care systems.
95 Specifies that the amendment does not affect which health care
96 services a health care provider is required to perform or
97 provide; affect which health care services are permitted by law;
98 prohibit care provided pursuant to general law relating to
99 workers' compensation; affect laws or rules in effect as of
100 March 1, 2010; affect the terms or conditions of any health care
101 system to the extent that those terms and conditions do not have
102 the effect of punishing a person or an employer for paying
103 directly for lawful health care services or a health care
104 provider for accepting direct payment from a person or an
105 employer for lawful health care services; or affect any general
106 law passed by two-thirds vote of the membership of each house of
107 the Legislature, passed after the effective date of the
108 amendment, provided such law states with specificity the public
109 necessity justifying the exceptions from the provisions of the
110 amendment. The amendment expressly provides that it may not be
111 construed to prohibit negotiated provisions in insurance
112 contracts, network agreements, or other provider agreements
113 contractually limiting copayments, coinsurance, deductibles, or
114 other patient charges.