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CS/CS/HJR 37

2010 Legislature

1 House Joint Resolution

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

5
6 Be It Resolved by the Legislature of the State of Florida:

7
8 That the following creation of Section 28 of Article I of
9 the State Constitution is agreed to and shall be submitted to
10 the electors of this state for approval or rejection at the next
11 general election or at an earlier special election specifically
12 authorized by law for that purpose:

13 ARTICLE I

14 DECLARATION OF RIGHTS

15 SECTION 28. Health care services.-

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

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

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

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

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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

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57 | fines.

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 | HEALTH CARE FREEDOM

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CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 28

HEALTH CARE SERVICES.—Proposing an amendment to the State Constitution to ensure access to health care services without waiting lists, protect the doctor-patient relationship, guard against mandates that don't work, 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

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113 | effective date of the amendment, provided such law states with
114 | specificity the public necessity justifying the exceptions from
115 | the provisions of the amendment. The amendment expressly
116 | provides that it may not be construed to prohibit negotiated
117 | provisions in insurance contracts, network agreements, or other
118 | provider agreements contractually limiting copayments,
119 | coinsurance, deductibles, or other patient charges.