

**Initiative #45
Health Care Choice**

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2 ◆ add health care choice as a constitutional right;
- 3 ◆ prohibit the state from requiring or enforcing any requirement that a
4 person participate in a public or private health coverage plan; and
- 5 ◆ restrict the state from limiting a person's ability to make or receive direct
6 payments for lawful health care services.

7 **Summary and Analysis**

8 Amendment ? adds health care choice as a right listed in the bill of rights in the
9 Colorado Constitution. The measure specifies that the right to health care choice
10 limits the ability of state government to either require health insurance or any other
11 type of health care coverage, or to restrict direct payment for health care services.

12 ***Current health care coverage requirements.*** Colorado law does not require a
13 person to have any type of health care coverage. A person may purchase coverage
14 from a private insurer; participate in a health plan through their employer; enroll in a
15 public program such as Medicaid and Medicare, if eligible; or have no coverage. If a
16 person does not have health care coverage, or if the plan does not cover a specific
17 service, services may be paid for out-of-pocket.

18 In March 2010, a package of laws — commonly referred to as federal health care
19 reform — was adopted by the United States Congress and signed by the President.
20 Beginning in 2014, most people are required to provide proof of health insurance or
21 other acceptable coverage to the Internal Revenue Service. Persons without
22 acceptable coverage are subject to a federal tax penalty.

23 ***Health care coverage requirements under Amendment ?.*** Amendment ?
24 prohibits Colorado from requiring a person to have health care coverage. Workers'
25 compensation insurance and mandatory emergency medical care performed by
26 hospitals and other health care providers are not affected. The measure also prohibits
27 the state from enforcing health care coverage requirements at the direction of the
28 federal government. However, Amendment ? does not impact the federal
29 government's ability to enforce its coverage requirements created by federal health
30 care reform. Coloradans are still required to have acceptable coverage under federal
31 law beginning in 2014.

1 **Payments for health care services.** Currently, health care services can be paid
2 by health insurance companies, the government, patients, or some combination of
3 these sources. Direct payments refer to when a person pays a health care provider
4 directly, based on an agreed-upon price and method of payment, without seeking
5 approval from a third party such as an insurance company or the government. No
6 state or federal law prohibits a person from seeking services outside of a health care
7 plan and paying a provider directly. Under Amendment ?, a health care system
8 cannot be created in which services are only paid by the government or health
9 insurance companies, without allowing for direct payments.

10 **Arguments For**

11 1) Making decisions about health care is a basic right. Decisions about how to
12 pay for health care, and what health care to pay for, are better left to individuals rather
13 than to the government. Any government requirement to have health care coverage
14 interferes with a person's ability to manage his or her own health care and spending.
15 Amendment ? maintains a person's right to choose the most appropriate coverage for
16 his or her situation and prevents the state from limiting a person's health care choices.

17 2) Amendment ? protects the ability of each person to determine how to pay for
18 health care services, including making direct payments to providers. This measure
19 prevents the state from requiring that only the government or health insurance
20 companies control payments and approval for all services. Preserving the ability to
21 pay for services directly allows a person to receive care at his or her choosing, even if
22 the government or insurance companies place limits on health care services.

23 3) Adding a constitutional right to health care choice could provide a basis for
24 individuals and the state to challenge the federal requirement that all persons have
25 health care coverage. This measure is a statement in opposition to federal health
26 care reform and sets Colorado apart as a state with a free market for health care
27 services.

28 **Arguments Against**

29 1) A state constitutional amendment cannot overturn federal law. Amendment ?
30 may mislead voters into thinking they can opt out of federal health care coverage
31 requirements. Regardless of whether this measure passes, federal law still requires
32 Coloradans to have coverage beginning in 2014. Further, this measure is
33 unnecessary because people can already pay doctors directly for health care services,
34 and no law restricts this practice.

35 2) Health care is a vital service. The measure creates an undefined right in the
36 constitution, and the effects of this change may jeopardize the health care system.
37 Current and future health care laws and regulations could be challenged if they conflict
38 with the measure. Ultimately, the courts will interpret what the right to "health care
39 choice" means.

1 3) Amendment ? limits the state's options to improve access to health care
2 coverage, which could hurt the people who need it the most. In Colorado, over
3 750,000 people, or approximately 15 percent of the population, do not have health
4 insurance. Expanding health insurance coverage increases access to cost-effective
5 preventive care, reduces expensive emergency room visits, decreases the rate of
6 medical bankruptcy, and prevents the insured population from having to cover the
7 costs of the uninsured. Society benefits when more people have health care
8 coverage.

9 **Estimate of Fiscal Impact**

10 Amendment ? is not expected to affect state or local government revenue or
11 spending.