

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 payments for health care services.

12 **Health care coverage requirements.** Colorado law does not require a person to
13 have any type of health care coverage. A person may purchase coverage from a
14 private insurer; participate in an employer-provided health plan; choose to 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 his or her plan does not cover a
17 specific service, services may be paid for out-of-pocket.

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

22 **Payments for health care services.** Currently, health care services can be paid
23 for by health insurance companies, the government, patients, or some combination of
24 these sources. When an individual has coverage, a third party, such as an insurance
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26 health care services. Direct payments refer to when a person pays a provider directly,
27 without seeking approval or reimbursement from a third party. No state or federal law
28 prohibits a person from seeking services outside of a health care plan and paying a
29 provider directly.

30 **Effects of Amendment ?.** Amendment ? does not change current health care
31 coverage requirements, but it places restrictions on what the state may require in the
32 future. For example, the state may offer new health coverage plans but, under
33 Amendment ?, could not require a person to join a plan. The measure prohibits the
34 state from: requiring a person to obtain health care coverage, regulating direct

1 payments, or penalizing a person for either participating or not participating in any
2 particular plan. The measure does not apply to workers' compensation insurance or
3 mandatory emergency medical care.

4 Amendment ? also prohibits the state from enforcing health care coverage
5 requirements at the direction of the federal government. However, the measure does
6 not impact the federal government's ability to enforce the coverage requirements
7 created by federal health care laws. Coloradans are still required to have acceptable
8 coverage under federal law beginning in 2014.

9 **Arguments For**

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

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) This measure is a statement in opposition to government-controlled health
24 care. It reinforces the pending lawsuits challenging the federal government over the
25 new health care laws and is in line with the actions of six states that have adopted
26 measures similar to Amendment ?. The measure affirms Colorado as a state that
27 values freedom of choice in health care services.

28 **Arguments Against**

29 1) Amendment ? limits the state's options to improve access to health care
30 coverage, which could hurt the people who need it the most and increase costs for
31 everyone. In Colorado, over 750,000 people, or approximately 15 percent of the
32 population, do not have health insurance. Expanding health insurance coverage
33 prevents the insured population from having to cover the costs of the uninsured,
34 increases access to health care, and decreases the rate of medical bankruptcy.
35 Society benefits when more people have health care coverage.

36 2) Health care is a vital service and the delivery of these services may be further
37 complicated by the effects of the measure. By establishing an undefined right in the
38 constitution, the state will have to spend time and resources interpreting the meaning.

Final Draft

1 Current and future health care laws and regulations could also be challenged if they
2 conflict with the measure. Ultimately, the courts will interpret what the right to "health
3 care choice" means.

4 3) A state constitutional amendment cannot overturn federal law. Amendment ?
5 may mislead voters into thinking they can opt out of federal health care coverage
6 requirements. Regardless of whether this measure passes, federal law still requires
7 Coloradans to have coverage beginning in 2014. This measure is primarily a
8 statement in opposition to federal health care reform. Further, this measure is
9 unnecessary because people can already pay doctors directly for health care services,
10 and no law restricts this practice.

11 **Estimate of Fiscal Impact**

12 Amendment ? is not expected to affect state or local government revenue or
13 spending.

Linda Gorman, Independence Institute

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21 Revenue Service. Persons without coverage are subject to a federal tax penalty.

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27 without seeking approval or reimbursement from a third party. No state or federal law
28 prohibits a person from seeking services outside of a health care plan and paying a
29 provider directly. MEDICARE DOES LIMIT THE PAYMENT PROVIDERS CAN ACCEPT.

30 **Effects of Amendment ?.** Amendment ? does not change current health care
31 coverage requirements, ~~but it places restrictions on what the state may require in the~~
32 ~~future.~~ For example, the state may offer new health coverage plans but, under
33 Amendment ?, could not require a person to join a plan. The measure prohibits the
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Linda Gorman, Independence Institute

1 payments, or penalizing a person for either participating or not participating in any
2 particular plan. The measure does not apply to workers' compensation insurance, or
3 mandatory emergency medical care, MEDICAID, OR MEDICARE.

4 Amendment ? also prohibits the state from enforcing health care coverage
5 requirements at the direction of the federal government. However, the measure does
6 not impact the federal government's ability to enforce the coverage requirements
7 created by federal health care laws. Coloradans are still required to have acceptable
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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.

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24 ~~care. It reinforces the pending lawsuits challenging the federal government over the~~
25 ~~new health care laws and is in line with the actions of six states that have adopted~~
26 ~~measures similar to Amendment ?. The measure affirms Colorado as a state that~~
27 ~~values freedom of choice in health care services.~~

28 3) AMENDING THE COLORADO CONSTITUTION TO INCLUDE A RIGHT TO HEALTH CARE
29 CHOICE PROVIDES AN IMPORTANT CHECK AND BALANCE ON COLORADO GOVERNMENT. AT
30 PRESENT, THE COLORADO CONSTITUTION ALLOWS THE COLORADO LEGISLATURE TO IMPOSE
31 HEALTH COVERAGE MANDATES. THE STATE CAN ALSO IMPOSE PENALTIES FOR NOT HAVING
32 COVERAGE THAT EXCEED THE PENALTIES IN FEDERAL LAW. THE FEDERAL HEALTH CARE
33 MANDATE MAY BE UNCONSTITUTIONAL. THERE ARE PENDING LAWSUITS JOINED BY AT LEAST
34 21 STATES AND 4 PRIVATE ORGANIZATIONS. IF IT IS UNCONSTITUTIONAL, THE FEDERAL
35 GOVERNMENT MAY SEEK TO IMPOSE COVERAGE MANDATES BY THREATENING TO WITHHOLD
36 FUNDS UNLESS STATE LEGISLATURES PASS COVERAGE MANDATES. AMENDMENT ? WOULD
37 INSULATE THE COLORADO LEGISLATURE FROM FEDERAL PRESSURE BY MAKING THE
38 IMPOSITION OF A STATE MANDATE UNCONSTITUTIONAL. THE MEASURE IS ALSO A STATEMENT
39 OF OPPOSITION TO FEDERAL GOVERNMENT CONTROL OF HEALTH CARE AND WOULD HELP SET
40 COLORADO APART AS A STATE THAT VALUES FREEDOM OF CHOICE IN HEALTH CARE
41 SERVICES.

Linda Gorman, Independence Institute

1 **Arguments Against**

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3 coverage, which could hurt the people who need it the most and increase costs for
4 everyone. In Colorado, over 750,000 people, or approximately 15 percent of the
5 population, do not have health insurance. Expanding health insurance coverage
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9 2) Health care is a vital service and the delivery of these services may be further
10 complicated by the effects of the measure. By establishing an undefined right in the
11 constitution, the state will have to spend time and resources interpreting the meaning.
12 Current and future health care laws and regulations could also be challenged if they
13 conflict with the measure. Ultimately, the courts will interpret what the right to "health
14 care choice" means.

15 3) A state constitutional amendment cannot overturn federal law. Amendment ?
16 may mislead voters into thinking they can opt out of federal health care coverage
17 requirements. Regardless of whether this measure passes, federal law still requires
18 Coloradans to have coverage beginning in 2014. This measure is primarily a
19 statement in opposition to federal health care reform. Further, this measure is
20 unnecessary because people can already pay doctors directly for health care services,
21 and no law restricts this practice.

22 **Estimate of Fiscal Impact**

23 Amendment ? is not expected to affect state or local government revenue or
24 spending.

LINDA GORMAN, INDEPENDENCE INSTITUTE

Comments on the 3rd draft of the Blue Book description of Initiative #45,
The Health Care Choice Amendment

Thank you for incorporating some of my previously suggested changes. Please consider the following changes to the 3rd draft:

1. The explanation should specifically state that the Amendment does not affect Medicaid or Medicare.

There is significant public confusion about the effect of the Amendment on Medicare and Medicaid. The evidence for this can be found in the public commentary on a number of local news websites. Following stories about the signatures submitted in order to get the initiative on the ballot, some commentators asserted that it would affect Medicare or Medicaid. Most people do not think about the fact that these programs are voluntary and therefore unaffected by Amendment __.

Since the purpose of the voter guide is to reduce confusion, please consider rewording lines 1 and 2 of page 2 to read:

...compensation insurance, mandatory emergency medical care, Medicaid, or Medicare.

2. The new draft provides an incomplete picture of how the Amendment would work in conjunction with federal health law. It does not discuss the difference between federal and state law with respect to insurance mandates. Please consider changing the third argument in the "Arguments for" section to read as follows:

Amending the Colorado Constitution to include a right to health care choice provides an important check and balance on Colorado government. At present, the Colorado Constitution allows the Colorado legislature to impose health coverage mandates. The state can also impose penalties for not having coverage that exceed those in federal law. The federal health care mandate may be unconstitutional. There are pending lawsuits joined by at least 21 states and 4 private organizations. If it is unconstitutional, the federal government may seek to impose coverage mandates by threatening to withhold funds unless state legislatures pass coverage mandates. Amendment __ would insulate the Colorado legislature from federal pressure by making the imposition of a state mandate unconstitutional. The measure is also a statement of opposition to federal government control of health care and would help set Colorado apart as a state that values freedom of choice in health care services.

3. Please consider recasting lines 28-29 of page 1 to reflect the fact that the direct payment provision protects both those who pay for services and those who receive the payment.

Lines 28-29 on page 1 state that "No state or federal law prohibits a person from seeking services outside of a health care plan and paying a provider directly..." This concentrates on the purchasing side of the transaction. The other side of the transaction is just as important because no trade can take place unless the entity providing services can legally receive the payment.

While it is technically correct that no state or federal law prohibits a person from paying a provider directly, Medicare does make it illegal for providers to receive certain payments.

Please consider rewording lines 28-29 to make this point. Possible alternative wording might be "...No state or federal law prohibits a person from seeking services outside of a health care plan and paying a provider directly. Medicare does limit the payments providers can accept."

4. The new draft should address the confusion about whether the Amendment prohibits the state from expanding health coverage.

That people are confused about this is evident from the comments in part 3 of the Arguments Against. The Amendment does nothing to restrict the expansion of state coverage plans. It does not prohibit the state from creating a public health coverage plan. All it does is stipulate that the state cannot force people to join any plan that it may create.

Please consider rewording lines 30-32 on page 1 to eliminate this confusion. Suggested wording:

"...Amendment ? does not change current health care coverage requirements. The state may offer new health coverage programs but, under the Amendment, would not be able to require that people join them. The measure would also prohibit the state from requiring a person...."

Niki Hawthorne, RBI Strategies

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Niki Hawthorne, RBI Strategies

1 conflict with the measure. Ultimately, the courts will interpret what the right to "health
2 care choice" means.

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8 ~~unnecessary because people can already pay doctors directly for health care services,~~
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10 1) AMENDMENT ? INCREASES COSTS FOR EVERYONE. IN COLORADO, OVER 750,000
11 PEOPLE, OR APPROXIMATELY 15 PERCENT OF THE POPULATION DO NOT HAVE HEALTH
12 INSURANCE. THIS AMENDMENT WILL EXPAND OR MAINTAIN THE ALREADY HIGH NUMBER OF
13 UNINSURED RECEIVING EMERGENCY ROOM CARE THEY CANNOT AFFORD OR USING TAXPAYER
14 FUNDED PUBLIC HEALTH SERVICES IN COLORADO. AT THE END OF THE DAY, MORE
15 UNINSURED MEANS HIGHER COSTS FOR THE INSURED.

16 2) HEALTH CARE IS A VITAL SERVICE AND THE DELIVERY OF THESE SERVICES SHOULD
17 NOT BE FURTHER COMPLICATED BY SUCH A CONVOLUTED CONSTITUTIONAL AMENDMENT.
18 THE MEASURE PUTS YET ANOTHER BARRIER BETWEEN PATIENTS AND THE CARE THEY NEED
19 AS LAWYERS AND COURTS LITIGATE THE IMPLICATIONS OF THE AMENDMENT'S COMPLICATED
20 LANGUAGE.

21 3) THE AMENDMENT IS A PARTISAN STATEMENT ON NATIONAL HEALTH CARE REFORM AND
22 HAS NO PLACE IN OUR ALREADY CLUTTERED CONSTITUTION. A STATE CONSTITUTIONAL
23 AMENDMENT CANNOT OVERTURN FEDERAL LAW AND THIS UNNECESSARY AND PARTISAN
24 AMENDMENT WILL SIMPLY LEAD TO EXPENSIVE LAWSUITS THAT THE TAXPAYERS WILL END UP
25 PAYING FOR.

26 **Estimate of Fiscal Impact**

27 Amendment ? is not expected to affect state or local government revenue or
28 spending.

NIKI HAWTHORNE'S, RBI STRATEGIES

Re: Initiative #45 - Health Care Choice Ballot Analysis - Final Draft

From: Niki Hawthorne

To: healthcarechoice

08/11/2010 04:26 PM

Here are our suggested edits.

Niki

1. Amendment ? increases costs for everyone. In Colorado, over 750,000 people, or approximately 15 percent of the population do not have health insurance. This amendment will expand or maintain the already high number of uninsured receiving emergency room care they cannot afford or using taxpayer funded public health services in Colorado. At the end of the day, more uninsured means higher costs for the insured.
2. Health care is a vital service and the delivery of these services should not be further complicated by such a convoluted constitutional amendment. The measure puts yet another barrier between patients and the care they need as lawyers and courts litigate the implications of the amendment's complicated language.
3. This amendment is a partisan statement on national health care reform and has no place in our already cluttered constitution. A state constitutional amendment cannot overturn federal law and this unnecessary and partisan amendment will simply lead to expensive lawsuits that the taxpayers will end up paying for.

Last Draft as Mailed to Interested Parties

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1 compensation insurance and mandatory emergency medical care performed by
2 hospitals and other health care providers.

3 The measure also prohibits the state from enforcing health care coverage
4 requirements at the direction of the federal government. However, Amendment ?
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19 pay for services directly allows a person to receive care at his or her choosing, even if
20 the government or insurance companies place limits on health care services.

21 3) Adding a constitutional right to health care choice is a statement in opposition
22 to full government control of health care. Individuals should be able to make decisions
23 about health care without interference from the government or insurance companies.
24 Amendment? sets Colorado apart as a state that values freedom of choice in health
25 care services.

26 **Arguments Against**

27 1) A state constitutional amendment cannot overturn federal law. Amendment ?
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31 unnecessary because people can already pay doctors directly for health care services,
32 and no law restricts this practice.

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

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1 3) Amendment ? limits the state's options to improve access to health care
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4 population, do not have health insurance. Expanding health insurance coverage
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INITIATIVE 45
HEALTH CARE CHOICE
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INITIATIVE 45
HEALTH CARE CHOICE
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INITIATIVE 45
HEALTH CARE CHOICE
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**Initiative #45
Health Care Choice**

1 **Ballot Title:** An amendment to the Colorado constitution concerning the right of all
2 persons to health care choice, and, in connection therewith, prohibiting the state
3 independently or at the instance of the United States from adopting or enforcing any
4 statute, regulation, resolution, or policy that requires a person to participate in a public
5 or private health insurance or coverage plan or that denies, restricts, or penalizes the
6 right or ability of a person to make or receive direct payments for lawful health care
7 services; and exempting from the effects of the amendment emergency medical
8 treatment required to be provided by hospitals, health facilities, and health care
9 providers or health benefits provided under workers' compensation or similar insurance.

10 **Text of Proposal:**

11 *Be it Enacted by the People of the State of Colorado:*

12 Article II of the Constitution of the State of Colorado is amended BY THE ADDITION
13 OF A NEW SECTION to read:

14 **Section 32. Right to health care choice.**

15 (1) ALL PERSONS SHALL HAVE THE RIGHT TO HEALTH CARE CHOICE. NO STATUTE,
16 REGULATION, RESOLUTION, OR POLICY ADOPTED OR ENFORCED BY THE STATE OF
17 COLORADO, ITS DEPARTMENTS AND AGENCIES, INDEPENDENTLY OR AT THE INSTANCE OF
18 THE UNITED STATES SHALL:

19 (a) REQUIRE ANY PERSON DIRECTLY OR INDIRECTLY TO PARTICIPATE IN ANY
20 PUBLIC OR PRIVATE HEALTH INSURANCE PLAN, HEALTH COVERAGE PLAN, HEALTH
21 BENEFIT PLAN, OR SIMILAR PLAN; OR

22 (b) DENY, RESTRICT, OR PENALIZE THE RIGHT OR ABILITY OF ANY PERSON TO
23 MAKE OR RECEIVE DIRECT PAYMENTS FOR LAWFUL HEALTH CARE SERVICES.

24 (2) THIS SECTION SHALL NOT APPLY TO, AFFECT, OR PROHIBIT: (A) EMERGENCY MEDICAL
25 TREATMENT REQUIRED BY LAW TO BE PROVIDED OR PERFORMED BY HOSPITALS, HEALTH
26 FACILITIES, OR OTHER HEALTH CARE PROVIDERS; OR (B) HEALTH BENEFITS PROVIDED IN
27 CONNECTION WITH WORKERS' COMPENSATION OR SIMILAR INSURANCE.

28 (3) "LAWFUL HEALTH CARE SERVICES" MEANS ANY SERVICE OR TREATMENT PERMITTED
29 OR NOT PROHIBITED BY ANY PROVISION OF COLORADO LAW.

1 (4) THIS SECTION IS INTENDED TO REFLECT AND AFFIRM THE POWERS RESERVED TO THE
2 STATE BY THE U.S. CONST., AMEND. X, AND TO IMPLEMENT THE POWERS RESERVED TO
3 THE PEOPLE BY SECTION 1 OF ARTICLE V OF THIS CONSTITUTION.

4 (5) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION BY THE GOVERNOR,
5 SHALL BE SELF IMPLEMENTING IN ALL RESPECTS, AND SHALL SUPERCEDE ANY PROVISION
6 TO THE CONTRARY IN THE CONSTITUTION OF THE STATE OF COLORADO OR ANY OTHER
7 PROVISION OF LAW.

8 (6) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON,
9 ENTITY, OR CIRCUMSTANCES IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT
10 OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT
11 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS
12 OF THIS SECTION ARE DECLARED SEVERABLE.