

Amendment 63 Health Care Choice

1 **Amendment 63 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 63 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
25 company or the government, negotiates with the provider to establish a price for
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 63.*** Amendment 63 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 63, 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

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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 63 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 63 maintains a person's right to choose the most appropriate coverage
15 for his or her situation and prevents the state from requiring a person to join any
16 specific health care plan.

17 2) Amendment 63 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 63. The measure affirms Colorado as a state that
27 values freedom of choice in health care services.

28 **Arguments Against**

29 1) Amendment 63 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.

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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 63
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 63 is not expected to affect state or local government revenue or
13 spending.