

Williams, Vincent

From: Christie Herrera [christie@alec.org]
Sent: Tuesday, December 14, 2010 2:24 PM
Subject: Re-Introducing ALEC's Freedom of Choice in Health Care Act for 2011
Attachments: AZ HCR 2014 - Engrossed Bill.pdf; AZ HCR 2014 - Language Breakdown.pdf; ALEC Questions and Answers V.2.pdf; Health_Care_Choice_Act_Q&A - Goldwater.pdf

Dear Wisconsin legislators,

I wanted to follow up to see if you'd be re-introducing ALEC's *Freedom of Choice in Health Care Act* in the 2011 legislative session. If so, I wanted to make sure that you have everything you need (attached to this e-mail):

* Arizona House Concurrent Resolution 2014 (2009): I recommend using this language, which expands and updates ALEC's original *Freedom of Choice in Health Care Act*. This language is identical to Arizona Proposition 106, Missouri Proposition C, and Oklahoma State Question 756, three legislature-referred initiatives that won on the 2010 ballot.

* Health policy talking points on the *Freedom of Choice in Health Care Act* from ALEC.

* Legal talking points on the *Freedom of Choice in Health Care Act* from the Goldwater Institute.

Until the federal individual mandate takes effect in 2014, ALEC's *Freedom of Choice in Health Care Act* will help your state in a number of ways. If enacted as a statute, it gives your state standing in any current litigation against the federal individual mandate; it will allow your state to launch additional, 10th Amendment-based litigation if the current lawsuits fail; and it can empower your attorney general to litigate on behalf of individuals harmed by the mandate when it takes effect in 2014.

Most importantly, if passed as a constitutional amendment, ALEC's *Freedom of Choice in Health Care Act* will ensure—even if the federal individual mandate is found to be unconstitutional—that Massachusetts-style, state-level requirements to purchase health insurance are prohibited.

If you will be re-introducing this legislation, please let me know. And of course, I can always be reached at 202-725-7127 or at christie@alec.org if you need any assistance.

Thank you for all you've done for health care freedom this year, and I look forward to working with you in 2011!

Best,
Christie

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Christie Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council
1101 Vermont Avenue, N.W., 11th Floor
Washington, D.C. 20005
Direct: 202-742-8505
Fax: 202-466-3801

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE CONCURRENT RESOLUTION 2014

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XXVII, BY ADDING SECTION 2, CONSTITUTION OF ARIZONA; RELATING TO HEALTH CARE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Article XXVII, Constitution of Arizona, is proposed to be amended
4 by adding section 2 as follows if approved by the voters and on proclamation
5 of the Governor:

6 2. Health care; definitions

7 SECTION 2. A. TO PRESERVE THE FREEDOM OF ARIZONANS TO
8 PROVIDE FOR THEIR HEALTH CARE:

9 1. A LAW OR RULE SHALL NOT COMPEL, DIRECTLY OR
10 INDIRECTLY, ANY PERSON, EMPLOYER OR HEALTH CARE PROVIDER TO
11 PARTICIPATE IN ANY HEALTH CARE SYSTEM.

12 2. A PERSON OR EMPLOYER MAY PAY DIRECTLY FOR LAWFUL
13 HEALTH CARE SERVICES AND SHALL NOT BE REQUIRED TO PAY PENALTIES
14 OR FINES FOR PAYING DIRECTLY FOR LAWFUL HEALTH CARE SERVICES. A
15 HEALTH CARE PROVIDER MAY ACCEPT DIRECT PAYMENT FOR LAWFUL HEALTH
16 CARE SERVICES AND SHALL NOT BE REQUIRED TO PAY PENALTIES OR
17 FINES FOR ACCEPTING DIRECT PAYMENT FROM A PERSON OR EMPLOYER FOR
18 LAWFUL HEALTH CARE SERVICES.

19 B. SUBJECT TO REASONABLE AND NECESSARY RULES THAT DO NOT
20 SUBSTANTIALLY LIMIT A PERSON'S OPTIONS, THE PURCHASE OR SALE OF
21 HEALTH INSURANCE IN PRIVATE HEALTH CARE SYSTEMS SHALL NOT BE
22 PROHIBITED BY LAW OR RULE.

23 C. THIS SECTION DOES NOT:

24 1. AFFECT WHICH HEALTH CARE SERVICES A HEALTH CARE
25 PROVIDER OR HOSPITAL IS REQUIRED TO PERFORM OR PROVIDE.

26 2. AFFECT WHICH HEALTH CARE SERVICES ARE PERMITTED BY
27 LAW.

28 3. PROHIBIT CARE PROVIDED PURSUANT TO ARTICLE XVIII,
29 SECTION 8 OF THIS CONSTITUTION OR ANY STATUTES ENACTED BY THE
30 LEGISLATURE RELATING TO WORKER'S COMPENSATION.

31 4. AFFECT LAWS OR RULES IN EFFECT AS OF JANUARY 1, 2009.

32 5. AFFECT THE TERMS OR CONDITIONS OF ANY HEALTH CARE
33 SYSTEM TO THE EXTENT THAT THOSE TERMS AND CONDITIONS DO NOT HAVE
34 THE EFFECT OF PUNISHING A PERSON OR EMPLOYER FOR PAYING DIRECTLY
35 FOR LAWFUL HEALTH CARE SERVICES OR A HEALTH CARE PROVIDER OR
36 HOSPITAL FOR ACCEPTING DIRECT PAYMENT FROM A PERSON OR EMPLOYER
37 FOR LAWFUL HEALTH CARE SERVICES.

38 D. FOR THE PURPOSES OF THIS SECTION:

39 1. "COMPEL" INCLUDES PENALTIES OR FINES.

40 2. "DIRECT PAYMENT OR PAY DIRECTLY" MEANS PAYMENT FOR
41 LAWFUL HEALTH CARE SERVICES WITHOUT A PUBLIC OR PRIVATE THIRD
42 PARTY, NOT INCLUDING AN EMPLOYER, PAYING FOR ANY PORTION OF THE
43 SERVICE.

44 3. "HEALTH CARE SYSTEM" MEANS ANY PUBLIC OR PRIVATE
45 ENTITY WHOSE FUNCTION OR PURPOSE IS THE MANAGEMENT OF,

1 PROCESSING OF, ENROLLMENT OF INDIVIDUALS FOR OR PAYMENT FOR, IN
2 FULL OR IN PART, HEALTH CARE SERVICES OR HEALTH CARE DATA OR
3 HEALTH CARE INFORMATION FOR ITS PARTICIPANTS.

4 4. "LAWFUL HEALTH CARE SERVICES" MEANS ANY HEALTH-RELATED
5 SERVICE OR TREATMENT TO THE EXTENT THAT THE SERVICE OR TREATMENT
6 IS PERMITTED OR NOT PROHIBITED BY LAW OR REGULATION THAT MAY BE
7 PROVIDED BY PERSONS OR BUSINESSES OTHERWISE PERMITTED TO OFFER
8 SUCH SERVICES.

9 5. "PENALTIES OR FINES" MEANS ANY CIVIL OR CRIMINAL
10 PENALTY OR FINE, TAX, SALARY OR WAGE WITHHOLDING OR SURCHARGE OR
11 ANY NAMED FEE WITH A SIMILAR EFFECT ESTABLISHED BY LAW OR RULE
12 BY A GOVERNMENT ESTABLISHED, CREATED OR CONTROLLED AGENCY THAT
13 IS USED TO PUNISH OR DISCOURAGE THE EXERCISE OF RIGHTS PROTECTED
14 UNDER THIS SECTION.

15 2. The article heading of article XXVII, Constitution of Arizona, is
16 proposed to be changed as follows if approved by the voters and on
17 proclamation of the Governor:

18 The article heading of article XXVII, Constitution of
19 Arizona, is changed from "REGULATION OF PUBLIC HEALTH, SAFETY
20 AND WELFARE" to "REGULATION OF HEALTH, SAFETY AND WELFARE".

21 3. The Secretary of State shall submit this proposition to the voters
22 at the next general election as provided by article XXI, Constitution of
23 Arizona.

HCR 2014 LANGUAGE BREAKDOWN

To preserve the freedom of Arizonans to provide for their health care,

A goal we can all agree upon

- 1. A law or rule shall not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.**

Arizonans should have the right to choose whether or not to join any health care system—to preserve their freedom to be in charge of their own health care decisions.

Note- there is no question that this language preserves the ability to use taxes from individuals and businesses to fund health care programs. It does prevent forcing people or businesses or providers to pay EXTRA penalties or taxes for opting out.

- 2. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services.**

The right to spend your own money to pay for lawful health care services must be protected and preserved.

A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

It is not enough to protect the right to pay for a health care service if the health care provider is forbidden from getting paid for the service. This protects the providers so they can actually provide the care that Arizonans want.

B. Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

It is not enough to simply protect the right to purchase health care services directly. Arizonans understand that health care is expensive. We must also protect the right of private businesses to sell health insurance to help defray some of the costs of health care. Nothing in this prevents the legislature and department of insurance from regulating insurance companies to protect Arizonans from fraud and abuse.

C. This section does not:

- 1. Affect which health care services a health care provider or hospital is required to perform or provide.**

The legislature retains the right to determine which services are in the scope of practice for health care providers and hospitals, and if a service must be offered.

HCR 2014 LANGUAGE BREAKDOWN

2. Affect which health care services are permitted by law.

The legislature retains the right to determine if a health care service is legal.

3. Prohibit care provided pursuant to Article XVIII, Section 8 of this Constitution or any statutes enacted by the legislature relating to workers' compensation.

Workers' compensation is addressed elsewhere in the state constitution and in statute. It is not the intent of HCR 2014 to disrupt or change workers' compensation rights for the people of Arizona.

4. Affect laws or rules in effect as of January 1, 2009.

The aim of HCR 2014 is to protect rights that the people of Arizona currently enjoy—while there are some serious issues with the right of Medicare patients to spend their own money now, it is not the intent of HCR 2014 to jeopardize health care benefits that Arizonans currently have.

5. Affect the terms or conditions of any health care system shall not be affected to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for providing directly purchased lawful health care services.

Private contracts for health care should be protected. The people of Arizona must be protected from health care and insurance contracts that take away the right to maintain the ultimate control over health care decisions.

E. For the purposes of this section:

1. **“Compel” includes penalties or fines.**
2. **“Direct purchase” means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.**
3. **“Health care system” means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants.**
4. **“Lawful health care services” means any health related service or treatment to the extent that the service or treatment is permitted or not permitted by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.**
5. **“Penalties or fines” means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created or controlled agency that is used to punish or discourage the exercise of rights protected under this section.**