

# STATES MAY (AND SHOULD) OPT OUT OF HEALTHCARE MANDATE

BY CHRISTIE HERRERA

A few weeks have passed since U.S. Senate Majority Leader Harry Reid floated the idea that states could “opt out” of the government-run health insurance plan. But nearly a year has passed since a growing coalition of officials in 26 states began crafting opt-out strategies of their own.

Those states include Florida, where Attorney General Bill McCollum has joined with other states’ attorneys general to challenge the

constitutionality of the individual mandate—that is, the requirement that citizens either purchase bureaucrat-approved insurance, or else be fined or jailed.

Meanwhile, in the Florida Legislature, lawmakers are signing onto a proposed state constitutional amendment that would, among other things, “prohibit laws or rules from

compelling any person, employer, or health care provider to participate in any health care system....” The measure, filed by Representative Scott Plakon and Senator Carey Baker, now has 44 cosponsors.

Why the precaution? Because the differences are clear. Mr. Reid’s “opt-

out provision” is no opt-out at all. It began as a last-ditch effort to revive the Medicare-modeled public plan and appease advocates of

single-payer health care. And it shows.

The Senate’s opt-out clause is just a detour on the road to socialized medicine. It’s unlikely that most state legislatures will have the political fortitude to reject the public plan. Ones that do will still be forced to open Mr. Reid’s “Door No. 2” to find an unprecedented requirement to



purchase health coverage, an economy-crippling employer mandate, and massive tax hikes to pay for Medicaid expansion and a host of new government programs.

But while Mr. Reid’s illusory scheme has been in the headlines, behind the scenes state legislators are pushing a real opt-out plan, such as Florida’s proposed constitutional amendment, which would preserve the freedom of individuals to make their own health care choices.

Last January, the American Legislative Exchange Council, a bipartisan group of conservative lawmakers, drafted the Freedom of Choice in Health Care Act. The state constitutional amendment—modeled after the narrowly defeated Proposition 101 on the 2008 Arizona ballot—would not only protect patients’ rights but may also provide a mechanism for states to opt out of a federal requirement to purchase health insurance.

The Freedom of Choice in Health Care Act accomplishes two goals. First, it preserves the right of patients to pay directly for medical care, which is illegal in some single-payer countries such as Canada.

Single-payer horror stories tell us that when the government pays for medical care, bureaucrats make decisions based on the bottom line—resulting in waiting lists and rationing. When patients control healthcare dollars, they retain the

right to decide which doctor to see and what medical treatments to receive.

Relevant to the federal debate, however, is the Freedom of Choice in Health Care Act’s second provision: that individuals can’t be fined for failing to purchase government-defined insurance.

This strikes at the heart of the individual mandate, a provision in both the House and Senate bills that the Cato Institute estimates would force 100 million Americans to lose their existing coverage.

In Massachusetts, a state that has had an individual mandate since 2006, more than 200,000 residents remain uninsured, and health insurance premiums for

those forced to purchase coverage cost nearly \$4,000 more than the national average.

Fifteen states have already filed the Freedom of Choice in Health Care Act. Arizona’s measure will face voters there on the 2010 ballot, and an additional 11 states have already announced their intentions to do so.

On its face, such constitutional amendments would strike down any state laws designed to prohibit direct payment for medical care or laws that would require an individual mandate. These are real threats at the state level; 13 states introduced single-payer bills during the 2009 legislative



***“...when the government pays for medical care, bureaucrats make decisions based on the bottom line...”***



session, and an individual mandate was enacted to thunderous bipartisan applause in Massachusetts.

Now states are facing a looming health care overhaul from Congress that would, among other unsavory elements, require an individual to purchase government-defined insurance. And in the event of federal passage, states may be able to use the Freedom of Choice in Health Care Act as a legitimate way to opt out of a federal individual mandate.

It's a legal battle that has been fought before and won before. Clint Bolick, legal adviser to the Arizona effort, maintains that our federal system empowers states to protect the liberty of their people, and the federal government has limited power to violate those protections. Recent Supreme Court cases not only have upheld this conclusion but also have permitted states to opt out of certain provisions of federal law.

State lawmakers aren't waiting around for Mr. Reid to present them with false choices that saddle them with higher taxes, bloated government programs, and worsening patient care. They know the time for state constitutional protection is now. ❧

*A version of this article was originally published in the Washington Times. Its author, Christie Herrera, is director of the Health and Human Services Task Force at the American Legislative Exchange Council. She previously served as director of public affairs at The James Madison Institute.*



## Worthy Words

*“The budget should be balanced, the Treasury should be refilled, public debt should be reduced, the arrogance of officialdom should be tempered and controlled, and the assistance to foreign lands should be curtailed lest Rome become bankrupt. People must again learn to work, instead of living on public assistance.*

– CICERO, 55 BC



*“A prolonged upward movement ... has been built up over a series of years on the amazing and unexampled prosperity of America. But some two years ago the speculative movement seemed to lose all touch with reality, and in spite of occasionally vigorous but more often halfhearted measures by the banking authorities of the United States, speculative fever spread throughout the nation and carried prices, mainly with the aid of borrowed money, to fantastic heights.”*

– THE ECONOMIST,  
NOVEMBER 23, 1929