S T A T E O F N E W Y O R K

7374

I N S E N A T E

April 5, 2010

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 17 of the constitution, in relation to preserving the freedom of New Yorkers to provide their health care

Section 1. Resolved (if the Assembly concur), That the article heading of article 17 of the constitution be amended to read as follows:

HEALTH AND Social Welfare

S 2. Resolved (if the Assembly concur), That article 17 of the constitution be amended by adding a new section 3-a to read as follows:

S 3-A. TO PRESERVE THE FREEDOM OF NEW YORKERS TO PROVIDE FOR THEIR HEALTH CARE:

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

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.

C. THIS SECTION DOES NOT:

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

2. AFFECT WHICH HEALTH CARE SERVICES ARE PERMITTED BY LAW;

3. PROHIBIT CARE PROVIDED PURSUANT TO SECTION EIGHTEEN OF ARTICLE ONE OF THIS CONSTITUTION OR ANY STATUTES ENACTED BY THE LEGISLATURE RELATING TO WORKERS' COMPENSATION;

4. AFFECT LAWS OR RULES IN EFFECT AS OF JANUARY FIRST, TWO THOUSAND TEN; OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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5. AFFECT THE TERMS OR CONDITIONS OF ANY HEALTH CARE SYSTEM 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 ACCEPTING DIRECT PAYMENT FROM A PERSON OR EMPLOYER FOR LAWFUL HEALTH CARE SERVICES.

D. FOR THE PURPOSES OF THIS SECTION:

1."COMPEL" INCLUDES PENALTIES OR FINES.

2. "DIRECT PAYMENT OR PAY DIRECTLY" 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 PROHIBITED 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.

S 3. Resolved (if the Assembly concur), That the foregoing amendments be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published three months previous to the time of such election.