

Same Fee for Health Care Services for Every Patient

Number: PETITION

Date: May 19, 2004

The Honorable Harry Lee Anstead
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On April 24, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to require physicians to charge the same fee for the same health care service to every patient. The full text of the proposed amendment states:

"1) Statement and Purpose:

Many physicians in Florida agree to accept fees for health care covered by health insurance plans or other governmental or private third-party payor programs which limit payments for particular medical treatments, services or procedures. Yet many Floridians, including those in Health Maintenance Organizations or other 'managed-care' programs and those without any coverage at all, pay substantially-higher fees for the same medical services. The purpose of this amendment is to insure that all Floridians are able to obtain the lowest prices for medical services which doctors will accept. Doctors will remain free to set their own fees, or to agree to any charges or fee schedules from third-party payors, subject to general law, but they can no longer charge some Floridians more for the same services just because the patients are not in the lowest-cost health insurance plan. In order to help consumers protect themselves against over-charges, patients and their representatives are to be given access, upon request, to the fee data necessary to determine whether they are receiving the lowest agreed-upon fee or whether this amendment is otherwise being violated.

2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by adding the following section at the end thereof, to read:
'Section 22. Physicians' Health Care Charges.

a) A physician shall charge all purchasers the lowest fee for health care which the physician has agreed to accept as full payment for the same health care when the same health care is being paid for in whole or in part through any agreement between the physician and any other purchaser. Nothing in this section shall be deemed to limit the physician's right to provide any health care for free.

b) To assist patients to determine a physician's fees and compliance with this Section, a patient

shall have access to any fee schedules agreed to by the physician, and any other records of the physician related to the patient's health care which might contain information indicating whether the physician is in compliance with this Section. This right of access, whether or not exercised, may not be waived, and may be exercised prior to, during or after the health care is provided. This right of access is not intended to conflict with, supercede or alter any rights or obligations under general law related to the privacy of patient records.

(c) Definitions. As used in this section, the following terms shall have the following meanings:

- i) 'Health care' means services, procedures, treatment, accommodations or products provided by a physician described by this section.
- ii) 'Physician' means one licensed pursuant to Chapter 458, Florida Statutes, or any similar successor statute, and any corporation, professional association or similar organization established and operated for the purpose of providing health care by such licensees.
- iii) 'Purchaser' means patients, third-party payors or others paying for a patient's health care, and does not include a patient receiving care without charge.
- iv) 'Charge' means require, charge, bill, accept or be entitled to receive as payment for health care.
- v) 'Patient' means an individual who has sought, is seeking, is receiving, or has received health care from the physician.
- vi) 'Have access to' means, in addition to any other procedure for producing such records provided by general law, making the records available for review, inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be made available by reference to the location at which the records are publicly available.'

3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate, and shall apply to any health care payment agreement entered into or renewed after the effective date. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application."

The ballot title for the proposed amendment is "Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient." The summary for the proposed amendment states:

"Current law allows a physician to charge different prices for the same health care provided to different patients. This amendment would require a physician to charge the same fee for the same health care service, procedure or treatment. Requires lowest fee which physician has agreed to accept. Doesn't limit physician's ability to provide free services. A patient may review the physician's fee and similar information before, during or after the health care is provided."

Article XI, section 3, Florida Constitution, provides in relevant part:

"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994); Advisory Opinion to the Attorney General--Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Mr. Scott Carruthers, Chair
Floridians for Patient Protection