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State Legislation Opposing Certain Health Reforms, 2009-2010

Updated: February 10, 2010 - subject to additions
by: Richard Cauchi, Program Director, NCSL Health Program

States have an extensive and complicated shared power relationship with the federal government in regulating various aspects of the health insurance market and in enacting health reforms.

As part of state-based responses to federal health reform legislation, individual members of at least **30 state legislatures** are using the legislative process to seek to limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance. In general the measures seek to make or keep health insurance optional, and allow people to purchase any type of coverage they may choose. The individual state language varies.

Constitutional amendments: In 21 of the states, the proposals include a proposed constitutional amendment by ballot question. In a majority of these states, their constitution includes an additional "hurdle" for passage - requiring either a "supermajority of 60% or 67% for passage, or requiring two affirmative votes in two separate years, such as 2010 and 2011.

Changing state law: In 10 states proposed bills would amend state law, not the state constitution. These require a simple majority vote and action by the governor; they also can be reamended or repealed by a future state law. So far in 2010, bills have advanced in Utah and Virginia but none have been enacted.

Unfunded mandates: New Hampshire has a bill that would prohibit any Medicaid expansion unless paid for by the federal government or approved by the NH Legislature.

Based on actions initially in Arizona, several states propose or may propose state constitutional amendments, using language such as:



"To preserve the freedom of all residents of the state to provide for their own health care... A law or rule shall not compel, directly or indirectly, any person, 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..."

[see full text in [Appendix 1](#)]

Arizona voters are scheduled to cast ballots on this constitutional amendment in November 2010. If adopted by voters, it could block future state health reforms and at least raise questions about some features within future federal health reforms.

According to *The New York Times*, "Conservatives and libertarians, mostly, have been advancing the theory lately that the individual mandate, in which the government would compel everyone to buy insurance or pay a penalty, is unconstitutional." (*NY Times*, 9/26/09) A current Massachusetts law, passed in 2006, includes an individual mandate, although it was written to be consistent with both state and federal constitutions. To the extent that congressional proposals provide for state opt-out or opt-in features, these proposals to restrict "reform" could well become more widely discussed.

Arizona Resolution passed, 2009



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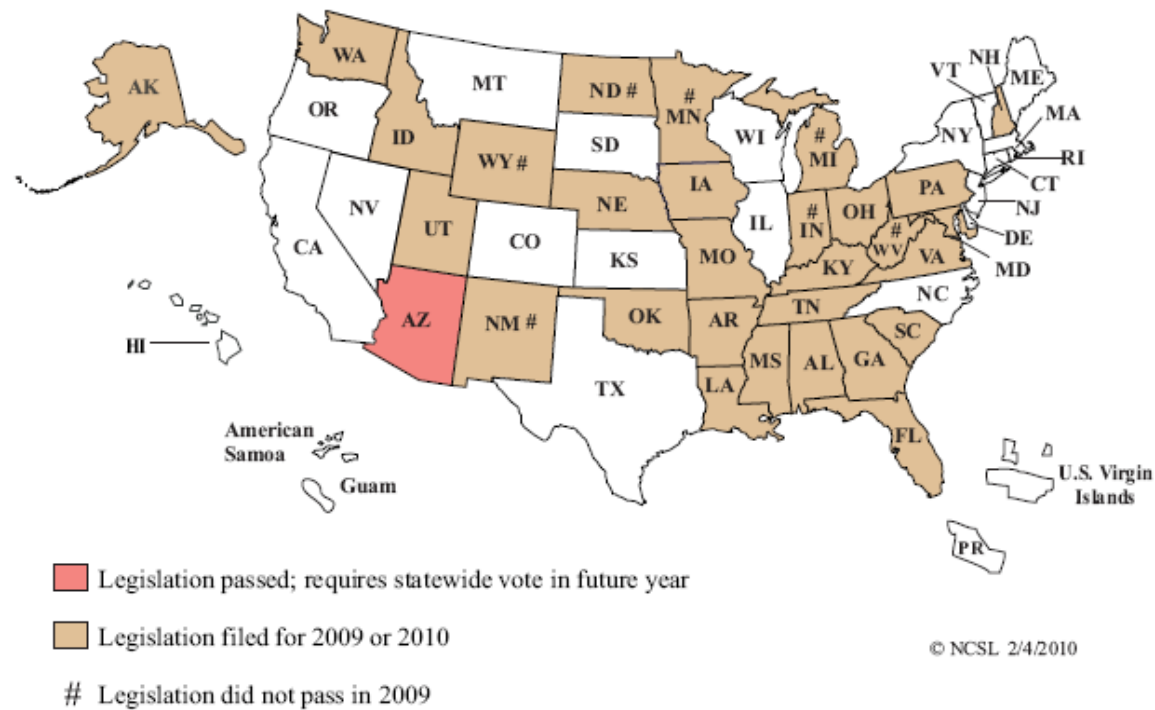
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30 States with 2009-2010 Legislation Opposing Certain Health Reforms (updated 2/10/2010)



As of early February, formal resolutions or bills had been filed in **Alabama, Alaska, Arizona, Arkansas ^{NEW}, Florida, Georgia, Idaho, Indiana, Iowa, ^{NEW}, Kentucky ^{NEW}, Louisiana, ^{NEW}, Maryland, ^{NEW}, Michigan, Minnesota, Mississippi ^{NEW}, Missouri ^{NEW}, Nebraska, New Hampshire ^{NEW}, New Mexico, North Dakota, Ohio, Oklahoma ^{NEW}, Pennsylvania, South Carolina, Tennessee, Utah ^{NEW}, Virginia, Washington, West Virginia** and **Wyoming**. Up to seven additional states were reported in media or association articles to have discussed future action or intentions; examples are [listed below](#). None of the proposals has been finally approved; **Arizona's** resolution is the first and only measure to have passed the legislative process.

As of mid-January more than 30 states have just begun their 2010 legislative sessions. Because at least 40 of the 50 states had completed their legislative work for 2009 by July and not all states permit early pre-filing for 2010, information in the examples list below is based on media statements by individual legislators or legislative associations. ^[1]

The issue has garnered state-level interest in part due to the American Legislative Exchange Council's (ALEC) [model](#) "Freedom of Choice in Health Care Act," which was described as "How Your State Can Block Single-Payer and Protect

Patients' Rights." The ALEC-endorsed language mirrors Arizona Proposition 101, which was narrowly defeated in 2008.

Several legal experts have expressed opinions on the validity of this approach. [See [Appendix 2](#) for comment and quotes.]

**Table 1:
Filed Bills and Resolutions for 2009-2010**

Table 1 indicates 1) Activity and status for measures filed;
2) the percentage of affirmative votes in the legislature required for approval;
3) the earliest date that a proposed constitutional amendment can appear on the statewide ballot. Timing and parliamentary steps vary among states.

The Constitutional process:

In 35 states, the legislature can enact a proposed constitutional amendment during a single session. [Appendix 3] This would allow passed measures to appear on the state ballot in 2010 or later. In 12 states the legislature must enact a proposed constitutional amendment during two sessions, which would make 2012 the earliest date for voter decisions.

STATE	ACTIVITY/LEGISLATION	REQUIRED FOR PASSAGE
Alabama	HB 42 by Rep. Bentley; HB 47 by Rep. Gibson Would propose a constitutional amendment to prohibit any person, employer, or health care provider from being compelled to participate in any health care system. <i>(Prefiled 11/5/09 for 2010 session; sent to Health Committee)</i>	60% both legislative chambers + 2010 ballot vote
Alaska <small>NEW</small>	HJR 35 by Rep. Kelly filed for 2010 session Would propose a state constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system. <i>(Filed & sent to Health & Human Services Comm. 1/19/10)</i>	2/3rds both legislative chambers + 2010 ballot vote
Arizona	Resolution HCR 2014 of 2009 by Rep. Barto	50% both

	<p>Refers to the November 2010 ballot a proposed amendment to the State Constitution "which provides that no law or rule shall compel any person or employer 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 doing so, a health care provider may provide directly purchased lawful health care services; prohibits the terms or conditions of a health care system from imposing certain mandates or limitations." <i>[full text in Appendix 1 below]</i></p> <p><i>(Filed 1/16/09; passed House 6/11/09; passed Senate 6/22/09) Also see 2008 ballot question history, below.</i></p>	<p>legislative chambers <i>(Passed)</i></p> <p>2010 ballot vote</p>
Arkansas <small>NEW</small>	<p>ISP 2009-204 by Rep. Glidewell (Interim Study Proposal for 2010 Fiscal Session) Would add a state statute to "ensure freedom of choice in health care" for state residents; "to prevent involuntary enrollments in health care insurance programs" and providing that an "individual or an employer may make direct payment for lawful health care services and shall not be required to pay penalties or fines" for making direct payment for health services.</p> <p><i>(Filed 12/17/09 for 2010 session)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
Florida	<p>HJR 37 (Joint Resolutions filed for 2010) by Rep. Plakon; 39 co-sponsors; SJR 72 by Sen Baker.</p> <p>Joint resolutions would propose a State Constitutional amendment to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permits person or employer to purchase lawful health care services directly from health care provider, and permits health care providers to accept direct payment from a person or employer for lawful health care services.</p> <p><i>(HJR 37 prefiled 7/27/2009 for 2010 session; SJR 72 prefiled 10/5/09; sent to 3 committees 12/9/09)</i></p>	<p>60% both legislative chambers + 2010 ballot vote</p>
Georgia	<p>Resolution HR 1086 of 2010 by Rep. Calvin Hill</p> <p>Would propose an amendment to the Constitution so as to provide that no law or rule or regulation shall compel any person, employer, or health care</p>	<p>2/3rds both legislative chambers</p>

provider to participate in any health care system and to authorize persons and employers to pay directly for lawful health care services without penalties or fines; to provide for the submission of this amendment for ratification or rejection.

(Prefiled 11/23/09 for 2010 session)

+
2010 ballot vote

Idaho NEW

[HB 391](#) filed for 2010 session

Would amend and add to existing law to establish the Idaho Health Freedom Act.

(Filed 1/19/10 for 2010 session)

Proposed statute: majority both legislative chambers

Indiana (2009) [SJR 65](#) by Sen. Waltz; [SJR 91](#) by Sen. Waltz; [SJR 111](#) by Sen. Waltz (Advisory resolutions for 2009)

SJR 91: Resolved, "That the Indiana General Assembly must ensure that all residents of Indiana may enter into private contracts with health care providers for health care services and may purchase private coverage for health care services. That the Indiana General Assembly should not require an individual to participate in a health care system or plan or impose on an individual a penalty or fine of any type for choosing to obtain or decline coverage for health care services or participating in a particular health care system or plan."

(SR 65 - filed 4/7/09 - did not pass by end of session; SR 91 - filed 4/27/09 - did not pass by end of session; SR 111 - filed 4/28/09 - did not pass by end of session; Indiana does not carry over bills or resolutions to 2010)

Non-binding resolutions

" NEW
(2010)

[SJR 14](#) by Sen. Krause, [HR 6](#); also non binding resolution [SCR 10](#)

Would propose a state constitutional amendment stating, "A person, an employer, or a health care provider shall not be compelled, directly or indirectly, to participate in any health care system. A person or an employer may pay directly for lawful health care services and shall not be subject to penalties or fines for paying directly for lawful health care services. A health care provider may receive direct payment for health care services from a person or an employer and shall not be subject to penalties or fines for

50% both legislative chambers
+
2012 ballot vote

accepting direct payment from a person or an employer."
(Filed 1/11/10)

Iowa

[HJR 2007](#) by Rep. Upmeyer

Would propose a state constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system.

(Filed for 2010 session)

50% both
 legislative
 chambers
 +
 2012 ballot vote

Kentucky NEW

[HB 307](#) by Rep Moore

Would prohibit by statute any other law "from requiring any individual to participate in any health care system or plan, or to impose a penalty or fine regarding participation; permit an individual or an employer to pay directly for health care services and a health care provider to accept direct payment without penalties or fines. Also would prohibit the state executive branch from "participating in or complying with any federal law, regulation, or policy that would compromise the freedom of choice in the health care."

(Filed 1/21/10; sent to Banking & Insurance Comm. 1/26/10)

Proposed
 statute:
 majority both
 legislative
 chambers

Louisiana NEW

[SB ____](#) by Sen. Crowe

Would prohibit by statute any other law requiring a "person, employer, health care provider to participate" in a health system or insurance system; also would prohibit compelling participation in any health care system or health insurance plan. Would establish a misdemeanor offense and penalty (\$500 or five day in prison) for any state or local official who "attempts to coerce any individual to purchase health insurance."

Measure drafted; to be filed for 2010 session) [5A](#)

Proposed
 statute:
 majority both
 legislative
 chambers

Maryland NEW

[SB 397](#) by Sen. Pitkin

Would propose a state constitutional amendment limiting the regulation of health care in the state; prohibiting a law from compelling residents to participate in any health care system; prohibiting residents from being required to pay penalties or fines for not participating in health insurance; specifying that the purchase or sale of specified health insurance may not be prohibited by

60% both
 legislative
 chambers
 +
 2010 ballot vote

	law; authorizing residents to pay directly or accept direct payment for specified health care services. <i>(Filed and sent to committee 1/29/10)</i>	
Michigan	SJR K of 2009 by Sen. Kuipers; HJR CC by Rep. Calley; HJR Z of 2009 by Rep. Amash Would propose a state constitutional amendment "to affirm the right to independent health care." Includes a statement that "a person or employer shall not be required to pay penalties or fines for paying directly for lawful health care services." <i>(Filed 8/1/9/09, 8/29/09 and 9/9/09; pending in Committee on Health Policy; no floor vote in 2009; carried over to 2010)</i>	2/3 both legislative chambers + 2010 ballot vote
Minnesota	HF 171 by Rep. Emmer, S 325 by Sen. Koch, S 1282 by Sen. Hann Would propose an amendment to the Minnesota Constitution stating that "no law shall be passed that restricts a person's freedom of choice of private health care systems or private health plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or health plan." <i>(Filed 1/22/09, 3/9/09; did not pass committee by end of 2009 session; subject to carryover to 2010)</i>	50% both legislative chambers + 2010 ballot vote
Mississippi <small>NEW</small>	HCR 17 by Rep. Monsour Resolution, would propose a constitutional amendment to prohibit laws compelling any person, employer or health care provider to participate in any health care plan. Would provide that 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." <i>(Filed; sent to Committee on Constitution 1/7/10)</i>	2/3 both legislative chambers + 2010 ballot vote
Missouri <small>NEW</small>	HJR 48 by Rep. Davis; HJR 50 by Rep. Ervin; HJR 57 by Rep. Jones Ti; SJR 25 by Sen. Cunningham Joint resolutions, would propose a constitutional amendment which would	50% both legislative chambers

	<p>prohibit compelling a person to participate in any health care system. "Upon voter approval, this proposed constitutional amendment prohibits any person, employer, or health care provider from being compelled to participate in any health care system. Individuals and employers may pay directly for lawful health care services, and health care providers can accept payment for health care services from individuals or employers without being subject to fines or penalties. The purchase or sale of health insurance in private health care systems cannot be prohibited by law or rule. <i>(Prefiled 12/1/09 , 12/4/09 & 1/6/10 for 2010 session)</i> 4, 10</p>	<p>+ 2010 ballot vote</p>
Nebraska <small>NEW</small>	<p>LR 289CA by Sen. McCoy Proposed constitutional amendment stating "no law shall be passed that: (1) Restricts a person's freedom of choice of private health care systems or private health plans of any type; (2) Interferes with a person's or an entity's right to pay directly for lawful medical services; or (3) Imposes a penalty or fine of any type for choosing to obtain or decline health care coverage." <i>(Filed & sent to Health & Human Services Committee 1/13/10)</i></p>	<p>60% both legislative chambers + 2010 ballot vote</p>
New Hampshire	<p>See Financing category below</p>	<p>--</p>
New Mexico	<p>SJR 1 of 2009 by Sen. Sharer/ HJR 10 of 2009 by Rep. Gardner Proposed constitutional amendment stating, "No law shall be enacted that: A. restricts a person's freedom of choice of a private health care system or plan; B. interferes with a person's right to pay directly for lawful medical services; or C. imposes a penalty or fine of any type on a person for choosing to obtain or to decline health care coverage or for participation in a particular health care system or plan." Fiscal Impact Report <i>(SJR 1 filed 1/21/09; HJR 10 filed 1/28/09; failed to pass by end of session; no carryover)</i></p>	<p>50% both legislative chambers + 2010 ballot vote</p>
North Dakota	<p>HCR 3010 by Rep. Kasper (Joint Resolution), a proposed 2010 constitutional amendment based on Arizona language. Would propose an amendment to the State Constitution; relates to freedom of choice in health care; prohibits laws that restrict an individual's choice of</p>	<p>50% both legislative chambers +</p>

private health care systems or private plans, interfere with a person's right to pay for lawful medical services, or impose a penalty or fine for choosing to obtain or decline health care coverage or for participation in any health care system or plan."

(Filed 1/14/09, failed to pass House 3/4/09 by end of 2009 session; no regular session in 2010)

future year
ballot
vote

Ohio

[SJR 2](#) of 2009 by Sen. Coughlin; [SJR 7](#) by Sen. Grendell; [HJR 3](#) by Rep. Maag
Joint resolutions for a proposed constitutional amendment to state, " The people of Ohio have the right to enter into contracts with health care providers ... and to purchase private health care coverage" Would prohibit state laws requiring coverage or imposing fines. For "obtaining or declining" coverage.

(SJR 2 filed 2/24/09; pending in Senate committee as of 10/29/09)

(SJR 7 filed 9/29/09; sent to Senate Insurance, Commerce Comm.)

(HJR 3 filed 8/26/09; sent to Insurance Comm. 9/15/09; no floor votes in 2009; carried over to 2010)

60% both
legislative
chambers
+
2010 ballot vote

Oklahoma NEW

HJR 1054 by Rep. Ritze
Joint resolution for a proposed constitutional amendment stating, "A law or rule shall not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system; and A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines" for lack of insurance.

(Filed 12/22/09)

50% both
legislative
chambers
+
2010 ballot vote

Pennsylvania

[HB 2053](#) by Rep. Baker
Proposed statute "providing for the rights of individuals to purchase private health care insurance and prohibiting certain governmental action." States, "The people shall have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The legislature may not require any individual to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular

Proposed
statute:
majority both
legislative
chambers

health care system or plan."

(Filed and sent to Insurance Committee, 10/21/09; no floor vote in 2009; carried over to 2010)

South Carolina	<p>HJR 4181 by Rep. Scott; SJR 980 by Sen. Bright; SJR 1010 by Sen. Rose.</p> <p>Resolution for a proposed constitutional amendment, "prohibiting any law, regulation, or rule to compel an individual, employer, or health care provider to participate in a health care system, by allowing individuals and employers to pay directly for lawful health care services without penalties or fines for these direct payments, by providing that the purchase or sale of health insurance in private health care systems must not be prohibited by law, regulation, or rule."</p> <p>The resolution title states, "... to preempt any federal law or rule that restricts a person's choice of private health care providers or the right to pay for medical services."</p> <p><i>(HJR 4181 filed for 2010 session; sent to Committee on Labor, Commerce and Industry, 11/17/09)</i></p> <p><i>(SJR 980 and SJR 1010 filed; sent to Senate Judiciary Committee 1/12/10)</i></p>	<p>50% both legislative chambers + 2012 ballot vote</p>
Tennessee <small>NEW</small>	<p>SB 2490 by Sen. Black; HB 2622 by Rep. Lynn</p> <p>Would amend state law by adding a "Tennessee Freedom of Choice in Health Care Act."</p> <p><i>(Filed for 2010 session)</i></p>	<p>Proposed statute: majority both legislative chambers</p>
Utah <small>NEW</small>	<p>H 67 for 2010 session by Rep. Wimmer</p> <p>Would amend provisions related to the state's strategic plan for health system reform to respond to federal reform efforts; prohibits a state agency or department from implementing any provision of the federal health care reform without first reporting to the Legislature: whether the federal act compels the state to adopt the particular federal provision; consequences to the state if the state refuses to adopt the particular federal provision; and impact to the citizens of the state if reform efforts are implemented or not implemented; would require any agency of the state not to implement any part of</p>	<p>Proposed statute: majority both legislative chambers</p>

federal health care reform passed by the US Congress after March 1, 2010, unless the department or agency reports to the Legislature and the Legislature passes legislation "specifically authorizing the state's compliance or participation in, federal health care reform."

(Prefiled 12/23/2009; favorable report with amendment; to House calendar 2/8/10) News articles [4](#), [7](#)

Virginia

[HJ 7](#) by Del. Marshall

Resolution for a proposed constitutional amendment, to protect "an individual's right and power to participate or to decline to participate in a health care system or plan; prohibiting any law that will infringe on an individual's right to pay for lawful medical services and prohibiting the adoption of any law that imposes a penalty, tax, or fine upon an individual who declines to enter into a contract for health care coverage or to participate in a health care system or plan.

(Filed and sent to committee 12/9/09) [Also see bills below]

50% both legislative chambers + 2012 ballot vote

Virginia NEW

[SB 283](#) by Sen. Quale; [SB311](#) by Sen. Martin; [SB 417](#) by Sen. Holtzman Vogel, [HB 10](#) by Del. Marshall;

Would amend state law by adding a section, "Health insurance coverage not required. No resident of this Commonwealth, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage. No provision of this title shall render a resident of this Commonwealth liable for any penalty, assessment, fee, or fine as a result of his failure to procure or obtain health insurance coverage." It would exclude Medicaid and CHIP coverage.

(Filed for 2010 session 1/13/10; SB 283, SB 311 and SB 417 passed Senate 23y-17n, 2/1/10; favorable report House Committee on Commerce and Labor, 17y-5n, 2/9/10) [news article] [Also see constitutional resolution above]

Proposed statute: majority both legislative chambers

Washington

[HB 2669](#) by Rep. Hinkle

Would amend state law by adding a provision that the state "shall not directly

Proposed statute:

	<p>or indirectly compel any person, employer, or health care provider to participate in any health care system." and that " A person or employer may pay directly for lawful health care services and shall not be required to pay any penalty, fine, or othersanction for paying directly for lawful health care services. <i>(Filed 1/12/2010)</i></p>	<p>majority both legislative chambers</p>
<p>West Virginia</p>	<p>H 3002 by Rep. J. Miller The "Health Care Freedom Act" states, "The people have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The Legislature may not require any person to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." <i>(filed 3/9/09; failed to pass by end of session; cannot carry over to 2010)</i></p>	<p>Proposed statute: majority both legislative chambers (Did not pass)</p>
<p>Wyoming</p>	<p>SJR 3, by Sen. Hines A proposed 2010 Constitutional amendment based on Arizona language, "that protects individuals, employers and health care providers from having to participate in any health care system." Provides for "freedom of choice in health car; prohibits laws interfering with freedom of choice in health care" <i>(filed 1/20/09; died in Senate committee 3/3/09; no carryover)</i></p>	<p>2/3 both legislative chambers + 2010 ballot vote</p>

States Opposing Health Reform Financing and Unfunded Mandates

State	Activity/Legislation	Required for Passage
<p>New Hampshire <small>NEW</small></p>	<p>SB 417 by Sen. Bradley Would amend state law to prohibit the expansion of the Medicaid program if Congress passes a national health insurance plan unless the expansion is approved by the NH Legislature or is paid for by the federal government. <i>(Filed and sent to Senate Finance Committee 1/6/10)</i></p>	<p>Proposed statute: majority both legislative chambers</p>

Sources: NCSL research; StateNet

Examples of states with reported interest or pre-legislative steps toward a proposed constitutional amendment or statute.

No formally filed legislation was reported in these six states as of January 1, 2010. NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material. Local news and opinion sources are listed as background only.

Colorado ¹¹ (updated 12/30/09)
Kansas, ⁴
Montana ⁵ (next regular session in 2011)
Texas, ^{source} (next regular session in 2011)
Wisconsin. [^{1, 4, 5}]
Wyoming ⁵

Other states have not taken any action in the 2009-2010 session as of January 2010.

Recent News and Articles

- ▶ "[Health Lobby Takes Fight to the States](#)" New York Times, 12/29/2009. <http://www.nytimes.com/2009/12/29/health/policy/29lobby.html>
- ▶ "[Florida attorney general: healthcare reform unconstitutional?](#)" CS Monitor, 12/30/2009.
- ▶ "[Some foes of health-care bill hope courts will stop legislation](#)" Washington Post, 1/3/2010. **NEW**
- ▶ "[Another Health-Care Obstacle Awaits in States](#)" - article; includes NCSL citation. Wall Street Journal, 1/20/2010. **NEW**
- ▶ Virginia "[Bill stating that no one can be forced to buy health insurance advanced.](#)" [The Roanoke Times](#), 1/26/2010.
- ▶ "[Virginia Closer to Banning Insurance Requirement](#)" - NY Times, 2/2/2010.
- ▶ "[States Look to Forstall Hypothetical Mandate](#)" - article; includes NCSL citation. NY Times **NEW**

APPENDIX 1 - The Arizona Proposed Constitutional Amendment

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.

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

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

2. Health care; definitions

section 2. A. To preserve the freedom of Arizonans to provide for their health care:

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.

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. 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 article xviii, section 8 of this constitution or any statutes enacted by the legislature relating to worker's compensation.
4. Affect laws or rules in effect as of January 1, 2009.
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.

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

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

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

Arizona 2008 History/Action: In 2008, Arizona Proposition 101 appeared on the ballot, referred to by proponents as the "Freedom of Choice in Health Care Act." If it had passed, it would have added the following language to the Arizona Constitution: "Because all people should have the right to make decisions about their health care, no law shall be passed that restricts a person's freedom of choice of private health care systems or private plans of any type. No law shall interfere with a person's or entity's right to pay directly for lawful medical services, nor shall any law impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan." Proposition 101 failed to pass by a vote of 1,048,512 in favor and 1,057,199 opposed, a difference of 8,687 votes. Arizona's Proposition 101 language from 2008 has served as the basis for 2009 legislative language drafted by the American Legislative Exchange Council (ALEC).

Arizona Opinions: ALEC article: "Arizona Poised to Block Single-Payer Health Care"

http://www.alec.org/am/pdf/Inside_July09.pdf

The 2009 legislative resolution was approved "along party lines." "I certainly would expect it would go to the courts as a states' rights issue," says Bert Coleman, manager of the Arizona campaign. Coleman adds that proponents of the efforts chose to go through the legislative route rather than a much slower citizen petition (as in 2008) process in order to be part of the ongoing discussion over health reform. "We wanted to be part of the debate now," Coleman stated to Inside Health Policy. "Will it influence the debate? I certainly hope so."

APPENDIX 2:**Some Legal and Legislative Opinions on Anti-Reform State Actions**

Rep. Nancy Barto, chairwoman of the Arizona House's Health and Human Services Committee, sponsored the bill that led to the ballot referendum. Her basic argument is that "there is no place for government between someone and their doctor," said Becky Blackburn, communications director for the Republican Caucus of the Arizona House of Representatives.

Rep. Linda Upmeyer, Iowa State Representative and the chair of ALEC's Health and Human Services Task Force stated, "Federal health care reform efforts may include a requirement that individuals purchase health insurance, and a so-called 'public option' which will result in less choices for consumers and new government mandates."

Thomas Miller, resident fellow at the American Enterprise Institute, stated that lawsuits are likely to challenge the mandate as an unprecedented violation of inherent individual rights under the U.S. Constitution in enforcing the purchase of a product "with no other reason other than the fact that you are just living in the country. "There's no clear Supreme Court precedent suggesting that this is going to be overturned constitutionally," he said. However, "give me the right five justices and anything's possible. Enforce it in a particularly onerous, all-encompassing, unfair manner and then it's more politically viable for judges to have problems with the way it comes out." [2]

The New York Times cited several legal experts who said "they saw little room for such a challenge:"

Mark A. Hall, professor of law and public health at Wake Forest University, says states don't have the power to override or "opt out" of, or not participate in the mandate. The debate is "a flash in a pan" set off by libertarians who say "Washington, D.C. shouldn't be telling us what to do," he said. "There is no way this challenge will succeed in court," adding that the state measures seemed more "an act of defiance, a form of civil disobedience if you will." [2] Hall has [studied the constitutionality of mandates that people buy health insurance](#), for the O'Neill Institute at Georgetown University.

Timothy Stoltzfus Jost, a health law expert at Washington and Lee University School of Law, concludes that "States can no more nullify a federal law like this than they could nullify the civil rights laws by adopting constitutional amendments." [3, 8]

Randy E. Barnett, a Georgetown law school professor who has written about what he views as legitimate [constitutional questions about health insurance mandates](#), seemed doubtful. "While using federal power to force individuals to buy private insurance raises serious constitutional questions," Professor Barnett said, "I just don't see what these state resolutions add to the constitutional objections to this expansion of federal power." [8]

Ruth Marcus, a legal analyst writing for the Washington Post (November 26, 2009), "[Constitution no bar to health reform](#)," seeks to make a detailed case that the latest federal proposals are constitutional. She states,

"Is Congress going through the ordeal of trying to enact health-care reform only to have one of the main pillars -- requiring individuals to obtain insurance -- declared unconstitutional? An interesting debate for a constitutional law seminar. In the real world, not a big worry. ... it's worth explaining where the Constitution grants Congress the authority to impose an individual mandate. There are two short answers: the power to regulate interstate commerce and the power to tax. The (Commerce) clause empowers Congress "to regulate commerce . . . among the several states," which may not sound terribly far-reaching. But since the New Deal, the Supreme Court has interpreted this authority to cover local activities with national implications.

... But the individual mandate is central to the larger effort to reform the insurance market. Congress may not be empowered to order everyone to go shopping to boost the economy. Yet health insurance is so central to health care, and the individual mandate so entwined with the effort to reform the system, that this seems like a different, perhaps unique, case. Congress clearly has authority to, in effect, require employees to purchase health insurance for their old age by imposing a payroll tax to fund Medicare.

The individual mandate is to be administered through the tax code: On their forms, taxpayers will have to submit evidence of adequate insurance or, unless they qualify for a hardship exemption, pay a penalty.

See full text [online](#).

Sources: NCSL provides links or references to third-party articles and information as a convenience. NCSL is not responsible for the accuracy or completeness of such material.

[1] American Legislative Exchange Council (ALEC) as quoted in article of August 12, 2009 and NCSL interview with Christie Herrera, ALEC Health Director, August 17, 2009.

[2] Insurance NewsNet: Legal Analysts: "[Suits May Challenge Constitutionality of Individual Mandate in U.S. Health Reform](#)," October 8, 2009.

[3] New York Times "[Health Care Overhaul and Mandatory Coverage Stir State' Rights Claims](#)," September 29, 2009

[4] CNS News.com, a subsidiary of the [Media Research Center](#). "[Nineteen States Move to Defend Individual Health Care Choice](#),"

Tuesday, October 27, 2009

[5] Inside ALEC: "[Arizona Poised to Block Single-Payer Health Care.](#)" Page 11, July 2009.
[ALEC web site](#), accessed 1/31/2010.

[5A] Marsha Shuler, The Advocate, [Baton Rouge]. [\[Louisiana state\] legislator pushing amendment addressing health-care changes.](#)" August 11, 2009

[6] Gov. Perry told Dallas talk radio WBAP's Mark Davis; as reported by the Fort Worth Star-Telegram, 7/23/2009

[7] Deseret News, "[Pushing back against feds,](#)" August 13, 2009

[8] Politico.com. [Professor Randy Barnett](#) and [Professor Timothy Jost](#): "[Healthcare: Is 'mandatory insurance' unconstitutional?](#)" Sept. 18 2009:

[9] Inside ARM. [State Lawmakers Seek Legislative Solutions to Health Care Reform Mandates](#) - September 28, 2009.

[10] News-Leader (Missouri) [Lawmakers: Overhaul a threat to freedom.](#) November 15, 2009

[11] Denver Post. [Efforts already underway in Colorado to blunt federal health care reforms.](#) December 30, 2009

APPENDIX 3:

Number of Sessions During Which Legislative Enactment Is Required

In the following 35 states, the legislature enacts a proposed constitutional amendment during only one session.

Alabama	Louisiana	North Dakota
Alaska	Maine	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	Rhode Island

Colorado	Mississippi	South Dakota
Florida	Missouri	Texas
Georgia	Montana	Utah
Idaho	Nebraska	Washington
Illinois	New Hampshire	West Virginia
Kansas	New Mexico	Wyoming
Kentucky	North Carolina	

In the following 12 states, the legislature must enact a proposed constitutional amendment during two sessions.

Delaware **	Nevada	Tennessee
Indiana	New York	Vermont
Iowa	Pennsylvania	Virginia
Massachusetts	South Carolina	Wisconsin

** Delaware does not require a public vote once a proposed amendment passes two consecutive sessions by a 2/3 vote.

In the following three states, the vote total determines the number of sessions during which a proposed constitutional amendment must be enacted.

Connecticut	New Jersey	Hawaii
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Appendix 3 Source: Brenda Erickson, NCSL Legislative Management memorandum, 2009.

Related NCSL Resource Pages: [State Health Reform](#) | [Federal Health Reform](#)

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