Morrison Institute for Public Policy

ARIZONA STATE UNIVERSITY

Understanding Arizona's Propositions: Prop 106

By Kristin Borns
Senior Policy Analyst
Morrison Institute for Public Policy

Proposition 106 – Health Care

Proposition 106 would amend the state Constitution to provide for the following as it relates to health care and insurance in Arizona:

- Allow individuals and employers to pay providers directly for health care without penalty or fine.
- Prohibit any rule or law from compelling individual participation in any particular health care system.
- Allow direct payment to a health provider for any lawful service.
- Provide for purchase and sale of health insurance in private health care systems without prohibition by rule or law.[i]

This measure, a legislative referral, is similar to a failed 2008 Arizona proposition. The 2008 measure's language was not as specific in intent as Proposition 106, but like Prop 106, it was designed to respond to specific initiatives underlying federal health care reform.

Additionally, Proposition 106 would not affect which services providers are required to supply; impact health care services allowed by law; or prohibit care provided by law as it relates to worker's compensation.[ii]

Arizona's 2008 failed proposition became a model for other states adopted by the American Legislative Exchange Council, a conservative, limited-government, nonprofit organization that has spearheaded introduction and adoption of similar measures in several states.

According to the bill's sponsor, state Rep. Nancy Barto, R-Phoenix, Proposition 106 is written to give Arizona patients the ability to opt out of any federal mandates.[iii]

Similar statutory measures are in place in Virginia, Idaho and Georgia.[iv] Missouri voters handily passed a similar proposition, known as Proposition C, by 71% in August.[vvi] Proposed constitutional amendments comparable to Arizona's proposition also are on the ballots in Oklahoma and Florida.[vii] In addition, in May 2010, Arizona joined Florida and a number of other states in a lawsuit challenging the constitutionality of federal health-care legislation.[viii]

Yes on Proposition 106?

Proposition 106 was referred to the ballot in summer 2009 for this year's general election. At that time, federal health care reform was being hotly debated in Washington, D.C. Provisions to be included in the final federal act, known as the Patient Protection and Affordable Care Act, or PPACA, were still unclear when language for the proposition was drafted.

Primary concerns expressed by supporters of Prop 106 highlight two fundamental issues: belief that a successful federal bill would include a government-run plan, or "public option;" and concern that

there would be employer and individual mandates to provide or purchase health insurance or face penalties and fines.

While PPACA does not include a federal public option, it does feature individual and employer mandates to purchase insurance, with some exemptions for low-income individuals. Supporters of Prop 106, including Governor Jan Brewer and the National Federation of Independent Business-Arizona, contend the proposition is designed to protect individual freedoms of Arizonans in choosing their own health care and providers.

> *"A yes vote on 106 is a vote against the mandate by President Obama and the Democratic Congress, who with ObamaCare, have given the IRS the power to fine Americans who don't buy insurance."*
>
> *-- Governor Jan Brewer*
>
> Source: Secretary of State's Office

Fears regarding bureaucratic control of personal health-care decisions, as well as the escalating costs of a federal health-care plan, are expressed by a number of proponents. The goal is to be proactive by limiting state allowances for health insurance mandates now or in the future. While there is currently no public option, supporters contend that if that ever became a federal reality, Arizonans would be protected.

One concern with the 2008 ballot measure was that individuals enrolled in the Arizona Health Care Cost Containment System (AHCCCS), the state's Medicaid program, would potentially lose coverage. Proponents of Proposition 106 claim the latest measure protects those individuals enrolled in AHCCCS, while the 2008 measure did not.

Even though similar protections regarding health-care choice are now in place via state statute, supporters argue that building these provisions in the state Constitution solidifies these measures by making it more difficult to change or amend.

Ultimately, many supporters of Prop 106 see its success as a statement against the actions of the federal government as it relates to health-care reform.

No on Proposition 106?

Opponents of Proposition 106 argue that much of the original referral was meant to counter the public option component of federal reform that many feared could cripple private insurance. This is now a moot point, as PPACA does not include a federal public option.

Further, Prop 106 includes the right to pay for services and coverage out of pocket. However, this right is not impeded by either existing law or PPACA.

Many opponents of Prop 106 also argue that federal health-care reform is beneficial, resulting in more Arizonans being covered by health insurance.

> *"Right now Arizona has the fourth highest percentage of uninsured children in the nation. PROP 106 moves Arizona backwards and away from providing quality, affordable health care to our children."*
>
> *-- John Wright, president*
> *-- Andrew Morrill, vice president*
> *Arizona Education Association*
>
> Source: Secretary of State's Office

Proposition 106 is premature as PPACA's individual and employer mandates do not take effect until 2014, opponents note. Most legal scholars argue that PPACA's mandate provisions likely would preempt any contrary state laws, such as Proposition 106, provided that the federal government lawfully enacted PPACA. As a result, PPACA's individual and employer mandate provisions would prevail over the contrary provisions of Proposition 106, even if it passes.

Further, while supporters of the measure argue that costs associated with federal reform are high, expenses associated with lengthy and likely unsuccessful litigation by the state defending Prop 106 could quickly escalate, opponents say.

Opponents also argue that escalating health-care costs are more likely to result from uncovered individuals seeking emergency care than from mandated coverage. A study by the Arizona Hospital and Healthcare Association estimates that between 2002 and 2006, a timeframe characterized by economic growth, the cost of uncompensated care to hospitals nearly doubled, to more than $311 million in 2006.[ix]

Finally, those planning to vote against Prop 106 note that the protections sought through the ballot measure are already in state statute. In order to authorize Arizona's participation in the multi-state lawsuit against federal health-care reform, lawmakers passed and the governor signed SB 1001, which included the same protections proposed by Proposition 106.[x]

The Bottom Line

A "yes" vote would amend the Arizona Constitution to allow individuals and employers to pay providers directly for care without penalty or fine; prohibit any rule or law from compelling participation in any particular health care system; allow direct payment to a provider for any lawful service; and provide for purchase and sale of insurance in private health care systems without prohibition by rule or law.

---

[i] Analysis by Legislative Council.
http://www.azleg.gov/alispdfs/Council/2010BallotMeasures/AdoptedHCR2014.pdf
[ii] *Ibid.*
[iii] Fox News Interview from July 1, 2009.
[iv]http://www.alec.org/AM/Template.cfm?Section=ALEC_s_Freedom_of_Choice_in_Health_Care_Act1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=29&ContentID=13558
[v] Lieb, David A. "Mo. voters reject key provision of health care law."
http://www.msnbc.msn.com/id/38549641/ns/politics/
[vi] Proposition C was a statutory change, Prop 106 if successful would be a constitutional change.
[vii].http://www.alec.org/AM/Template.cfm?Section=ALEC_s_Freedom_of_Choice_in_Health_Care_Act1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=29&ContentID=13558
[viii]http://azgovernor.gov/dms/upload/PR_051410_BrewerAnnouncesAZJoinedMultistateBipartisanHealthCareLawsuit.pdf
[ix] *Who Really Pays? When Healthcare Services Go Under the Budget Knife.* Arizona Healthcare and Hospital Association. April 2008.
[x] http://www.azcentral.com/news/election/azelections/articles/2010/04/06/20100406obama-health-care-lawsuit.html

August 2010 / Morrison Institute for Public Policy is a leader in examining critical Arizona and regional issues, and is a catalyst for public dialogue. An Arizona State University resource, Morrison Institute uses nonpartisan research and communication outreach to help improve the state's quality of life.