

ASSEMBLY JOINT RESOLUTION NO. 14—COMMITTEE
ON LEGISLATIVE OPERATIONS AND ELECTIONS

MAY 17, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Proposes to amend the Nevada Constitution to ensure access to affordable emergency medical care at reasonable rates to all persons in this State. (BDR C-1218)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to ensure access to affordable emergency medical care at reasonable rates to all persons in this State.

Legislative Counsel's Digest:

Existing federal law requires hospitals to provide certain services to persons who go to a hospital or independent facility for emergency medical care or who have an emergency medical condition, regardless of the ability of the person to pay and regardless of whether the person has health insurance. (42 U.S.C. § 1395dd) Existing state law requires a hospital in this State to provide emergency services and care to patients, regardless of their financial status. Existing state law further makes it a crime for a hospital to: (1) refuse to treat a patient in need of emergency services and care; (2) transfer a patient to another hospital or health facility in certain circumstances; or (3) order testing of a patient to be performed at another hospital if the hospital from which the orders are issued is capable of providing the testing. (NRS 439B.410) Existing state law further requires certain major hospitals to reduce the total billed charges by at least 30 percent for hospital services provided to certain patients who do not have insurance or any other contractual agreement with a third party for the payment of the charges. (NRS 439B.260)

This resolution proposes to amend the Nevada Constitution to guarantee persons in this State who arrive at a hospital or independent facility for emergency medical care and who are seeking medically necessary emergency services are not denied the right to receive medical services needed as a result of the emergency, regardless of the ability of the patient to pay and regardless of whether the patient has insurance. In addition, this resolution provides persons in this State a right to receive such emergency medical services at a reasonable cost and, with certain exceptions, guarantees that a hospital or independent facility for emergency



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medical care will not charge for any treatment, service or medication or other product provided to a person who arrives at the hospital or facility as a result of an emergency more than 150 percent of the lowest rate that the hospital or facility has agreed to accept from a federal public insurer for the treatment, service, medication or other product received by the patient.

This resolution also provides that its provisions: (1) are self-executing; (2) may not be waived in any manner or altered or varied by agreement; and (3) may be enforced by the State or a political subdivision and may additionally be enforced by a civil action brought by a person who is denied any right protected by this resolution.

Finally, this resolution allows the Legislature by law to establish a different rate that may be charged for medically necessary emergency services if the Legislature establishes a commission to ensure that hospitals and independent facilities for emergency medical care provide medically necessary emergency services at a reasonable cost. However, if the Legislature does not establish a different rate by law, the state agency authorized by law to regulate the hospitals or facilities may allow a rate increase only if the hospital or facility proves that the increase is absolutely necessary to avoid a rate that is confiscatory under the United States Constitution. (U.S. Const. Amend. V, XIV) If the state agency allows such an increase, the amount of the increase must not exceed the amount that the hospital or facility proves is absolutely necessary to avoid an unconstitutional result. (*Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08 (1989) ("The guiding principle has been that the Constitution protects [private companies] from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."); *Guar. Nat'l Ins. Co. v. Gates*, 916 F.2d 508, 512-16 (9th Cir. 1990); *Reinkemeyer v. Safeco Ins. Co.*, 117 Nev. 44, 50-53 (2001))

If this resolution is passed by the 2017 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

WHEREAS, The charges for health care services rendered as a result of an emergency are often exorbitant; and

WHEREAS, Persons in the State of Nevada, some of whom are not indigent but do not have health insurance or are underinsured are often made to pay highly inflated prices for emergency medical care; and

WHEREAS, Such exorbitant pricing discourages persons from seeking necessary care and can be devastating financially to those who do seek such care; and

WHEREAS, It is of the utmost importance that all persons in this State have access to affordable health care services at reasonable rates when needed as a result of an emergency; and

WHEREAS, It is unconscionable for hospitals and independent facilities for emergency medical care to charge inflated and unreasonable rates for health care services provided as a result of an emergency to middle and lower income persons to subsidize the lower rates paid by public and private insurers; now, therefore, be it



RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 17, be added to Article 15 of the Nevada Constitution to read as follows:

Sec. 17. 1. No hospital or independent facility for emergency medical care shall deny treatment or services to a person who arrives at the hospital or facility seeking medically necessary emergency services, regardless of whether the person has health insurance and regardless of the ability of the person to pay for such services.

2. All persons in this State have a right to receive medically necessary emergency services at a reasonable cost, and except as otherwise provided in subsection 3, no hospital or independent facility for emergency medical care shall charge for any treatment, service or medication or other product provided to a person who arrives at the hospital or facility seeking medically necessary emergency services, whether or not the person has insurance, an amount which is:

(a) Greater than 150 percent of the lowest rate which the hospital or facility has agreed to accept from a federal public insurer for the treatment, service or medication or other product; or

(b) If the Legislature provides by law for a different rate pursuant to subsection 5, greater than the rate provided by law.

3. If the Legislature has not provided by law for a different rate pursuant to subsection 5, the state agency authorized by law to regulate the hospital or independent facility for emergency medical care may allow the hospital or facility to increase the rate above the rate provided in paragraph (a) of subsection 2 only if the hospital or facility proves that the increase is absolutely necessary to avoid a rate that is confiscatory under the Constitution of the United States. If the state agency allows such an increase, the amount of the increase must not exceed the amount that the hospital or facility proves is absolutely necessary to avoid an unconstitutional result.

4. The provisions of subsections 1, 2 and 3:

(a) Are self-executing.

(b) May not be waived in any manner or altered or varied by agreement.

(c) May be enforced by:

(1) The State of Nevada or a political subdivision of the State of Nevada.



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1 (2) *A civil action brought by a person who is denied*
2 *any right protected by those provisions.*

3 5. *The Legislature:*

4 (a) *Shall provide by law for the administration and*
5 *enforcement of the provisions of this section.*

6 (b) *May provide by law for a different rate than the rate*
7 *provided in paragraph (a) of subsection 2 if the Legislature*
8 *establishes, by law, a commission to ensure that hospitals*
9 *and independent facilities for emergency medical care*
10 *provide medically necessary emergency services at a*
11 *reasonable cost. If such a commission is established, the*
12 *Legislature shall provide by law for:*

13 (1) *The appointment of the members of the*
14 *commission; and*

15 (2) *The powers and duties of the commission*
16 *consistent with the provisions of this section.*

