STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

March 23, 2015

TO: William Semple, Ralph Ogden, and Martha Tierney

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2015-2016 #19, concerning State Health Care System.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2015-2016 #19 to #22. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2015-2016 #20 to #22, except as necessary to fully

understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum

Purposes

The major purposes of the proposed amendment to the **Colorado constitution** appear to be:

1. To create a new health care financing system called ColoradoCare;

2. To define terms that are used in the measure, including "beneficiary," an individual who is eligible for benefits and whose primary residence is in Colorado, and "member," a beneficiary who is at least eighteen years of age, whose primary residence has been in Colorado for at least one year, and who is eligible to vote and serve on the board of trustees;

3. To specify that ColoradoCare is a political subdivision of the state but is an independent entity not subject to state control;

4. To specify that the purpose of ColoradoCare is to finance health care services for Colorado residents, administer state and federal health care funds, and institute fiscally sound payment policies;

5. To establish an interim board to take initial steps to get ColoradoCare established and operational, including: Adopting initial bylaws, procedures, and rules; approving an operating budget; hiring employees and consultants; adopting rules to ensure transparency in its operations; seeking a federal waiver to allow suspension of the state health benefit exchange; notifying the governor of the date on which ColoradoCare will assume responsibility for health care payments; dividing the state into seven districts from which elected board members will be elected; adopting rules governing selection of elected board trustees, the conduct of elections, and the certification of election results; and scheduling the election of trustees to the elected board;

6. To specify that board of trustee elections are nonpartisan and that trustee candidates must be members of ColoradoCare who reside in the district in which they are seeking election;

7. To establish the parameters of the elected board of trustees, including specifying that:

   a. The elected board consists of twenty-one members, three from each of the seven districts;

   b. The elected trustees serve four-year terms of office and may serve no more than two consecutive terms of office, except that seven trustees serve initial two-year terms, the chair is to determine who those seven trustees are by lot, and trustees who serve initial two-year terms are allowed to serve two four-year terms after serving the initial shorter term; and

   c. The procedure for filling vacancies on the board;

8. To allow the board to redraw district boundaries once every ten years after the decennial census figures are published by the United States census bureau;

9. To specify the powers and duties of the elected board;

10. To specify the health care services provided to beneficiaries for which ColoradoCare will pay and to allow the elected board to authorize payment for additional benefits;

11. To specify that ColoradoCare is to pay for health care services to beneficiaries regardless of the cause of the injury or illness, including medical expenses incurred by injured workers that are currently paid under the "Workers' Compensation Act of Colorado";

12. To specify the benefits for beneficiaries who are eligible for medicaid, the children's basic health plan, or other federal health care programs;

13. To prohibit ColoradoCare from charging beneficiaries deductibles;

14. To address the process for transitioning from the current health care system in Colorado to ColoradoCare, including the state departments and agencies that are to assist the interim and elected board in obtaining appropriate state and federal waivers, exemptions, or agreements to allow ColoradoCare to administer federal health care programs and obtain all state and federal funds for those programs;

15. To impose a transitional operating fund tax, effective July 1 of the year following the effective date of the measure, as follows:

    a. 0.6 percent of total payroll from each employer;

    b. 0.3 percent of all payroll income from each employee; and

    c. 0.9 percent of all nonpayroll income from beneficiaries and part-time Colorado residents;

16. To impose a permanent premium tax, starting thirty days before ColoradoCare is to start paying for health care services, as follows:

    a. 6.34 percent of total payroll from each employer;

    b. 3.16 percent of all payroll income from each employee; and

    c. 9.5 percent of all nonpayroll income from beneficiaries and part-time Colorado residents;

17. To specify that payment of the premium tax by an employer satisfies the employer's obligation to provide health care insurance for its employees but does not constitute the purchase of a health insurance policy by an employer or taxpayer;

18. To establish a limit on the amount of an individual's annual payroll and nonpayroll income that is subject to the premium tax and a mechanism for annually adjusting that limit;

19. To establish exemptions from constitutionally imposed fiscal year spending limits, elections laws and rules, and state personnel system laws and rules;

20. To specify that when a beneficiary has coverage under a health insurance plan, the health insurance is the primary payer, and ColoradoCare is the secondary payer;

21. To specify the interplay between ColoradoCare and medicare and when ColoradoCare is obligated to pay for medicare-covered services;

22. To grant ColoradoCare subrogation and lien rights and the authority to recover health care payments from collateral sources;

23. To require the general assembly to enact enabling and implementing legislation in the first regular session after the measure takes effect;

24. To specify that board meetings are subject to open meetings requirements under the "Colorado Sunshine Act of 1972";

25. To specify that the measure takes full force and effect on the day after the secretary of state certifies that a majority of voters voting on the measure approved it;

26. To declare the measure severable in the event a court declares any portion of the measure unconstitutional or invalid; and

27. To specify the board's duties if it determines that ColoradoCare cannot operate in a fiscally sound manner.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. A number of the implementation steps are triggered by the effective date of the measure. Can you provide a timeline for the implementation of the measure? What would be the earliest date on which the department of revenue would collect transitional taxes and premium taxes? What would be the first date a beneficiary could receive health care services through ColoradoCare?

3. "Beneficiary" is defined in section 2 (2) as an individual whose primary residence is in Colorado. How will this be determined? Will beneficiaries receive

some type of card indicating they are beneficiaries? Who would not be a beneficiary? What would happen if someone is visiting Colorado and needs health care?

4. "Member" is defined in section 2 (11) as a beneficiary who is at least eighteen year old and whose primary residence has been in Colorado for at least one continuous year. How will someone prove they meet the membership requirements?

5. Section 3 (1) establishes ColoradoCare as a political subdivision. Section 1-1-111, Colorado Revised Statutes, outlines the powers and duties of governing boards of political subdivisions concerning elections. How will this statutory section or other Colorado laws impact the elections conducted under the measure? Is the intent of section 10 (3) to exempt ColoradoCare from this and other election laws?

6. Section 3 (2) states that ColoradoCare is to "institute fiscally sound payment policies that improve and maintain high standards for value, quality, and healthy outcomes for all beneficiaries." How is this measured? Is ColoradoCare subject to independent audits to ensure that it is complying with this charge? Could the general assembly enact legislation to impose audit requirements on ColoradoCare?

7. With regard to section 4 of the measure, which addresses the interim board's governance and responsibilities:

   a. Subsection (2) (b) requires the interim board to hire employees and consultants and to perform various tasks, all of which appear to require a revenue stream to fund. Will there be any revenues available from taxes imposed under section 9 of the measure to pay these and other costs of the interim board?

   b. Subsection (2) (e) requires the interim board to create seven districts from which the members of the elected board will be elected. Given that the state is already divided into seven congressional districts, can the current seven congressional districts be used instead of creating new districts? Will creating new districts cause delay in getting ColoradoCare operational?

   c. Section 4 outlines that the interim board shall use the most recent United States decennial census figures to divide the state into seven compact con-

tiguous districts. However, the census figures may include nonmembers, such as people who have lived in the district for less than a year, but the measure says the districts are to have "substantially the same number of members." How will the number of members in each district be determined?

d. What process would be used to determine the districts? Would it be similar to the redistricting process used to determine congressional and legislative districts? Do you wish to specify a method for determining the districts?

e. Subsection (2) (g) says that the interim board shall promulgate rules governing the selection of trustees and the conduct of elections. Are the proponents envisioning that the elections will be conducted during a general election or would the elections be conducted more like the public employees' retirement association board or a credit union board election? If the election is to be conducted during a general election, how will membership be verified by election officials?

f. Subsection (2) (b) (II) states that the interim board shall approve an operating budget. Who is responsible for developing the operating budget?

8. Both section 4 (1) (b) and section 5 (2) (b) state that a trustee can be "removed for cause by a majority vote of the other trustees." What would constitute cause for removal?

9. With regard to section 5, which addresses the elected board of trustees' duties and responsibilities:

a. Subsection (4) (d) states that the board must provide funds to the commissioner of insurance for the establishment of two ombudsman offices, but then subsection (4) (d) (I) states that the funding shall be sufficient to allow the timely completion of all investigations. Based on the language in subsection (4) (d) (I), would the measure require continual funding, rather than just funding for the establishment of the offices? How will sufficient funding be determined?

b. Subsection (4) (h) specifies that rules must be promulgated for annual performance and financial audits. Who will be responsible for conducting the audits?

10. With regard to section 6 of the measure, which addresses the health care benefits paid by ColoradoCare:

a. It appears that the benefits listed in subsection (1) (a) somewhat mirror the essential health benefits required under section 1302 of the affordable care act, except the benefits listed in subsection (1) (a) appear to be more expansive in that the requirement for ambulatory patient services specifies that the benefits include "primary and specialty care"; "urgent care" is covered; "pediatric services" also includes "hearing care"; and "palliative and end-of-life care" are added. Do the proponents intend to include benefits beyond what is required under the affordable care act?

b. What about coverages that are currently mandated under Colorado law in section 10-16-104, Colorado Revised Statutes? For example, would treatment for autism spectrum disorders, as required by section 10-16-104 (1.4), Colorado Revised Statutes, or early intervention services, as required by section 10-16-104 (1.3), Colorado Revised Statutes, be a covered benefit under ColoradoCare?

c. Subsection (1) (a) states that "ColoradoCare shall contract with providers to pay for health care services to beneficiaries . . ."

i. Would ColoradoCare pay the full cost of or bill for the services? Would beneficiaries have any out-of-pocket expenses, such as copayments or coinsurance amounts? Would there be a limit on the annual amount of benefits per year or the amount of benefits per lifetime?

ii. Would the contract with providers establish the amount ColoradoCare will pay for all services furnished by a provider? What if a provider won't contract with ColoradoCare? What if, as permitted under subsection (6), a beneficiary chooses a primary care provider that has not contracted with ColoradoCare? Would ColoradoCare still pay that provider for services furnished to the beneficiary, or would the beneficiary be obligated to pay for the services of that provider?

d. Subsection (1) (b) authorizes the board to expand on the list of benefits for which ColoradoCare will pay. How would the board expand the list of benefits? Could the board expand the benefits for some beneficiaries but not all? Could the board expand the benefits on a case-by-case basis? By what process could the board expand the benefits? If the board expands benefits and

then determines ColoradoCare should no longer pay for the benefits, could the board eliminate the expanded benefits, and if so, by what means?

e. Subsection (2) (a) states that ColoradoCare will "pay for health care services to beneficiaries regardless of the cause of their injuries or illnesses." However, section 11 appears to make an exception to this requirement if a beneficiary is enrolled in a health insurance plan, in which case ColoradoCare is a "secondary payer" [sic], or if a beneficiary has medicare coverage. Would proponents consider adding language to subsection (2) (a) to clarify that "except as provided in section 11," ColoradoCare pays for all health care services?

f. Subsection (2) (b) requires ColoradoCare to "assume responsibility for payment of all reasonable and necessary medical expenses" of injured workers whose employers are required to provide workers' compensation insurance. Section 12 (1) (f) also requires the general assembly, in the first regular session after the proposed measure takes effect, to repeal or amend provisions of the "Workers' Compensation Act of Colorado" that "concern the payment of premiums for medical benefits." Reading these provisions together, is it the proponents' intent that the current workers' compensation system, under which determinations are made as to the extent of a worker's injury or disability and the amount and duration of benefits, would remain in place? It appears that the measure only directs the general assembly to repeal or amend provisions related to an employer's requirement to provide workers' compensation coverage and pay premiums for that coverage, so is it the intent of the measure to retain the provisions of the workers' compensation law that dictate the actual determination of benefits? If so, should the language in subsection (2) (b) reflect that intent? The phrase "payment of all reasonable and necessary medical expenses" suggests that ColoradoCare will develop a different system for determining the amount and duration of workers' compensation benefits.

g. Subsection (2) (c) refers to "any other federal health care programs to be administered by ColoradoCare." Is this referring to any existing programs or federal health care programs that may be created in the future? Should this term be defined to help clarify the meaning and scope of "any other federal health care programs"?

h. In subsection (2) (c) (I), are the "benefits required by federal law" referring to benefits required under the programs specified in the introductory portion

of (2) (c), e.g., medicaid, the children's basic health plan, and any other federal health care programs administered by ColoradoCare?

i. For beneficiaries who are eligible for medicaid or the children's basic health plan, it appears that these beneficiaries may be eligible for more extensive benefits than noneligible beneficiaries. Is that correct? What is the rationale for providing different levels of benefits to beneficiaries based on eligibility for medicaid or the children's basic health plan?

j. Under subsection (2) (d), if a beneficiary loses eligibility for medicaid and is only eligible for ColoradoCare benefits, what happens if the beneficiary was receiving ongoing benefits that are no longer benefits for that beneficiary under ColoradoCare?

k. Subsection (3) prohibits ColoradoCare from charging beneficiaries any deductibles. Subsection (4) allows the board to waive copayments.

   i. Where does the measure authorize copayments? Is it the intent of the proponents that beneficiaries will pay copayments for health care services that ColoradoCare covers as benefits under subsection (1)? Who determines copayment amounts, and how do beneficiaries know what the copayment requirements are?

   ii. Subsection (4) prohibits copayments for "designated primary and preventive care services." Designated by whom? Does this allow copayment amounts for some preventive care services that have not been "designated"? Would that violate the affordable care act, which prohibits copayments for preventive care services?

l. Subsection (5) suggests that beneficiaries may be responsible for copayments or other cost-sharing arrangements if ColoradoCare approves those arrangements. What is the process by which those arrangements would be approved? This language seems to allow a provider to charge copayments, as opposed to ColoradoCare charging copayments. Is that the intent?

m. In subsection (7), what is meant by "provide funding and other support to improve access to health care services"? Provide funding to whom? What is "other support"? Could this include providing transportation for beneficiaries? Could ColoradoCare provide some infrastructure to "improve access to health care services"? What is encompassed by this language?

n. Subsection (8) also refers to providing "funding and other support," but in this provision, the funding and other support is for "statewide access to emergency and trauma care services." Again, what type and level of funding and other support is envisioned by this language? Could ColoradoCare buy ambulances for an emergency service provider organization? Build infrastructure? This language seems open to broad interpretation.

11. With regard to section 7 of the measure, which addresses the delivery of service models:

a. Subsection (1) refers to ColoradoCare beginning operations by assuming payments for health care services. When do the proponents envision ColoradoCare will begin making payments for health care services furnished to beneficiaries?

b. In subsection (1), how will ColoradoCare assume payment for health care service "in a manner designed to minimize disruptions to current delivery and payment systems"? Will there be a certain date by which ColoradoCare will take over payments? Who will be responsible for paying for services delivered prior to the date on which ColoradoCare assumes payment responsibility?

c. What is the intent of subsection (2)? Is a "unified billing system" possible if a beneficiary retains health insurance as described in section 11 of the measure? Would the payment reforms and unified billing system apply to a private health insurance plan or to medicare coverage?

d. In subsection (3), how would ColoradoCare determine if a payment model optimizes "quality, value, and healthy outcomes for beneficiaries"? Are there industry standards for measuring payment models based on these criteria?

12. With regard to section 8 of the measure, concerning the transition to ColoradoCare:

a. In subsection (1) (a), what is meant by the term "health care funding"? Would proponents consider defining this term?

b. Subsection (1) (a) requires various state departments and agencies to "assist the interim and elected boards in seeking all waivers, exemptions, and agreements from the state and federal governments that are necessary to transfer health care funding . . . to ColoradoCare." What waivers, exemptions, or agreements do the proponents consider would be necessary to transfer the funding to ColoradoCare? Who would be responsible for actually seeking a waiver, exemption, or agreement? Would ColoradoCare provide funding to the state department or agencies to defray their costs in assisting ColoradoCare? If not, who would pay their costs, assuming they would incur costs to perform these tasks?

c. Under subsection (1) (b), is the delivery of federal funds to ColoradoCare contingent on attaining any waivers or exemptions or entering any agreements? Should that be specified?

d. Subsection (1) (c) appears to apply only to state- or federally funded health care services, requiring ColoradoCare to assume payment responsibility once health care funding is transferred to ColoradoCare. Does this only require ColoradoCare to pay for services provided to beneficiaries who are medicaid recipients or children's basic health plan enrollees? Would ColoradoCare have to start paying for health care services provided to other beneficiaries at this time, as well?

e. Subsection (1) (c) requires ColoradoCare, upon "securing the transfer of health care funding," to assume responsibility for paying benefits and services previously paid by the state and federal government with those funds. Subsection (2) requires the state, "no later than the date ColoradoCare is to assume responsibility for health care payments," to transfer to ColoradoCare state and federal funds for medicaid, the children's basic health plan, and any other programs to be administered by ColoradoCare. How do these two provisions work together? One specifies that ColoradoCare is to assume payment responsibility once it receives state and federal funds, and the other says once ColoradoCare is responsible for health care payments, the state transfers the funds. Please explain the timing. Does ColoradoCare receive the funds first, then become responsible for paying for services, or vice versa?

f. Subsection (2) requires the state to transfer federal funds to ColoradoCare within ten days after receipt of the funds; yet, in subsection (1) (b), the measure requires direct delivery of federal funds to ColoradoCare, to the ex-

tent allowable. Do these provisions conflict? Should they be combined, with language specifying the time for transfers in the case the direct delivery of federal funds is not allowed? This assumes that these provisions are referring to the same federal funds. Is that a correct assumption?

g. Under subsection (4), what is a medicare advantage program or medicare supplemental program, and what is the impact of ColoradoCare becoming one of these programs? To whom would ColoradoCare apply to become one of these programs? Would beneficiaries who are eligible for these programs receive different benefits than those who are ineligible?

h. What types of programs or funds do the proponents intend in subsection (5)?

13. With regard to section 9 of the measure, concerning funding of ColoradoCare:

a. Subsection (1) requires the department of revenue to collect "transitional operating fund taxes" starting "July 1 of the year following the effective date of this article." (Note that this language also appears in section 12 (1) (a), and this question applies to that provision, as well). If the measure is on the 2015 ballot and passes but does not take effect until January 1, 2016, or some other date in 2016, this provision would not require the department to start collecting transitional taxes until July 1, 2017. Is that the proponents' intent? If proponents want the tax collection to begin on the first July 1 after the effective date, you should consider rewording the language in subsection (1).

b. Income tax is imposed on a calendar year. Is there a reason the measure would impose the taxes on payroll, income, and other earnings starting July 1 instead of starting January 1? Should these taxes coincide with the normal federal and state income tax cycle?

c. Subsection (1) and (2) both refer to ColoradoCare assuming "fiduciary responsibility for health care payments." Is this responsibility different from the responsibility to pay for health care services, as specified in section 8 (1) (c) and 8 (2)?

d. Who determines when ColoradoCare will assume fiduciary responsibility for health care payments, thus triggering the end of the transitional tax and the start of the premium tax? How will the department of revenue know

when “thirty days before ColoradoCare assumes fiduciary responsibility” will be?

e. Neither in the definitions of “employee” and “employer” in section 2, nor in the references to employee and employer in section 9, does the measure specify that it applies only to Colorado employers and employees. Is the measure intended to apply only to employers and employees in Colorado? Do the taxes apply to public employers?

f. Would a Colorado employee who resides across the border in Wyoming be required to pay taxes under section 9 but not be eligible for payment of health care services as a beneficiary? Is the intent to apply the tax requirement to all employees in Colorado, regardless of whether they reside in Colorado or are eligible for benefits from ColoradoCare?

g. Under subsection (1) (c) and (2) (c), who determines whether a person is a “part-time Colorado resident”? How would a person establish part-time residency? Also, what are “Colorado activities,” who determines what constitutes a Colorado activity, and how does one prove or disprove that income earned is “from Colorado activities”?

h. Subsection (2) (d) states that “payment of the premium tax does not constitute the purchase of a health insurance policy by an employer or taxpayer.” What is meant by this statement? Does that statement conflict with the statement in subsection (2) (a), which provides that payment of the payroll tax by employers “satisfies their obligation to provide health care insurance for their employees”? Can Colorado law determine whether an employer’s payment of a state-imposed tax satisfies a requirement under federal law?

i. Subsection (4) specifies the total amount of an individual’s payroll earnings and nonpayroll income that is subject to tax under section 9 and requires the department to annually adjust the amount based on the inflation rate. In what year would the department start making the adjustment? Are the amounts in the measure intended to apply at the time the first tax is imposed, or would the department be required to adjust those amounts by the time the transitional tax is imposed? At what time each year do the proponents intend the department to make the adjustment in the total amounts subject to the taxes? Would the adjustment apply prospectively only or would it apply for the entire year?

j. Subsection (5) refers to a “public report” that ColoradoCare must prepare. In what manner is the report “public”? Is the intent that the process of developing the report is “public”? Alternatively, is the intent that only the final report is public? In what manner should ColoradoCare make the report “public”?

k. Under subsection (6), is the board subject to any specific criteria in determining whether to propose a tax increase? Does ColoradoCare need to be close to insolvency? What constitutes "fiscal stability"? Is there a specific ratio of anticipated tax revenues to anticipated expenses for benefits that would trigger a tax increase? Would the board be able to increase benefits and then increase the tax rate to "maintain the fiscal stability of ColoradoCare"?

14. With regard to section 10 of the measure, concerning exemptions:

a. To clarify, the measure exempts taxes imposed pursuant to section 9 from the constitutional revenue limits in article X, section 20 of the Colorado constitution, so that ColoradoCare may retain and expend all taxes collected under section 9 for the purposes specified in the measure. Is that accurate?

b. Please explain the intent of subsection (3). Given that section 3 (1) states that ColoradoCare “is not an agency of the state and is not subject to administrative direction or control by any state executive, department, commission, board, or agency,” is the exemption in subsection (3) from the “state department of personnel” necessary? Under section 13, article XII of the Colorado constitution, only “appointive public officers and employees of the state” are included in the state personnel system, so is the exemption from the department of personnel redundant?

c. As for the exemption from state election laws and rules, does this mean ColoradoCare can determine its own rules for conducting elections, regardless of the requirements of other constitutional provisions governing elections? Do the proponents intend this provision, as well as subsection (2), to exempt tax elections under section 9 (6) from the specific requirements in article X, section 20 of the Colorado constitution regarding elections at which a tax rate increase is proposed? Does the exemption from election laws constitute a separate and distinct subject in violation of the single-subject requirement in section 1 (5.5) of article V of the state constitution?

15. With regard to section 11 of the measure, concerning secondary payer status and subrogation rights:

a. What is meant by the term "secondary payor" [sic]? (Note that the correct spelling is "payer"). What is encompassed by the term "health insurance plan"? Does that term apply to private health insurance only, or would it include public insurance plans, like the children's basic health plan or medicare?

b. In subsection (2), what does the phrase "state health plan" mean? What are "designated supplemental health care services" and who designates them? Would the proponents consider defining the various medicare plans and parts referred to in subsection (2)?

c. Is subsection (2) intended to avoid duplication of payment for benefits that are covered by a medicare plan? It also appears that the intent is to exclude payment for benefits that a medicare-eligible beneficiary would have covered under a medicare part B or D plan, regardless of whether the beneficiary purchased that medicare coverage. Is that correct?

d. What is a "medicare advantage plan," and why would a beneficiary enroll in that plan? Is there a premium or other cost for a medicare advantage plan? Does that type of plan provide more extensive benefits than will be provided under ColoradoCare, and, if so, what are those benefits?

e. With regard to subsection (3), can the proponents please explain the intent and meaning of this provision and how it would be applied?

16. With regard to section 12 of the measure, concerning implementing legislation:

a. Is it premature to require the general assembly to enact legislation in the first regular session after the measure takes effect, given that some of the legislation is contingent on or subject to obtaining federal waivers, or that ColoradoCare likely will not be able to take over the programs in the first year after the measure takes effect? For example, if the general assembly enacts legislation to suspend the Colorado health benefit exchange in the first session after the measure become effective, what happens to individuals covered under health benefit plans purchased through the exchange? How would individuals and employers purchase health care coverage until ColoradoCare is

able to assume responsibility to health care payments? Do the proponents intend any legislation to have a delayed or contingent effective date to allow ColoradoCare time to build up funds and accomplish all that is necessary to actually take on responsibility for administering medicaid, the children's basic health plan, etc.?

b. Under subsection (1) (e), does the affordable care act permit a state that obtains a waiver to still obtain federal funds that are available under the act for premium tax credits, subsidies, and small business tax credits?

c. For purposes of subsection (1) (f), is the intent that the only portion of the "Workers' Compensation Act of Colorado" that would need to be amended or repealed are the provisions regarding premiums? Is the intent to retain all other parameters of the act, such as provisions governing determination of amount and duration of benefits for an injured worker, requirements regarding doctors and other providers authorized under the workers' compensation program, and fee schedules?

d. What is a "state contribution for health care services," referred to in subsection (1) (g)? What are "state government expenditures for health care services"? Who determines what fits within "state government expenditures for health care services" for purpose of determining the required state contribution? Does the "state contribution" get paid to ColoradoCare?

e. For the purpose of calculating the annual adjustment in the state contribution amount, is the adjustment amount based on the "change in the consumer price index" between the current and prior year, or is the increase based on what the inflation rate is? For example, if the inflation rate in 2016 is 2.2 percent, and the inflation rate in 2017 is 2.7 percent, is the adjustment based on the change in the rate, i.e., one-half percent? Or is the intent to adjust the contribution amount based on the actual 2.7 percent inflation rate? Also, for the purpose of calculating the adjustment based on the change in state population, is the intent to calculate the adjustment based on the percentage change in state population? Would the proponents consider clarifying in the measure how the state contribution adjustment is to be calculated? Or is the intent to allow the general assembly to clarify these issues through implementing legislation?

17. In section 14, please note that section 1, article 5 of the Colorado constitution states that an article becomes law upon the proclamation of the governor, <u>not</u>

the certification of the secretary of state. Absent an amendment to article 5, section 1 in this measure, the measure cannot take effect until the governor issues a proclamation pursuant to that section. Are the proponents intending to amend article 1, section 5 in this measure to allow the measure to become effective upon certification of the election results by the secretary of state? If so, does that raise single-subject concerns?

18. Section 16 provides for what will happen if ColoradoCare doesn't receive the necessary federal approvals to continue, but it doesn't address the repeal of certain laws required in Section 12 of the proposed initiative. What happens if operations are terminated? To whom would the unused funds be returned and how? Would there be a wind-down period to allow for another health exchange or other alternative to be established to comply with federal health care laws?

Technical Comments and Questions

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. In the amending clause, the instruction word, for example, "add," "amend," or "repeal," should be in **boldface** type.

2. Although the text of the proposed initiative should be in small capital letters, an uppercase letter should be used, where appropriate, to indicate capitalization. The following should be large-capitalized:

   a. The first letter of the first word of each sentence;

   b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and

   c. The first letter of proper names.

3. Titles, such as "secretary of state," and names of government departments and agencies, such as "department of revenue," should not be capitalized.

4. The term “which” is improperly used throughout the measure when "that" is grammatically appropriate. “Which” indicates a nonrestrictive clause that does not restrict the word modified and that provides additional or descriptive information about the word modified. A nonrestrictive word, clause, or phrase is not essential to the meaning of the sentence and is set off by commas. “That” indicates a restrictive clause that restricts and defines the word or phrase modified and is necessary to identify the word modified. A restrictive word, clause, or phrase is necessary to the meaning of a sentence and is not set off by commas. For example, in section 2 (7), the word “which” precedes the phrase “must be reported on internal revenue service form W-2.” This phrase appears to define "wages, salaries, tips, or any other income" and is restrictive. Accordingly, the word "that" is grammatically correct instead of “which.” Throughout the measure, “which” should be changed to “that” when the phrase following “which” is restrictive.

5. It is standard drafting practice to spell "monies" as "moneys."

6. For ease of reading, consider breaking the text of proposed section 1 into separate subsections, paragraphs, etc., as follows:

Section 1. Purpose and findings. (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:
(a) COLORADANS NEED THE SECURITY OF KNOWING …
(b) BUSINESSES NEED RELIEF FROM THE …
(c) ANNUAL INSURANCE CHANGES DISRUPT …
(d) HEALTH CARE COSTS HAVE BEEN INCREASING ...
(2) THEREFORE, COLORADO WILL FINANCE HEALTH CARE THROUGH COLORADOCARE, ...

7. a. Consider changing the definition of “board” to define both “board” and “elected board” since you occasionally use the term “elected board” to differentiate between the elected board and the interim board. For example, section 2 (3) would read: (3) “Board” or “elected board” means the elected board of …

b. "Board" is defined as meaning two different things. This is vague and confusing to the reader. Instead, because there is only one place within the proposed initiative where "board" is used to mean the interim board, consider adding the word “interim” before “board” in section 4 (2) (d).

8. Definitions should end with a period, so section 2 (9) should end with a period.

9. Because the proposed initiative is referring to federal acts, consider adding the citation where they can be found in federal law. For example, section 2 (10) refers to the federal “Social Security Act,” 42 U.S.C. 1305 et seq.

10. Colorado law should be cited first by section number, then subsection, then paragraph. In section 2 (12), the citation should read as follows: “section 39-22-104 (4) (f), Colorado Revised Statutes, …”

11. Hyphens

    a. Phrases that modify another word should be hyphenated. Examples are “twenty-one-member board,” “good-faith efforts,” “two-year term,” and “four-year-term.”

    b. Fractions such as “one-half” and “one-hundredths” should be hyphenated.

    c. Prefixes should not be hyphenated. Examples are “nonvoting,” “nonpartisan,” and “copayments.”

    d. “Decision making” should not be hyphenated because it is not a modifier.

    e. “Bylaws” is one word and should not be hyphenated. The word “subsection” is also one word and should not be hyphenated.

    f. Hyphens should not be used to replace the word “through.” See section 2 (12), where hyphens are used to refer to lines 8 through 10, 12 through 18, and 20 and 21 of the IRS form 1040.

12. It is standard drafting practice that a provision should not be subdivided unless there are at least two paragraphs in the subdivision following the introductory portion. In other words, there shouldn't be a sub-subparagraph (A) unless there is a sub-subparagraph (B). In section 4 (2) (a) (I) (A), (A) is the only subdivision, so it should be combined with subparagraph (I) by deleting the letter "(A)" and abutting the text to the end of subparagraph (I).

13. Since "board" is defined, it is not necessary to use the phrase "elected board of trustees" in section 4 (2) (i). Consider striking “of trustees” after “the elected board.”

14. In section 5 (4) (d), paragraph (d) is structured as an introductory portion, but subparagraphs (I) and (II) under paragraph (d) are complete sentences that don't follow the introductory language in paragraph (d). A provision should only be subdivided in this way if there is an introductory portion followed by sentence fragments that are only complete sentences when read with the introductory portion. The Roman numerals (I) and (II) should be deleted and the subsequent sentences abutted to the end of paragraph (d).

15. Section 5 (4) (o) refers to "judicial review according to Colorado law." It would be helpful to include a citation to the section in the Colorado Revised Statutes where judicial review is set forth.

16. In Section 6 (1) (b), the citation should include the subsection number, so "(1)" should be inserted after "subsection."

17. In section 6 (2) (c) (II), the citation to the optional benefits under medicaid should be "42 U.S.C. sec. 1396d" (lowercase "d").

18. When a provision is subdivided into several sentence fragments that follow an introductory portion, each subdivision should end with a semicolon. For example, paragraphs (a) and (b) in subsection (1) of section 9 should end in semicolons rather than periods, and paragraphs (a) and (b) of subsection (1) of section 11 should end with semicolons rather than commas.

19. When there is a list as in section 9 (1) it is preferable to use an "AND" or an "OR" before the last item in the list.

20. Paragraph (d) in subsection (2) of section 9 does not follow the introductory portion. It should be renumbered as a new subsection or subsection (2) could be subdivided as follows:

(2) (a) THIRTY DAYS BEFORE …
(I) SIX AND THIRTY-FOUR ONE-HUNDREDTHS PERCENT …
(II) THREE AND SIXTEEN ONE-HUNDREDTHS PERCENT …
(III) NINE AND ONE-HALF PERCENT …
(b) PAYMENT OF THE PREMIUM …

21. The Roman numeral “X” should be capitalized in subsections (1) and (2) of section 10 to conform to standard citation format.

22. A semicolon should be inserted after "BENEFICIARIES" in subsection (2) of section 11.

23. The medicare coverages referred to as parts A, B, C, etc. are usually capitalized. In Section 11 (2) there are several references to those parts that should be capitalized. However, the terms “medicare” and “medicare advantage” should not be capitalized.

24. In section 11 (2) (b), the second “that” should be “than.”

25. Section 11 (2) (c) does not follow the introductory paragraph. Consider rewriting the sentence so that it begins with “Medicare parts B and D …” Alternatively, in the introductory portion of subsection (2), consider changing “services covered by:” to “services:” and adding “Covered by” at the start of paragraphs (a) and (b).

26. In section 12 (1) (a), instead of "JULY 1ST" use "JULY 1."

27. In section 12 (1) (b), the citation should read “ARTICLE 22 OF TITLE 10, COLORADO REVISED STATUTES.” The words “OF THE” are not necessary.

28. In section 12 (1) (f), “under the act” should include the complete name of the act being referenced, such as the “Workers’ Compensation Act of Colorado.”

29. Subsection (3) of section 12 refers to "programs specified in paragraphs (a) and (b) of subsection (1)" of section 12. However, paragraph (a) does not specify any programs as is written. Should the reference be to paragraphs (b) and (c), and possibly (d)?