

# 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 #22, 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 #19 to #21, 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. 7.5 percent of total payroll from each employer;
  - b. 3.5 percent of all payroll income from each employee; and
  - c. 11 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**

#### **Substantive Questions**

Substantive comments and questions from the memorandum for proposed initiative 2015-2016 #19 apply to initiative 2015-2016 #22 and, as such, will not be repeated.

The form and substance of the proposed initiative raise the following question:

1. It appears that the only differences between the proposed measure and proposed initiative 2015-2016 #19 are the premium tax rates. Is that correct? What is the purpose of the different tax rates?

#### **Technical Comments**

Technical comments and questions from the memorandum for proposed initiative 2015-2016 #19 apply to initiative 2015-2016 #22 and, as such, will not be repeated.