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MEMORANDUM

TO: David Silverstein and Andrew Graham
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 23, 2018
SUBJECT: Proposed initiative measure 2017-2018 #119, concerning Transparency in Healthcare Insurance Carrier Billing

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.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #85, was the subject of a memorandum dated December 19, 2017. Proposed initiative 2017-2018 #85 was discussed at a public hearing on December 21, 2017. The substantive and technical comments and questions raised in this memorandum do not include comments and questions on initiative 2017-2018 #85 not addressed in this revised proposal. To the extent applicable, those comments and questions are hereby incorporated.

This initiative is one of a series identified as initiatives 2017-2018 #118 to #122. The comments and questions raised in this memorandum do not include comments and questions addressed in the memoranda for proposed initiatives 2017-2018 #118 and #120 to #122, except as necessary to fully understand the issues raised by the revised proposed initiative.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To prohibit any contract between a health insurer and health care provider issued, amended, or renewed on or after April 30, 2019, from including any provision that restricts the ability of a provider or health insurer to provide patients with the health care service charge information required to be published by the proposal and to specify any such provision is void and unenforceable;
2. To require health insurers to post on their websites and provide, in writing upon request from a covered person:
 - a. The specific basis for determining the payment or reimbursement amount the insurer provides to a health care provider rendering health care services to a person covered under a plan issued by the insurer;
 - b. Items that appear as charges on an explanation of benefits or provider billing statement that the carrier does not pay;
 - c. Detailed coverage and negotiated payment information by plan type and participating provider; and
 - d. Prescription drug prices in a form and manner determined by the commissioner.
3. To require health insurers to annually, or more frequently if required by the commissioner of insurance, publish detailed information, in a form and manner determined by the commissioner of insurance, regarding all forms of remuneration derived from rebates or other forms of incentive received as the result of health care services or purchases of prescription drugs or medical devices;

4. To require the commissioner of insurance, on or before April 30, 2019, to adopt rules necessary to implement, administer, and enforce the requirements imposed on health insurers and to thereafter revise the rules as necessary;
5. To define terms used in the measure; and
6. To specify that the measure takes effect on April 30, 2019.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and 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. Sections 1 and 2 of the initiative proposal place provisions in article 20 of title 6, and section 3 adds a new provision in article 16 of title 10. All of the provisions in these three sections relate to insurance carriers and should all be placed in the same article and title. Have the proponents considered placing the entire proposed initiative in article 16 of title 10?
3. The declaration of legislative purposes in section 1 of the initiative proposal is identical to the purposes stated in initiatives 2017-2018 #118 and #120 to #122. However, the substantive provisions of this initiative are more narrowly focused on health insurance carriers. Would you consider narrowing section 1 of the proposal to reflect only purposes related to health insurance carrier information?
4. Section 6-20-302 defines various terms that are not actually used in part 3 of article 20 of title 6. Would the proponents consider removing any term included in the definitions section that is not used in section 6-20-303? For any terms used in section 10-16-147, would the proponents consider moving the definitions to section 10-16-147 or 10-16-102?

Technical Comments

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. The amending clause for a new part, as in sections 1 and 2 of the proposed initiative, should read "...**add** part 3 to article 20..." instead of "...**add** part 3 of article 20..."
2. Both section 1 and section 2 of the proposed initiative add a new part 3 to article 20 to title 6 of the Colorado Revised Statutes. These amending clauses should be combined into a single amending clause, followed by the heading for the new part 3. The purpose section should be renumbered as "6-20-302" and moved to follow section 6-20-301. The following sections, 6-20-302 and 6-20-303, should be renumbered as 6-20-303 and 6-20-304, respectively.
3. The term "healthcare" is used throughout the purpose section of the proposed initiative. However, throughout the Colorado Revised Statutes, the term is spelled "health care." Consider changing all instances of "healthcare" to "health care."
4. A reference to a subsection of the Colorado Revised Statutes should indicate every element of the subsection referenced as well as the section in which that subsection can be found. For example, the reference in 6-20-102 (5)(f) should, presumably, be "To the extent not covered by subsections (5)(a) through (5)(e) of this section..."
5. A measure should only include definitions for terms that are actually used in the measure. It does not appear that the defined terms "CMS," "pharmacy," and "third-party payer" are used in the measure, so they should be eliminated from the definitions section.
6. Statutory text should immediately follow each headnote. For example, the text in subsection (1) of section 6-20-303 should be moved to follow "**rules.**" instead of appearing on the next line.
7. Statutory text should immediately follow each headnote. For example, the text in subsection (1) of section 6-20-303 should be moved to follow "**contracts.**" instead of appearing on the next line. The same is true regarding section 10-16-147 in section 3 of the measure.
8. The end of 10-16-147 (2)(a)(II) should end with a semi-colon instead of a period to denote that the list of which it is a part continues in the next subsection, (2)(b).

9. The first word following a new subsection should be capitalized, even if it is the continuation of a sentence that begins in a previous subsection. For example, the first word in 10-16-147 (2)(d), "prescription," should be capitalized.