

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Ronald Leinbach and Rita Durbin

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 7, 2024

SUBJECT: Proposed initiative measure 2023-2024 #172, concerning establishing state-run hospitals

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 the Colorado 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, 2023-2024 #105, was the subject of a memorandum dated December 15, 2023. Proposed initiative 2023-2024 #105 was discussed at a public meeting on December 18, 2023. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. Establishing a five percent tax on all medical entities doing business in Colorado;
2. Establishing an independent insurance rate of one thousand dollars per year per person; and
3. Using the tax increase and new insurance rates to establish state-run medical facilities.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the **People of the State of Colorado**". The proponents have used the phrase "Be it Enacted by the General Assembly of the State of Colorado." To comply with the constitutional requirement, the phrase at the beginning of the proposed initiative must be updated.
2. 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?
3. Pursuant to article V, section 1 (2) of the Colorado Constitution, proposed initiatives must amend either the Colorado Constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative must be revised to indicate whether it amends the Colorado Constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.

From the enacting clause at the beginning of the proposed initiative, it appears that the proponents may intend to amend the Colorado Revised Statutes. If this is the case, the proponents must use amending clauses to note where in the statutes the language of the initiative should be placed (i.e., as a new article in title 25, C.R.S.; as a new section in title 10, C.R.S; etc.). Below are examples of amending clauses:

SECTION 1. In Colorado Revised Statutes, **add** article 24 to title 10 as follows:

SECTION 1. In Colorado Revised Statutes, **add** part 9 to article 3 of title 25 as follows:

SECTION 1. In Colorado Revised Statutes, **add** 39-22-348 as follows:

4. Section 2(a) of the proposed initiative reads, in part, "[facilities] and personnel for [facilities] would be funded by five percent tax." "Would" is a modal verb used to express an intention or plan. If the proposed initiative is meant to state that the state-run medical facility is funded by the five-percent tax, proponents should consider using the verb "is." Please also review the language in sections 2(c), 3(a), 3(b), 3(c), 4(a), 4(c), and 4(f) for similar issues.
5. The following questions concern section 1 of the proposed initiative:
 - a. In this section, you define the term "hospital" which appears to have the intent of capturing all hospitals in Colorado. It is common in the statutes to define hospital as "a hospital licensed or certified by the department of public health and environment pursuant to section 25-1.5-103." Would you consider an existing definition such as this to capture all hospitals in the state?
 - b. Throughout the statutes, the word "carrier" or "health insurer" is used to define "health insurance company". "Health benefit plan" and "health coverage plan" are also defined terms. Depending on your intent, would you consider using terms already defined in statute?
 - c. Would you consider defining dentists as "a dentist who is licensed to practice dentistry pursuant to article 220 of title 12"?
 - d. "Pharmacy" (also defined as "prescription drug outlet") is a defined term in statute that appears to capture the intent to include all pharmacies operating in Colorado. Would you consider using the defined term as it exists in section 12-280-103 (43), Colorado Revised Statutes?
 - e. In paragraph (f) of section 1 of your proposed initiative, you reference manufacturers as any manufacturer selling service or equipment to medical entities in Colorado or physically located in Colorado. Is the intent that the entity be defined as selling service or physically located in Colorado, or both?

- f. In paragraph (g) of section 1 of your proposed initiative, you define "service company" as a "service company servicing...." Would you consider replacing "service company" in the first instance with another term such as "organization" or "entity" so that the term "service company" is not defined by using the same term?
 - g. In paragraph (i) of section 1 of your proposed initiative, what is meant by the term "urgent care facilities"? Do you mean urgent care facilities, emergency rooms, and freestanding emergency rooms?
6. The following questions concern section 2 of the proposed initiative:
- a. It is not clear if you intend to include all state-run medical facilities or all facilities licensed by the state. Would you be willing to clarify your intent? (Note that health facilities licensed or certified by the state are listed and defined in section 25-1.5-103.)
 - b. How would the five percent facility tax be assessed?
 - c. What are "subscribers to independent insurance"?
 - d. Who will build the state-run medical facility? Is the intent that the facility be owned and operated by the state? Where will the facility be constructed?
 - e. Often the Colorado Revised Statutes impose specific requirements for energy generation. Is it your intent that paragraph (c) 6 would be exempt from those requirements? Does "steam infrastructure" refer to geothermal energy?
7. The following questions concern section 3 of the proposed initiative:
- a. What is meant by independent third party? Would you consider defining "major carrier"?
 - b. In section 3(a), how would the one thousand dollars be collected from each subscriber? By subscriber, do you mean each covered person under a health insurance plan or the person who purchases the plan?
 - c. Who is required to issue a subscriber card?
8. The following questions concern section 4 of the proposed initiative:
- a. On what date would this tax be imposed and when would it end?

- b. The state fiscal year begins on July 1 and ends on June 30 of the following year. Will this tax be imposed for a fiscal year or a calendar year?
 - c. How would it be determined whether the tax needed to be continued beyond the first two years?
 - d. Who would collect this tax?
 - e. Would this tax revenue only be spent for the purpose of paying for the program described in this proposed initiative? If so, is this better thought of as a fee than a tax?
 - f. What qualifies as a "transaction" for purposes of the tax described in this proposed initiative?
 - g. Is the tax revenue collected as a result of the proposed initiative meant to be exempt from the spending limit in article X, section 20 of the Colorado Constitution (TABOR)?
9. The following questions concern section 5 of the proposed initiative:
- a. Is the intent of the proponents to include section 5 in the initiative? If so, would you consider moving this information to a legislative declaration at the beginning of the initiative?
10. It appears that the intended effective date is January 1, 2025. Typically, a separate effective date section should be included at the end of the initiative, for example:

SECTION 6. Effective date. This proposed initiative takes effect January 1, 2025.

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. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example:

"**SECTION 1.** In Colorado Revised Statutes, **add** section x-xx-xxx as follows:".

Each section in the Colorado Revised Statutes and the Colorado Constitution must have a headnote. Headnotes briefly describe the content of the section but are not part of the law. See examples below:

10-24-101. Definitions.

25-3-902. State-run medical facilities - funding - architecture - definition.

2. The Colorado Revised Statutes are divided into sections (see the examples in technical comment 1: 10-24-101 and 25-3-902 are section numbers), and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs, as shown below:

X-X-XXXX. Headnote. (1) Subsection language that is an introductory portion (IP):

- (a) Paragraph language that is an IP:
 - (I) Subparagraph that is an IP:
 - (A) Sub-subparagraph; and
 - (B) Sub-subparagraph; and
 - (II) Subparagraph.
 - (b) Paragraph.
 - (2) Subsection.

3. Each provision in the proposed initiative should end in either a period or a semicolon. In the proposed initiative, the period or semicolon is missing in sections 1(a), 1(b)1 to 1(b)4, 1(c)1 to 1(c)9, 1(e), 1(f)1 to 1(f)3, 1(g), 1(h)1 to 1(h)26, 2(c)1 to 2(c)4, 4(b), and 5(a).
4. Definitions sections in the Colorado Revised Statutes follow a general format; are arranged alphabetically; are often worded in the singular, not the plural; and are often in their own section. Should the proponents consider adapting definitions in the proposed initiative to follow this format, below is an example:

10-24-101. Definitions. As used in this (section, part, article), unless the context otherwise requires:

(1) "Health insurance company" means any insurance company selling health insurance to Colorado residents. "Health insurance company" includes:

(a) Vision insurance companies;

...

(c) Major medical insurance companies; and

(d) Supplemental insurance companies.

(2) "Medical entity" means any business whose service or product is consumed or distributed in the state of Colorado for the purpose of providing patient health care and associated products for Colorado residents.

Please also note that definitions are written in complete sentences; in the example above, where the proponents had used a hyphen, the example uses the words "means" to connect the defined term to its definition.

5. Statutory and constitutional provisions must be written in complete sentences. The following provisions of the proposed initiative are not written in complete sentences and should be:

a. Section 4(b) appears to be missing a subject and a verb;

b. Section 4(f) appears to be missing a "The" before "[five percent tax] would be collected"; and

c. The way that section 5 is structured, there appears to be an introductory portion missing, as sections 5(a) to 5(d) are not complete sentences. Proponents should consider whether to add language like "The benefits of [this section/part/article] include:"

6. The sections of the proposed initiative are numbered, but there is no indication where in the Colorado Revised Statutes or the Colorado Constitution the language should be inserted. Once the proponents make that decision, they should also rephrase cross-references between sections of the proposed initiative. Section 2(a) of the proposed initiative reads, in part, "and independent insurance subscribers as described in **section 3**." If the proponents insert the language in section 3 of the proposed initiative into, for example, a newly created section 25-3-903, C.R.S., the cross-reference in section 2(a) of the proposed initiative would read "and independent insurance subscribers as described in **section 25-3-903**."

7. It is standard drafting practice to use SMALL CAPITAL LETTERS [not ALL CAPS] to show language being added to the Colorado Revised Statutes and the Colorado Constitution. As an example, here is how the language in section 1(a) of the proposed initiative appears when in SMALL CAPITAL LETTERS:

(a) HOSPITALS – ANY HOSPITAL DOING BUSINESS IN THE STATE ... OR PHYSICALLY LOCATED IN ... COLORADO.

8. To follow drafting conventions for the Colorado Revised Statutes:
 - a. Please spell out numbers, including:
 - i. "Five percent" in sections 2(a) and 4(f) of the proposed initiative;
 - ii. "Thirty to fifty beds" in section 2(c) of the proposed initiative;
and
 - iii. "Three hundred fifty" in section 4(b) of the proposed initiative;
 - b. Section 2-4-102, C.R.S., states that:

2-4-102. Singular and plural. The singular includes the plural, and the plural includes the singular.

Please consider using the singular or plural or both instead of using a slash symbol to indicate both the singular and the plural in sections 2(a), 2(b), and 3(b) of the proposed initiative where "facility/facilities" is used; and
 - c. In section 4(a) of the proposed initiative, please use the following format for dates and years: "Month, date, year."
9. Proponents should consider removing grammatically incorrect commas in the following provisions:
 - a. In section 1 of the proposed initiative, in the definition of "medical entity," please remove the comma in the phrase "for the purpose of providing health care, and associated products of Colorado residents";
 - b. In section 2 of the proposed initiative, in the definition of "state-run medical facility," please remove the comma in the phrase "a medical facility leased or newly constructed by the state, that shall provide all the services...."
10. In section 1(f) of the proposed initiative, there appears to be an incorrect apostrophe in the defined term "Manufacturer's". Please consider making the defined term "manufacturer" or "manufacturers."
11. While proper names of states, like Colorado, are capitalized in the Colorado Revised Statutes, phrases like "state of" are not; please consider lowercasing the

first letter in "state" in sections 1(a), 1(d), 1(e), 1(f), 1(g), 1(h), 1(l), 4(a), and 4(e).

12. The word "environmental" is misspelled in section 2(c)1 of the proposed initiative.