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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: April 19, 2024
SUBJECT: Proposed initiative measure 2025-2026 #2, 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 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.

Purposes

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

1. Establishing a five percent tax on all medical entities doing business in Colorado;
2. Establishing an independent insurance rate of \$1,000 per year per person; and

3. Using the tax increase and new insurance rate to establish a state-run medical facility or 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." While you have included the phrase, it should be at the very beginning of the proposed initiative, so that it applies to everything that follows.
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. You must use amending clauses to note where in the statutes the language of the initiative will be placed (i.e., as a new article in title 25.5, C.R.S., or as a new section in title 10, C.R.S., etc.). Below is an example of an amending clause:

SECTION 1. In Colorado Revised Statutes, **add** article 12 to title 25.5 as follows:

4. It appears that you are trying to add section 25.5-1-101 to the Colorado Revised Statutes. This section already exists in law. Would you consider adding this proposed addition to the hospital licensing statutes in title 25, C.R.S.? Or, in the alternative, consider creating and adding a new article, part, or section to the existing title 25.5, C.R.S.?

Should you do the former, articles 3 and 3.5 of title 25, C.R.S., include laws governing hospitals. Consider adding a new part to either article. For example, because parts 1 to 8 of article 3 of title 25, C.R.S., already exist, you could add a new part 9. The amending clause would then read:

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

25-3-901. Legislative declaration ...

Should you do the latter, articles 1 to 11 of title 25.5, C.R.S., already exist. It appears that you may have attempted in the proposed initiative to create new articles 12 to 17 of title 25.5. However, a new article is not needed for each

section of substantive law. Create one article, then include multiple sections within that article. For example:

SECTION 1. In Colorado Revised Statutes, **add** article 12 to title 25.5 as follows:

ARTICLE 12

State-run Medical Facilities

25.5-1-1201. Legislative declaration. (TEXT, IN COMPLETE SENTENCES AND IN SMALL CAPITAL LETTERS, OF THE LEGISLATIVE DECLARATION)

25.5-1-1202. Definitions. AS USED IN THIS ARTICLE 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DENTIST" MEANS ...

(2) "HEALTH INSURANCE COMPANY" MEANS ...

(3) "HOSPITAL" MEANS ...

...

25.5-1-1203. State-run medical facilities - architecture - financing - enrollment. (1) (TEXT, IN COMPLETE SENTENCES AND IN SMALL CAPITAL LETTERS, OF SUBSTANTIVE LAW)

5. Would the state-run medical facilities offer all the sales and services that would be taxed under the proposed initiative?
6. How would the five percent tax be assessed? Is there an end date to the tax collection?
7. The following questions and comments concern article 13 of the proposed initiative:
 - a. Subsection (a) references hospitals licensed or certified pursuant to section 25-3-601, C.R.S. This section is a definitions section; it does not include substantive law concerning the licensing or certifying of hospitals. Would you consider citing the proper licensing statute: Section 25-1.5-103, C.R.S.?
 - b. Throughout the Colorado Revised Statutes, the words "carrier" and "health insurer" are commonly used to refer to a "health insurance company." The word "carrier" is defined in a number of statutes, including in section 10-16-102 (8), C.R.S., and the word "health insurer" is defined as well, including in sections 10-16-150 (6) and 25-49-102 (7), C.R.S.

"Health benefit plan" and "health coverage plan" are also defined terms in the Colorado Revised Statutes. Depending on your intent, would you

consider using terms already defined in statute? While the term "carrier" is not used in the proposed initiative, should you choose to use that term instead of "health insurance company," the definitions in your definitions section might read:

25.5-1-1202. Definitions. AS USED IN THIS ARTICLE 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CARRIER" HAS THE MEANING SET FORTH IN SECTION 10-16-102 (8).

- c. Subsection (e) references surgical centers as described in section 25-3-601, C.R.S. Surgical centers are not referenced or defined in that section. Is it your intent to create a new definition in section 25-3-601, C.R.S.?
- d. Subsection (h) refers to doctors' offices and subsection (i) refers to urgent care facilities as described in section 12-36-106, which section does not exist in statute. It appears you are referencing an outdated version of the Colorado Medical Practice Act (act), because article 36 of title 12, C.R.S., no longer exists; however, the act did not and does not (in article 240 of title 12, C.R.S., where the act is now located) describe or define "doctors' offices" or "urgent care facilities."

8. Throughout the proposed initiative, there are lists created after each proposed definition. Is it your intent that the lists be included as part of each definition? If so, they should be worded and formatted differently. For example:

25.5-1-1202. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DOCTOR'S OFFICE" MEANS ANY DOCTOR'S OFFICE DOING BUSINESS IN THE STATE OF COLORADO OR PHYSICALLY LOCATED IN THE STATE OF COLORADO AND INCLUDES THE OFFICES OF THE FOLLOWING TYPES OF DOCTORS:

- (a) DERMATOLOGISTS;
- (b) FAMILY PRACTICE DOCTORS;
- (c) PEDIATRICIANS;
- (d) ONCOLOGISTS;

...

9. Article (16)(b) of the proposed initiative states that the \$350 million collected through the five-percent tax would be available for the state-run medical facilities. Is it your intent that the state fund this amount, regardless of the actual amount that becomes available? If the intent of the statement is simply an estimate, would you consider moving this section to the legislative declaration?

10. In article (16)(e) of the proposed initiative, it is not clear what person or entity will be responsible for requesting additional funding from federal sources should that become necessary. What is your intent?
11. Article 15 of the proposed initiative defines "independent third-party facilitator."
 - a. Is it your intent that this person act as an insurance company as defined in article 13 of the proposed initiative? If so, would the proponents clarify the role of the facilitator as a health insurance company? For example, is the facilitator issuing subscriber cards?
 - b. How is the independent third-party facilitator chosen? Who has the authority to choose the facilitator and who would the facilitator report to?
12. The effective date of the proposed initiative is January 1, 2025. Because this initiative will not be on the ballot in 2024, the initiative cannot take effect on January 1, 2025. You will need to change the date to a date that is later than the November 3, 2026, election date because this measure cannot be placed on the ballot until November 3, 2026. Also consider, while there is an effective date for the proposed initiative, is there a proposed deadline for when the state-run facilities must be leased or built and operating?

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. Before the amending clause, number each section, part, etc., that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In Colorado Revised Statutes, **add** article 12 to title 25.5 as follows:

Whether the section is a legislative declaration, a definitions section, or a section describing the architecture of the state-run medical facilities, it must be numbered.

2. Each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to every section of the proposed initiative and be in bold-faced type. For example:

25.5-1-1201. Legislative declaration.

25.5-1-1202. Definitions.

25.5-1-1203. State-run medical facilities - architecture - financing - enrollment.

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado Revised Statutes. Because it appears that your proposed initiative adds new language to the statutes, all the new language in the law should be shown in small capital letters. See the sample language in **Substantive Question #8** for an example of language in small capital letters.
4. Throughout the proposed initiative, you use the word "statue" to refer to sections of law, but the correct word is "statute."
5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

- (a) Paragraph:
 - (I) Subparagraph
 - (A) Sub-subparagraph
 - (B) Sub-subparagraph
- (II) Subparagraph
- (b) Paragraph
- (2) Subsection
- (3) Subsection

Please note that in article 14 of the proposed initiative, subsection "(I)" should be lettered as subsection "(i)."

Please also note that definitions sections are organized differently. See **Substantive Question #8** for an example of how a definitions section should be organized.

6. Each provision in the proposed initiative should end in either a period, a colon, or a semicolon. As mentioned in **Technical Comment #1**, many of the provisions in the proposed initiative lack punctuation.

7. Definitions sections in the Colorado Revised Statutes follow a general format: The definitions are arranged alphabetically; are almost always worded in the singular, not the plural; and are grouped into their own section to help the reader find them more easily. There are definitions in article 13, article 14, and article 15. Please combine them into one definitions section. Please also note that definitions are written in complete sentences and use the word "means" to connect the defined term to its definition. See the definition of "doctor's office" in **Substantive Question #8**.
8. In article 12 of the proposed initiative, the legislative declaration is not in small capital letters; do you intend for it to be a nonstatutory legislative declaration? If so, it does not need to be in small capital letters, but you will need to add a section number and a headnote. Additionally, the legislative declaration, as written, is difficult to understand as it is not written in complete sentences, and the punctuation is inconsistent. Consider organizing the declaration, if it is a nonstatutory declaration, as shown in part below:

SECTION 1. Legislative declaration. (1) The benefits of this (section, article, part) are:

(a) Making additional facilities available in the event of the next pandemic; ...

9. In article 13 of the proposed initiative:
 - a. See **Substantive Question #8** for an example of how definitions sections should be structured. Please also note that, because definitions sections should be organized alphabetically, to ensure that the reader can easily find the definition they are looking for, the definitions should be reordered (the definition of "dentist" first, then "doctor's office," etc.)
 - b. Cross References
 - i. In subsection (a), the cross reference to section 25-3-601 is worded incorrectly. That cross reference should read "pursuant to section 25-3-601." There are similar cross-reference issues in subsections (b), (d), (e), (h), and (i).
 - ii. In subsection (c), the reference to article 220 of title 12, C.R.S., is worded incorrectly. That cross reference should read "pursuant to article 220 of title 12."

- c. The names of state departments are not initial-capitalized in the Colorado Revised Statutes. Subsection (a) should read, in part, "certified by the department of public health and environment."

10. In article 14 of the proposed initiative, the cross reference in subsection (b) is formatted and worded incorrectly. Cross references to other sections should not be in parentheses. To refer to a specific provision, use the template "section ##-#-### (# or letter)."

11. In article 15 of the proposed initiative:

- a. For purposes of a statutory initiative, the word "shall" is defined in means "that a person has a duty." The related word is "must," which "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."

Subsection (c) reads "A subscriber card will be issued ... this is the only ID that would need to be presented" Consider naming the actor who has a duty to issue the subscriber card. Also, in the phrase "would need to be presented," the word "would" is only used in hypothetical situations. To make the statute clearer, consider rephrasing as: "A subscriber card is the only identification that must be presented."

- b. In subsection (c), the word "ID" should be spelled out as "identification."
- c. In subsection (d), the word "a" is needed before "state-run facility" for the sentence to be grammatically correct: "Subscriber cards can only be used at a state-run facility or facilities."

12. In article 16 of the proposed initiative:

- a. Dates should be spelled out with words and numbers; the dates in subsection (a) should read: "January 1, 2025, through January 1, 2026,".
- b. See **Technical Question #11a** concerning use of the word "would" in subsections (a), (b), and (d) and the words "will be" in subsection (f).