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Colorado General Assembly

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MEMORANDUM

TO: Apryl Steele and Ali Mickelson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 22, 2024
SUBJECT: Proposed initiative measure 2023-2024 #144 concerning Veterinary Telehealth

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 amendment to the Colorado Revised Statutes (C.R.S.) appear to be:

1. To amend the Colorado Revised Statutes to allow a Colorado licensed veterinarian to practice telehealth on an animal patient located in Colorado;

2. To apply the same standards of care to veterinary medicine services via telehealth and in-person veterinary medicine services;
3. To establish requirements for the practice of veterinary telehealth;
4. To authorize a veterinarian practicing veterinary telehealth to order, prescribe, or make available prescription drugs under certain conditions; and
5. To prohibit a veterinarian practicing veterinary telehealth from prescribing controlled substances, except under certain conditions.

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. What will be the effective date of the proposed initiative?
3. Section 12-315-104, C.R.S., defines terms that apply to all of article 315 of title 12, C.R.S. By placing the proposed language in article 315 of title 12, C.R.S., do you intend the definitions of words in § 12-315-104, C.R.S., to apply to the proposed language?
4. Section 12-315-106 (5)(g), C.R.S., authorizes the board to adopt, amend, or repeal rules governing the practice of veterinary medicine. Is it the proponents' intent that the board will have authority to adopt rules relating to veterinary telehealth?
5. The proponents use the term "veterinarian" throughout the proposed initiative. Does the reference to "veterinarian" in the proposed initiative mean a veterinarian licensed in this state? If so, the proponents should consider adding "licensed" before "veterinarian" in the proposed initiative to match the defined term "licensed veterinarian."
6. The definition of "veterinarian-client-patient relationship" in section 12-315-104 (19)(b)(II) of the proposed initiative states that the veterinarian-client-patient relationship may be established through "[a]n electronic examination using an audio-video based communication medium." Does this mean that the veterinarian does not need to have seen the patient in person prior to engaging in veterinary telehealth? If so, for clarity, the proponents should consider

removing the language in subsection (19)(b) that states that the veterinarian has "recently seen" the animal.

7. The definition of "veterinary telehealth" in the proposed initiative references the delivery of "veterinary health-care services". That term is not defined. Do you mean "veterinary medicine," as defined in section 12-315-104 (20), C.R.S.? Or, do you mean services relating to the "practice of veterinary medicine," as defined in section 12-315-104 (14), C.R.S.? If neither or those terms apply, the proponents may wish to consider defining "veterinary health-care services."
8. Section 12-315-127 (3) of the proposed initiative states that "the board has jurisdiction over a veterinarian practicing veterinary telehealth on a patient in Colorado, *regardless of where the veterinarian's physical office is located.*" [Emphasis added] Is it the proponents' intent that the veterinarian is required to have an active Colorado license to practice veterinary telehealth in Colorado?
9. In subsections (4) introductory portion, (4)(b), (5)(b), and (5)(e) of the proposed initiative, the phrase "the owner or other caretaker" is used. In section 12-315-104 (4), C.R.S., the word "client" is defined for all of article 315 of title 12, C.R.S., to mean "the patient's owner, the owner's agent, or a person responsible for the patient". The proponents may wish to replace the term "the owner or other caretaker" throughout the proposed initiative with the defined term "the client".
10. Section 12-315-127 (5)(a) of the proposed initiative uses the phrase "prevailing quality of veterinary medical care." Is this the same as "generally accepted standards of veterinary practice" referenced in section 12-315-112 (1)(z), C.R.S.? The proponents may wish to define the phrase.
11. Section 12-315-127 (5)(c) of the proposed initiative states that the technology method and equipment must comply with "all current privacy protection laws."
 - a. Which privacy protection laws are these? The proponents may wish to identify the specific laws with which the veterinarian must comply.
 - b. Is the reference to "technology method and equipment" intended to be a reference to a series of three distinct things or does "technology" modify the one term "method" in the sentence? If the proponents intend to refer to a series of three distinct things, the proponents may wish to use commas between the terms to clarify that the phrase indicates a series.
12. Section 12-315-127 (5)(d) of the proposed initiative requires a veterinarian to determine whether veterinary telehealth "is an appropriate method for

delivering medical treatment to the patient". In section 12-315-104 (26) of the proposed initiative, "veterinary telehealth" is defined as a means "to facilitate the assessment, diagnosis, or treatment of a patient". Given the definition of "veterinary telehealth" in the proposed initiative, should the language in section 12-315-127 (5)(d) reference the terms "assessment" and "diagnosis" as well as "treatment"?

13. Section 12-315-127 (7)(a) of the proposed initiative states that a veterinarian practicing veterinary telehealth may order, prescribe, or make available prescription drugs "in accordance with all relevant federal regulations". Section 12-315-126, C.R.S., provides that a veterinarian is subject to the limitation on prescriptions specified in section 12-30-109, C.R.S., which section imposes limitations on a prescriber's authority to prescribe opioids and benzodiazepines. As such, the proponents may wish to instead reference "all relevant federal and state laws" in subsection (7)(a).
14. Section 12-315-127 (7)(b) of the proposed initiative states that a veterinarian cannot take certain actions, such as prescribing controlled substances, before
15. Under the proposed initiative, is an individual who is not a licensed veterinarian able to deliver any veterinary health-care services through veterinary telehealth? If so, which services and under what conditions? If veterinary technicians are able to do so, part 2 of article 315 of title 12, C.R.S., should be amended as well.
16. Do you want to amend section 12-315-112, C.R.S. to allow for the discipline of licensees for failing to comply with the requirements for the practice of veterinary telehealth pursuant to section 12-315-127?

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. In section 12-315-104 (19)(b)(II) of the proposed initiative, the word "BY" is not needed after the word "OR." The introductory portion (IP) to subparagraphs (19)(b)(I) to (19)(b)(III) reads, in part, "by virtue of," and all three

subparagraphs read correctly in conjunction with the IP without needing to add the additional word "by."

2. In section 12-315-104 (19)(b)(III) of the proposed initiative, the "and" should be in small capital letters. However, it would be correct for the "and" to be in lowercase letters if the "and" in subsection (19)(b) introductory portion of the proposed initiative was not stricken. Should you choose to make that change, that subsection would read as follows:

(b) There is sufficient knowledge of an animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of ~~an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept~~; ONE OF THE FOLLOWING:

...

(III) MEDICALLY APPROPRIATE AND TIMELY VISITS TO THE PREMISES WHERE THE ANIMAL IS KEPT; and

3. The first letter of the first word of each sentence should be capitalized. Please capitalize the first letter of the first word in subsections (4)(a), (4)(b), and (5)(a) to (5)(e) of section 12-315-127 of the proposed initiative.
4. In section 12-315-127 (4) of the proposed initiative, because a veterinarian is required to provide the information in subsections (4)(a) and (4)(b), please consider replacing the period at the end of subsection (4)(a) with a semicolon and adding the word "and," as shown below:

(a) THE SAME STANDARDS OF CARE APPLY TO ... SERVICES; AND

5. In section 12-315-127 (7)(a) of the proposed initiative, the reference to "paragraph (b) of this subsection" should be changed to match drafting conventions for internal references and should read "SUBSECTION (7)(b) OF THIS SECTION."
6. In section 12-315-127 (7)(b) of the proposed initiative, in the cross reference to section 12-315-112 (1)(y), C.R.S., please remove the small caps coding from the "(1)(y)," otherwise the reference to "(1)(Y)" may be confusing for readers.