

STATE OF COLORADO

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 #145 concerning Establishing Qualifications and Registration for Veterinary Professional Associate

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 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 article 315 of title 12, C.R.S., to require registration of an individual who practices as a veterinary professional associate after January 15, 2027, and

- to restrict the use of certain titles to individuals who are veterinary professional associates;
2. To allow a veterinary professional associate to practice veterinary medicine within the veterinary professional associate's advance education and experience and under the supervision of a licensed veterinarian who is responsible for the veterinary professional associate's performance;
 3. To subject a veterinary professional associate to discipline by the state board of veterinary medicine (board);
 4. To establish the qualifications and process for registration and renewal of registration;
 5. To allow the board to:
 - a. Approve a nationally recognized veterinary professional associate credentialing organization to credential veterinary professional associates in Colorado;
 - b. Establish requirements for continuing education for veterinary professional associates, as well as suspension, revocation, and reinstatement of registration; and
 - c. Establish fees for registration and renewal of a registration as a veterinary professional associate;
 6. To establish the scope of practice of a veterinary professional associate and consequences if a licensed veterinarian delegates duties beyond the veterinary professional associate's training and experience and for negligence by the veterinary professional associate; and
 7. To establish provisions relating to unauthorized practice as a veterinary professional associate, judicial review of regulator actions against a veterinary professional associate, and inspection of veterinary medical records of a veterinary professional associate.

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. Pursuant to section 12-315-203.7 (3) of the proposed initiative, an individual who practices as a veterinary professional associate must be registered with the board commencing January 15, 2027. Is there a reason for the delay in registration?
4. Section 12-315-104, C.R.S., defines terms that apply to all of article 315 of title 12, C.R.S. (article 315).
 - a. By placing the proposed language in article 315, do you intend the definitions of words in section 12-315-104, C.R.S., to apply to the proposed language?
 - b. Section 12-315-104 (21.5), C.R.S., defines "veterinary professional" to mean a licensed veterinarian and a veterinary technician. If you want a veterinary professional associate to be included in the definition of "veterinary professional," the proponents should add veterinary professional associate to the definition in subsection (21.5).
5. By establishing the veterinary professional associate registration in article 315, the provisions in articles 20 and 30 of title 12, C.R.S., that apply generally to article 315 may apply to veterinary professional associates. Is that your intent?
6. Section 12-315-106 (5)(g), C.R.S., authorizes the board to adopt, amend, or repeal rules governing the practice of veterinary medicine.
 - a. Is it the proponents' intent that the board will have authority to adopt rules relating to the practice of veterinary professional associates?
 - b. Both licensed veterinarians and veterinary technicians are represented on the board. If the proponents wish to have a registered veterinary professional associate on the board, the proponents should add a registered veterinary professional associate to the membership of the board or replace an existing member of the board with a registered veterinary professional associate in section 12-315-106, C.R.S. If the proponents add a new member to the board or replace an existing member of the board, the proponents should consider identifying a specific date by which the new member would be added or an existing member would be replaced.
7. The definition of "veterinary professional associate" in section 12-315-104 (21.7) and section 12-315-203.7 (2)(b) of the proposed initiative refer to a

- master's degree in veterinary clinical care. Do these programs exist and, if so, where? Further, section 12-315-203.7 (2)(b) of the proposed initiative authorizes the board to determine "the equivalent" of that degree. What do the proponents believe would be equivalent?
8. Section 12-315-106 (5)(j) of the proposed initiative requires the board to approve a nationally recognized veterinary professional associate credentialing organization (credentialing organization) "for purposes of credentialing veterinary professional associates in this state." Does such an organization exist? If so, which organizations credential veterinary professional associates?
 9. Pursuant to section 12-315-203.7 (2) of the proposed initiative, the qualifications for registration of a veterinary professional associate do not include being credentialed by a credentialing organization approved by the board as referenced in section 12-315-106 (5)(j) of the proposed initiative.
 - a. Does a veterinary professional associate need to be credentialed by a credentialing organization to be registered in this state? If so, that should be added as a requirement for registration in section 12-315-203.7 (2), C.R.S.
 - b. If a veterinary professional associate does not need to be credentialed by a credentialing organization, it might be clearer to add language in section 12-315-203.7 (2) of the proposed initiative and section 12-315-206 (3) and (4)(a), C.R.S., that the credentialing requirement is in place "if required by the board by rule" or similar language.
 - c. It might also be clearer to amend the language in section 12-315-106 (5)(j) of the proposed initiative to state that the board "may approve" a credentialing organization.
 10. Similar to question #9 regarding credentialing for registration, pursuant to section 12-315-106 (5)(j) of the proposed initiative, the credentialing organization shall require continuing education for a veterinary professional associate. Pursuant to section 12-315-201 (1)(c) and (1)(d) of the proposed initiative, the board shall require biennial continuing education, as determined by the board by rule, as a condition of renewing registration, and the board shall adopt rules pursuant to section 12-315-203.7 (4)(e) of the proposed initiative regarding continuing education requirements. What if the rules of the board and the credentialing organization relating to continuing education conflict? Would the veterinary professional associate be able to renew the

registration if the veterinary professional associate were not in good standing with the credentialing organization?

11. Section 12-315-203.7 (4)(b) of the proposed initiative requires the board to establish by rule registration and renewal fees for veterinary professional associates. However, the proposed initiative amends section 12-315-106 (5)(d), C.R.S., to authorize the board to establish a schedule of fees for veterinary professional associates without having to do so by rule. These two provisions within the proposed initiative, therefore, appear to conflict. Do the proponents intend that the board may establish the fees without rule-making, as is authorized in statute for licensed veterinarians and registered veterinary technicians? If so, the proponents should remove section 12-315-203.7 (4)(b) from the proposed initiative.
12. Pursuant to section 12-315-205, C.R.S., the board may issue a registration by endorsement to a veterinary technician who satisfies the requirements of the occupational portability program. Do the proponents want to allow registration by endorsement for a veterinary professional associate? If so, that language should be added to the proposed initiative.
13. Section 12-315-207, C.R.S., authorizes the board to take disciplinary action against a registered veterinary technician. The proposed initiative amends section 12-315-207, C.R.S., to also authorize the board to take disciplinary action against a veterinary professional associate. The amendments to that section do not include the addition of veterinary professional associate in subsection (1)(l) of that section, which subsection concerns a determination that the individual is mentally incompetent to a degree that the individual is incapable of holding a registration as a veterinary technician. Do the proponents intend that veterinary professional associates be subject to subsection (1)(l)? If so, the proponents should amend subsection (1)(l) of that section.
14. The proposed initiative adds section 12-315-209.7. Subsection (3)(a)(I) of that section states that a licensed veterinarian is "in violation of section 12-315-112 (1)(ee) and (1)(hh) of this article" if the veterinary professional associate is delegated duties beyond the veterinary professional associate's training and experience. Subsection (1)(hh) does not appear in the current section 12-315-112, C.R.S., nor does it appear to be added in the proposed initiative.
15. In section 12-315-209.7 (4)(b)(III) of the proposed initiative, it states that a veterinary professional associate may be subject to "[d]iscipline pursuant to

sections 12-20-404 and 12-315-204 for a violation of section 12-13-207 (1)(n)". The reference to section 12-315-204 is unclear, as that section simply states that only a registered veterinary professional associate can use the title and initials designating that credential. If the proponents' intent is that the board could revoke the veterinary professional associate's registration for practicing or performing services beyond the registrant's scope of competence, the proposed language should state that without reference to section 12-315-204, C.R.S.

16. Article 315 concerns the three professions of veterinarians, veterinary technicians, and veterinary professional associates. Section 12-20-404 (1)(d)(II)(M) of the initiative, says "Article 315 of this title 12 concerning veterinarians, and veterinary technicians OR VETERINARY PROFESSIONAL ASSOCIATES," which implies that article 315 concerns veterinarians and *either* veterinary technicians or veterinary professional associates, but not both. Please consider rephrasing the sentence to read, in part, "veterinarians, ~~and~~ veterinary technicians, AND VETERINARY PROFESSIONAL ASSOCIATES." The latter is how a similar sentence is amended in section 12-20-408 (1)(f) of the proposed initiative.

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 1 of the proposed initiative, because section 12-315-102, C.R.S., does not currently have a subsection (1), we cannot add a subsection (2) without amending the entire section; the statutory section is also missing the section number and headnote. The amending clause, the headnote, the language in current law, and the new language from the proposed initiative should appear, in part, as is shown below:

SECTION 1. In Colorado Revised Statutes, **amend** 12-315-102 as follows:

12-315-102. Legislative declaration. (1) This article 315 is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the practice of veterinary medicine is a

privilege conferred upon persons possessed of the personal and professional qualifications specified in this article 315.

(2) THE PEOPLE OF THE STATE OF COLORADO DECLARE THAT:

2. In section 12-315-102 (2) of the proposed initiative, please consider hyphenating "access to veterinary care" when the phrase modifies the word "crisis." Should you choose to make the change, the phrase would need to be changed in subsections (2)(b), (2)(c), and (2)(d). For example, section 12-315-102 (2)(b) of the proposed initiative would read:

(b) THE VETERINARY WORKFORCE SHORTAGE IS CAUSING AN ACCESS-TO-VETERINARY-CARE CRISIS IN COLORADO;

3. It is standard drafting practice to only capitalize proper nouns, such as "Colorado," "South Platte river," and "Pike's Peak community college."

Please lowercase the "s" in the word "Section" in section 12-315-104 (21.7) of the proposed initiative. Please make this same change in:

- a. Section 12-315-209.7 (3)(a)(I);
- b. Section 12-315-209.7 (3)(a)(III);
- c. Section 12-315-209.7 (4) introductory portion;
- d. Section 12-315-209.7 (4)(b)(I); and
- e. Section 12-315-209.7 (4)(b)(III).

Similarly, the words "veterinary professional associate" should not be initial-capitalized in section 12-315-210 of the proposed initiative.

4. It is standard drafting practice to include introductory portions even when they are not being amended, so that the reader can understand the context of the amendments. In section 12-315-105 of the proposed initiative, the language in subsection (1) introductory portion is missing. The headnote, introductory portion, and new language should appear, in part, as is shown below:

12-315-105. License requirements and exceptions - definitions - rules. (1)
A person shall not practice veterinary medicine in this state if the person is not a licensed veterinarian. A person shall not practice artificial insemination or ova transplantation of cattle or other animal species in this state except in accordance with section 12-315-106 (5)(c). This article 315 does not prohibit:

(r) A VETERINARY PROFESSIONAL ASSOCIATION FROM ...

5. In amending clauses, it is standard drafting practice to show instruction words in the following order: "**amend**," "**repeal**," and "**add**." In section 4 of the proposed initiative, the amending clause should read as follows:

SECTION 4. In Colorado Revised Statutes, 12-315-106, **amend** (5)(a), (5)(b), (5)(d), and (7); and **add** (5)(j) as follows:

6. In section 12-315-106 (5)(j) of the proposed initiative, please consider hyphenating "university approved" when it modifies program and please indent subsections (5)(j)(I) to (5)(j)(III), as shown below:

(j) APPROVE A NATIONALLY RECOGNIZED VETERINARY PROFESSIONAL ASSOCIATE CREDENTIALING ORGANIZATION FOR PURPOSES OF CREDENTIALING VETERINARY PROFESSIONAL ASSOCIATES IN THIS STATE. THE CREDENTIALING ORGANIZATION APPROVED BY THE BOARD MUST:

(I) REQUIRE COMPLETION OF A **UNIVERSITY-APPROVED** PROGRAM FOR VETERINARY PROFESSIONAL ASSOCIATES;

(II) REQUIRE THAT AN APPLICANT PASS A VETERINARY PROFESSIONAL ASSOCIATE NATIONAL EXAMINATION; AND

(III) REQUIRE CONTINUING EDUCATION FOR VETERINARY PROFESSIONAL ASSOCIATES.

7. In section 12-315-203.7 (2) introductory portion, (3), and (4) introductory portion of the initiative, the words "Qualifications," "Registration," and "Rules" appear to be internal headnotes. If this is the case, the words should not be in small capital letters, as they are considered editorial and not part of the law. They should instead appear in bold-faced type. For example:

(2) **Qualifications.** TO BE QUALIFIED ...

8. In section 12-315-203.7 (4)(e) of the proposed initiative, in the cross-reference to "section 12-315-201(1)(c)," please remove the small caps coding from the "(1)(C)" so that it reads "(1)(c)," otherwise the reference to "(1)(C)" may be confusing for readers.
9. Section 12-315-204 (2) of the proposed initiative reads, in part, "On or after January 15, 2027." Current law in subsection (1) of that section reads, in part, "On and after." Did the proponents use the phrase "On *or* after," instead of "On *and* after," for a specific reason? In the Colorado Revised Statutes, "on *or* after" usually involves discrete acts that an actor will only do once or once in a while, such as applying for a license. While "on *and* after" is often used when, for instance, conduct applies all day, every day. If the proponents agree, please consider changing "On or after" in subsection (2) to "On and after."

10. When amending current law, each provision must be copied into the proposed initiative *exactly* as it appears in the Colorado Revised Statutes. This avoids amendment by implication and the resulting confusion.
- a. In section 12-316-206 of the proposed initiative, subsection (2) is missing the word "armed" before the phrase "services of the United States."
 - b. In section 12-316-206 of the proposed initiative, subsection (3) is missing "section 12-315-203 (3)" and the new language "this part 2" is not added in small capital letters. The language at issue should read:

(3) The board shall not renew ... pursuant to ~~section 12-315-203 (3)~~ THIS PART 2 unless the
 - c. In section 12-20-407 of the proposed initiative, subsection (1)(a)(V)(W) is missing language, specifically an "or" after "title 12," as shown below:

(W) Veterinary medicine ... as regulated under article 315 of this **title 12; or**
11. In section 12-315-206 (3), for grammatical purposes, the word "THE" should be added between "or" and "VETERINARY PROFESSIONAL" in the last portion of added language so that it reads as follows: "...maintains active credentialing with the credentialing organization or THE VETERINARY PROFESSIONAL ASSOCIATE CONTINUES"
12. In section 12-315-206 (4)(a) of the proposed initiative in the second sentence, consider removing the commas that set off the phrase "as a veterinary technician OR VETERINARY PROFESSIONAL ASSOCIATE". The commas create a nonrestrictive clause, meaning that the information within the commas is considered additional information that is not necessary to understanding the sentence.
13. In section 11 of the proposed initiative, the amending clause, as currently written, is incorrect; the section number and the **amend** direction should be moved to read, in part, "In Colorado Revised statutes, **12-315-207, amend** (1) introductory portion"
14. In section 12-315-209.7 (3)(a) of the proposed initiative, there is a reference to "[s]ection 12-315-112 (1)(ee) and (1)(hh) of this article."
- a. The words "of this article" are not needed as the article number, 315, in the section number, 12-**315**-112, has that information;

- b. Subsection (3)(a)(III) should end in a period, as there are no further subparagraphs in that subsection (3)(a).

Similarly, section 12-315-209.7 (3)(a)(III) says "[s]ections 12-20-404 and 12-315-112 of this article." The phrase "of this article" is not needed because the article number is specified in the section number.

- 15. The structure of section 12-315-209.7 (1), (3), and (4) of the proposed initiative is incorrect. Drafting rules for the Colorado Revised Statutes state that, with certain exceptions, a subsection can only have a paragraph (a) if it also has a paragraph (b). Please consider changing those subsections by removing the (a) after the subsection number (1) and by restructuring subsections (3) and (4) as shown below:

(3) IF A VETERINARY PROFESSIONAL ASSOCIATE IS DELEGATED DUTIES BEYOND THE VETERINARY PROFESSIONAL ASSOCIATE'S TRAINING AND EXPERIENCE, THE LICENSED VETERINARIAN:

- (a) IS IN VIOLATION ...;
- (b) MAY BE LIABLE ...; AND
- (c) MAY BE SUBJECT TO

(4) IF A VETERINARY PROFESSIONAL ASSOCIATE PERFORMS DUTIES ... SUPERVISING VETERINARIAN AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE VETERINARY PROFESSIONAL ASSOCIATE MAY BE SUBJECT TO:

- (a) A CEASE-AND-DESIST ORDER ...;
- (b) DAMAGES RESULTING FROM ...; AND
- (c) DISCIPLINE PURSUANT TO