

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Evelyn Hammond and Lucas Granillo
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 26, 2024
SUBJECT: Proposed initiative measure 2023-2024 #149, concerning the Disclosure of Adverse Medical Incidents to Patients

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.

This initiative was submitted with a series of initiatives, including proposed initiative 2023-2024 #150. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2023-2024 #150, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in that memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

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

1. To allow a patient or the patient's representative access to all medical records, medical information, and medical communications made by a health-care institution or health-care professional with regard to an adverse medical incident that caused or could have caused injury or death to the patient.

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. Article V, section 1 (4)(a) of the Colorado Constitution states that all approved ballot measures shall take effect on the day of the proclamation by the governor. Is this the intended effective date of the initiative? If not, was is the intended effective date?
3. The proposed initiative adds section 13-64-103 to part 1 titled, "Short Title – Legislative Declaration," of article 64 titled, "Health Care Availability Act," of title 13, titled "Judgments and Executions." What is your intent with this placement?
4. Generally, the federal Health Insurance Portability and Accountability Act of 1996 provides patients with access to their medical records. What does the proposed initiative cover that is not covered by the federal law?
5. The proposed initiative references a "patient or the patient's representative." Is it your intent to exclude the parent or legal guardian of a patient who is a minor?
6. The citation to section 25-3-109, Colorado Revised Statutes, is incorrect. Should the citation rather be 25-1.5-103, Colorado Revised Statutes?
7. It is standard practice to use "a" or "the" instead of "any" or "such." Does the use of "such" or "any" make the initiative ambiguous?
8. In subsection (2)(f) of the proposed initiative, there appears to be an extra "not" contained in the language.

9. Is the intent of this proposed initiative to allow patients access to all communications related to an adverse medical incident experienced by the patient?
10. The proposed initiative pertains to adverse medical incidents that caused or could have caused injury or death. Virtually all medical procedures have some risk of injury. Is the intent of the proposed initiative to broadly encompass all medical procedures?

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. After each section number there is an explanatory heading, or "headnote," in bold-type that should briefly describe the content of the section. When the content of the section includes definitions, the headnote should include "definitions" in the headnote separated by a dash and should appear at the end of the substantive portion of the headnote.
2. It is drafting standard practice to use the singular form of a noun or pronoun whenever possible. For example, in subsection (1) of the proposed initiative, it reads "patient or their representatives." It should instead read "a patient or the patient's legal representative."
3. When drafting a legislative measure, "and/or" should never be used. Use "and" to connect two or more phrases, conditions, or events, all of which must occur. Use "or" to connect two or more phrases, events, or conditions when one or more, but not all, need to occur.
4. It is standard drafting practice for the definitions section to appear as the first subsection of the section and to list the defined terms in alphabetical order. Each defined term is set off by quotation marks, and the introductory portion of the definitions subsection should read: "As used in this section, unless the context otherwise requires:".
5. It is standard drafting practice to use terms that have been defined for a particular section, part, or article. Article 64 of title 13 does not contain definitions that apply to the entire article 64. It is therefore incorrect to refer to

article 64 in defining "health-care professional." Additionally, it is standard drafting practice to not include references to paragraphs or subparagraphs of a section when referencing a term that is defined in another section. In referencing these defined terms, you can simply cite the section.

6. Capital letters should not be used for the titles of state departments.