

# STATE OF COLORADO

## Colorado General Assembly

Natalie Castle, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 E. Colfax Ave., Room 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
Email: lcs.ga@coleg.gov



Ed DeCecco, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 E. Colfax Ave., Room 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Email: olls.ga@coleg.gov

## MEMORANDUM

**TO:** Wayde Goodall and Darcy Schoening  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 16, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #175, concerning a Prohibition on Certain Medical Procedures for Minors

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 appear to be:

1. To prohibit health-care providers from performing certain medical procedures on a minor that would alter a minor's hormones or physical appearance to align with the minor's purported gender identity that differs from the minor's sex as determined at birth;

2. To allow a minor or the minor's parent or legal guardian to bring an action against a health-care provider that performs a medical procedure on a minor to alter the minor's appearance in order for the minor's appearance to align with a gender identity that differs from the minor's sex as determined at birth if the minor is injured as a result of the medical procedure or dies as a result of the physical or emotional harm inflicted on the minor; and
3. To require the attorney general to bring an action against a health-care provider that violates the proposed initiative to enjoin further violations, disgorge any profits from the procedure, and recover a civil penalty of \$25,000 per violation.

## **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. The proposed initiative prohibits performing certain medical procedures on a minor. What happens if a health-care provider performs the medical procedure? Is the only enforcement mechanism a civil action after the minor is injured or dies?
3. There are potential risks associated with all medical procedures. Is it the intent of the proposed initiative to create a cause of action even if a known complication occurs?
4. Civil actions for medical malpractice already address procedures that result in injury. How does the proposed initiative differ from existing remedies?
5. It is standard drafting practice to use the following when creating a definitions provision, "As used in this section, unless the context otherwise requires:". Would the proponents consider using this drafting convention?
6. In section 12-30-123 of the proposed initiative, the headnote is "**Definitions.**" Headnotes briefly describe the content of the section. The section contains more than just definitions; would the proponents consider adding additional descriptions to the headnote to cover the other substantive provisions of the section?
7. Section 12-30-123 (8)(b) of the proposed initiative requires the attorney general to bring an action against a health-care provider that violates the section. Is the

- attorney general required to bring an action in a case in which a minor or parent of the minor does not bring a civil action?
8. Section 12-30-123 (9) of the proposed initiative states that a violation of the section constitutes a potential threat to public health, safety, and welfare and requires emergency action by an alleged violator's appropriate regulatory authority. What does "emergency action" mean? Would the proponents consider defining it?

## **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.

1. For purposes of this proposed statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "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."
2. It is standard drafting practice to use "a" or "the" instead of "any" or "such" to provide more clarity to the reference.
3. In the Colorado Revised Statutes, "health-care" is a hyphenated word.
4. It is standard drafting practice to spell out numbers in statutes and not include a numeral in parentheses.
5. A reference internal to a section should include all levels of the provision necessary to locate the provision, beginning with a subsection number. For example, to reference a subsection: "subsection (2);" to reference a paragraph: "subsection (2)(a);" to reference a subparagraph: "subsection (2)(a)(I);" and to reference a sub-subparagraph: "subsection (2)(a)(I)(B)." Please note that the style conventions for our memos include punctuation within quotation marks, while the style conventions for the Colorado Revised Statutes locate punctuation outside of quotation marks. Internal references in the Colorado Revised Statutes do not include quotation marks.

6. Subsection (1)(b) of the declaration should end in a period, not a semi-colon, since the paragraph contains more than one sentence.
7. Subsection (1)(f) of the declaration should end in a semi-colon, not a period, since it contains one sentence.
8. In section 12-30-123 of the proposed initiative, subsection (1) should follow the headnote rather than start on a new line.
9. Each of the subsections in section 12-30-123 (1) of the proposed initiative should end in a period, not a semi-colon.
10. In section 12-30-123 of the proposed initiative, subsection (1)(d) is skipped; the subsections should be renumbered to use (1)(d).
11. In section 12-30-123 (4)(a) of the proposed initiative, the paragraph-level subsection letter (a) is not needed since further paragraph-level subsections do not occur within that section.