

# 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:** Julie Whitacre and Alyssa Davenport  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 2, 2024  
**SUBJECT:** Proposed initiative measure 2023-2024 #275, concerning disclosure of adverse medical incidents

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 initiatives 2023-2024 #274 and #276. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #274 and #276, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to provide a patient, a patient's representative, including a minor patient's parent, or a patient's legal representative with the right to access, including the right to inspect and copy upon request, the patient's medical record, medical information, or medical communication made or received in the course of medical treatment, whether prior or ongoing, by a health-care institution or health-care professional relating to any adverse medical incident that caused injury to or the death of 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. What will be the effective date of the proposed initiative?
3. In subsections (2)(e), (2)(f), and (2)(g) of the proposed initiative, "medical record," "medical information," and "medical communication" are defined to exclude "recommendations to address any adverse incident made by those professional review committees established in sections 12-30-204 and 12-30-205; or recommendations to improve a quality management program to reduce risks to patients as referenced in sections 25-3-109 or 25-3.5-904."
  - a. Section 25-3-109 (4), C.R.S, provides exceptions to the confidentiality of records, reports, or other information that are part of a quality management program. Do you intend to apply those exceptions to the definitions of "medical record," "medical information," and "medical communication" and render those records, reports, or other information subject to the right to access established by the proposed initiative?
  - b. Section 25-3.5-904 (2)(b) and (3)(b), C.R.S., provides exceptions to the confidentiality of records, reports, or other information obtained and maintained in accordance with a quality management program. Do you intend to apply those exceptions to the definitions of "medical record," "medical information," and "medical communication" and render those records, reports, or other information subject to the right to access established by the proposed initiative?

## Technical Comments

The technical issues raised in the technical comments for proposed initiatives 2023-2024 #274 and #276 apply to this proposed initiative as well. 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 subsection (2)(a) of the proposed initiative, there is a reference to section 25-1.3-103, C.R.S. That section does not exist. Did you intend to refer to section 25-1.5-103, C.R.S., as you did in proposed initiative #274?
2. When referencing multiple section numbers and joining them with the conjunction "or," it is necessary to use the singular "section" rather than the plural "sections" because the reference is to one, not both, of the sections referenced. In subsections (2)(e), (2)(f), and (2)(g) of the proposed initiative, the references to "sections 25-3-109 or 25-3.5-904" should be changed to "section 25-3-109 or 25-3.5-904."

Additionally, the use of semicolons in subsections (2)(e), (2)(f), and (2)(g) of the proposed initiative, in the language regarding exceptions to the definitions, is incorrect. The language should read, when punctuated correctly:

Medical information does not include documents or statements protected by the attorney-client privilege or attorney work product doctrine; documents, statements, or communications created during or occurring during an initiated open discussion as defined in section 25-51-103; recommendations to address any adverse incident made by those professional review committees established in sections 12-30-204 and 12-30-205; or recommendations to improve a quality management program to reduce risks to patients as referenced in section 25-3-109 or 25-3.5-904.