

STATE OF COLORADO

Colorado General Assembly

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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 #276, concerning patient right to medical records

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 #275. 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 #275, 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 Constitution appears to be to ensure that every patient or the patient's representative has a right to access, inspect, and copy all of the patient's medical records, medical information, and medical communications concerning the patient or the patient's medical treatment.

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. With regard to another person who represents the patient pursuant to the proposed initiative, how does a patient's representative who is not the patient's legal representative or a minor patient's parent demonstrate that they represent the patient?
4. Certain medical records, medical information, and medical communications are privileged and confidential under Colorado law, federal law, the attorney work-product privilege, and the attorney-client privilege. Is it your intention that the right to access will supersede the privileged and confidential status of these documents?
5. Proposed initiatives 2023-2024 #274 and #275 define many of the terms used in this proposed initiative. Should terms including "patient," "medical record," "medical information," "medical communication," and "medical treatment" be defined to prevent ambiguity in the proposed initiative?
6. If a facility or provider with custody of a patient's medical records, medical information, or medical communications charged a patient or the patient's representative a fee to inspect or copy the patient's records, would such fee be consistent with the "right to access" required in the proposed initiative?
7. A patient's medical records, medical information, and medical communications may be located outside of the state; do you intend for this right to access to apply to records that are not located in Colorado?

Technical Comments

The technical issues raised in the technical comments for proposed initiatives 2023-2024 #275 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. The amending clause is incorrect. It should read:

In the constitution of the state of Colorado, **add** section 17 to article XVIII as follows:

2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Constitution or the Colorado Revised Statutes. The language in proposed section 17 of the Colorado Constitution should be in SMALL CAPITAL LETTERS.