

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: Ronald Leinbach and Rita Durbin
From: Legislative Council Staff and Office of Legislative Legal Services
Date: August 20, 2024
Subject: Proposed initiative measure 2025-2026 #5, concerning Establishing State-Run Medical Facilities

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. Establish state-run medical facilities that are funded through a five percent tax on a medical entity's quarterly income if the entity is located in Colorado and, for a medical entity located out of state, a five percent tax on each sale made in the state.

2. Allow subscribers to pay an annual one-thousand-dollar fee to access the state-run medical facilities.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this the proponents' intention?
3. The proposed initiative states the effective date for the proposed initiative is January 1, 2027. The proposed initiative states the tax would be collected in 2026 to fund the construction of the state-run medical facilities. In order to collect the tax in 2026, the proposed initiative would need to be effective by January 1, 2026, or earlier to allow the initiative to be implemented.
4. The proposed initiative contains a legislative declaration that states what the proposed initiative would do. Is it the proponents' intent that the General Assembly would pass implementing legislation to effect the proponents' intent? If not, the proposed initiative would need to include language directing how the proposed initiative would be implemented.
5. The proposed initiative includes statements regarding the benefits of the proposed initiative. Are those statements intended to be part of the legislative declaration?
6. One of the statements of the benefits of the proposed initiative states, ". . .small businesses will benefit by being able to offer affordable health care for employees." How would a small business be able to do that under the proposed initiative?
7. The proposed initiative uses the term "medical entities/businesses" and "medical entity/business;" standard drafting practice does not include using slashes in statute. Would the proponents consider rephrasing?
8. The proposed initiative contains definitions for the following terms: hospital, health insurance company, dentist, pharmacies, service company, doctors office, and subscriber card. Those terms do not appear anywhere in the proposed initiative except in the definitions section. Standard drafting practice does not

- include defined terms that are not used in substantive statutes. What is the proponents' intent in including definitions that are not included in the substantive statutory portions of the proposed initiative?
9. The proposed initiative definition of "medical entity/business" includes subsequent definitions, including "subscriber card." What is the proponents' intent with respect to how a "subscriber card" is subject to the tax contemplated by the proposed initiative?
 10. The proposed initiative would have the state treasurer collect the tax from the medical entity/business located in Colorado. Is it the proponents' intent that the state treasurer determines the methodology for collecting the tax? Why did the proponents choose the state treasurer to collect the tax, as opposed to the Department of Revenue?
 11. The proposed initiative states, ". . .any excess funding collected in a fiscal year would be rolled over in the next year."
 - a. What does "excess funding" mean?
 - b. What does "would be rolled over in the next year" mean?
 12. The proposed initiative states, ". . .the second year would be when state run medical facility construction would begin."
 - a. What state entity would be responsible for constructing the facilities?
 - b. Would that entity be responsible for determining what kind of medical facilities would be constructed and where they would be constructed?
 - c. What entity would be responsible for managing the state-run medical facilities?
 - d. When would subscribers be able to access the state-run medical facilities?
 - e. Who is an eligible subscriber?
 13. The proposed initiative states, "Based on estimates from public sources, from 2022 there would be an estimated three hundred and fifty million dollars of revenue from the four major Colorado hospital systems alone." What is the proponents' intent in including the statement in the proposed initiative?
 14. The proposed initiative states, "Any medical entity/business based out of state and delivering goods or services within the state of Colorado would have to pay the five percent tax per transaction." The proposed initiative requires the state treasurer to collect the five percent tax for businesses in Colorado. What entity

would be responsible for collecting the tax from the out-of-state medical entities/businesses? Does the requirement to "pay the five percent per transaction" mean that the medical entity/business is required to remit the tax to the state of Colorado immediately upon the point-of-sale transaction?

15. How would the proposed taxes interact with section 20 of article X of the Colorado Constitution?

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. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new part to article 1.4 of title 25 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** part 8 to article 1.5 of title 39 as follows:".
2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

3. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the e Colorado Revised Statutes.
4. For purposes of this 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."
5. The definitions should be placed in alphabetical order in the proposed initiative.
6. It is standard drafting practice to express months in words rather than numbers.
7. The proponents should write all statutory language in the present tense. For example, instead of "The first year 1/1/26-1/1/27 would be when the collection of taxes begins," the proponents should instead say: "Tax collection begins January 1, 2026" or similar.
8. All provisions must end with punctuation, typically either a semi-colon or a period.
9. Since the proposed initiative would be in the Colorado Revised Statutes, internal references should be written as follows: "(2) Hospital means a hospital licensed or certified by the department of public health and environment pursuant to section 25-1.5-103." The proponents do not need to include mentions of the "Colorado revised statutes" or the abbreviation "C.R.S." in internal references. Existing references to "C.R.S." in the Colorado Revised Statutes are in the process of being updated to the form described above.