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MEMORANDUM

October 15, 2002

TO: Ousama Ghaibeh

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #1, concerning Colorado's medicaid program

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 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 appear to be:

1. To allow all Colorado residents who have lived in Colorado for more than one year to buy into the medicaid program for their health insurance at a price of 130% of the average cost for a medicaid patient.
2. To require all physicians in Colorado to participate in the Colorado medicaid program as part of their medical license requirement.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

Would the proponent consider adding an enacting clause at the beginning of the proposed measure?

2. To provide notice to the public of the proposed changes to the law, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional section that is to be amended or repealed. An initiative usually goes further to provide the specific language within the statutory section that will be amended or repealed. Arguably, the language in the proposed measure does not provide adequate notice to the public of the changes to the law proposed by the initiative. Would the proponent consider specifying the statutory or constitutional sections that are to be amended or repealed in the proposed measure?
3. In Colorado, when a proposed measure adds new language or repeals existing language of the Colorado Revised Statutes, the proposed measure uses an amending clause indicating the specific section of the statutes where new language will be added or existing language will be deleted. The new language itself generally is shown in capital letters. If language from the statutes is to be repealed, the convention is to show the language with dashes through it to indicate it is repealed or to state in the amending clause that the entire provision or provisions are repealed. Each section of the statutes begins with a section heading that includes the section number and a short description of the section contents.

Would the proponent consider adding appropriate amending clauses to the proposed measure to indicate whether the measure will add new language or repeal existing language of the Colorado Revised Statutes? Would the proponent consider showing existing statutory language with dashes through it, if you intend to repeal existing language, or indicating new language with capital letters? In copying existing statutes into the measure, the proponent should include the section heading.

4.
 - a. Is it the proponent's intent to amend the Colorado Medical Assistance Act, which contains the statutes governing Colorado's medicaid program? If so, would the proponent consider placing this proposed measure within article 4 of title 26 of the Colorado Revised Statutes?
 - b. Is it also the proponent's intent to amend the Medical Practice Act with a new condition of physician licensure? If so, would the proponent consider amending

article 36 of title 12 of the Colorado Revised Statutes?

5. The proposed measure appears to do two things: First, to allow all Colorado residents who have lived in Colorado for more than one year to buy into the medicaid program for their health insurance at a price of 130% of the average cost for a medicaid patient; and, second, to require all physicians in Colorado to participate in the Colorado medicaid program as part of their medical license requirement. Would the proponent consider separating these two purposes into, at least, two separate sentences?
6. The proposed measure includes the phrase: "All COLORADO resident of more than one year,". Does the proponent intend this phrase to address "anyone who resides in Colorado for more than one year"? If so, would the proponent consider clarifying this phrase?
7. Would the proponent consider striking the word "can" and substituting "may" in the second phrase of the sentence for proper grammar usage?
8. Would the proponent consider striking the four commas in the sentence and placing a period after the word "patient" for proper punctuation usage?
9. Would the proponent consider striking the word "price" and substituting "cost" for proper grammar usage?
10. Since the word "all", which is used twice in the sentence, is plural, would the proponent consider changing the word "resident" to "residents" and "physician" to "physicians"?
11. Would the proponent consider adding the word "a" before the phrase "medicaid patient" or making "medicaid patient" plural?

Substantive questions:

1. Federal law prohibits states from placing length of stay residency requirements on people who are eligible for medicaid other than requiring that an applicant be a resident of the state. The proposed measure would require a person to be a resident of Colorado for more than one year in order to be eligible to buy into the state's medicaid program. How does the proponent plan on reconciling this requirement with the federal law prohibition?
2. What other eligibility requirements are there for the health insurance portion of the proposed measure besides the residency requirement?
3. What does the proponent intend by the phrase "at a price of 130% of average cost for medicaid patient"? Does the proponent intend this to be the average overall cost for any medicaid patient or the average cost of someone on medicaid with similar health conditions? How did the proponent come up with 130%?
4. If the proponent intends for a resident to buy into medicaid for a certain cost, who does the

proponent expect to pay the difference between what the resident paid and the actual cost of the health care services provided to that resident? Medicaid in Colorado is a program paid for through 50% state funding and 50% federal funding. Does the proponent intend for the state or federal government to pick up a portion of the cost of this new program?

If the proponent intends for the federal government to pay a portion of the cost of the medical services provided under this new program, would the proponent consider providing the authority for a state agency (for example, the department of health care policy and financing) to seek federal approval of this proposal?

5. Currently, the county departments of social services determine eligibility for medical benefits under the Colorado medical assistance act. Does the proponent intend for the county to determine eligibility for the health insurance portion of the proposed measure?
6. Currently, if a child is not eligible for the state's medicaid program, the child may be eligible for the Children's Basic Health Plan. Does the proponent intend for the proposed measure to cover children? Only adults? Families?
7. Would residents eligible under this new program be required to be served under the medicaid managed care system or through fee-for-service providers?
8. Which medical services under the state's medicaid program does the proponent intend these residents to be able to purchase? All of the services specified under section 26-4-202, Colorado Revised Statutes? All of the services specified under section 26-4-302, Colorado Revised Statutes?
9. What executive department(s) would administer this proposed measure? Who would enforce the medical licensure provisions of the proposed measure? Currently, the Colorado department of health care policy and financing administers the state's medicaid program and the board of medical examiners under the department of regulatory agencies has the authority to oversee the practice of medicine in Colorado.
10. What does the phrase "participate in COLORADO medicaid program," mean? Is there a threshold number of patients a physician will be required to treat?
11. Regarding the physician licensure requirement within the proposed measure, would this requirement apply to a physician who holds a license to practice medicine within Colorado but lives outside of Colorado? Does the proponent intend this requirement to only apply to physicians? What about other licensed health care providers?
12. If a physician practices a medical specialty that is not a covered medical service under the state's medicaid program, e.g., plastic surgery, would that physician be required to participate in the medicaid program as a condition of that physician's medical licensure?
13. Does the proponent intend for the money paid by the resident to buy into the state's medicaid program to be deposited into the state general fund? If so, does the proponent intend for the

appropriations made to pay for the medical services of these residents to be subject to the 6% statutory limitation on general fund appropriations growth? If not, the proponent may want to consider using language similar to the language found in subsection (3) of section 17 of article IX of the Colorado constitution. Does the proponent intend for the appropriations made to pay for the medical services of these residents to be restricted by the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution? If not, the proponent may want to consider using language similar to the language found in subsection (3) of section 17 of article IX of the Colorado constitution.

14. How does the proponent intend the health insurance portion of the proposed measure to work with CoverColorado, the state's uninsurable health insurance plan? (See part 5 of article 8 of title 10, Colorado Revised Statutes.)
15. Does the proponent intend the health insurance portion of the proposed measure to only apply to a person who is uninsured or uninsurable?
16. Section 1 of article V of the Colorado constitution requires that each initiative contain no more than one subject, which must be clearly expressed in its title. The courts have held that an initiative that tends to affect or carry out one general object or purpose satisfies the single subject requirement while a measure that has at least two distinct and separate purposes that are not dependent upon or connected with each other violates the single subject rule. The proposed measure appears to address the ability of certain Colorado residents to buy into the state's medicaid program for health insurance coverage and the requirement that all physicians in Colorado participate in the state's medicaid program as a condition of medical licensure. What does the proponent intend to be the single subject of the proposed measure?
17. Article V, section 1 (4) of the Colorado constitution requires that all elections on initiated measures be held at the biennial regular general election (i.e. the November general election held in an even-numbered year). Article X, section 20 (3) (a) of the Colorado constitution requires ballot issues related to section 20 of article X, the "Taxpayer Bill of Rights", be decided in a state general election or on the first Tuesday in November of odd-numbered years.

Is it the proponent's intent that this proposed measure qualify for the 2003 or 2004 ballot?

18. Section 1-40-106 (1), Colorado Revised Statutes, specifies that the first meeting of the title board shall be no sooner than the first Wednesday in December after an election. Accordingly, the title board cannot meet to set a title for a measure to appear on the 2004 ballot until the first Wednesday in December after the 2002 general election. The title board can set a title prior to that date only for a measure that will appear on the 2003 November general election ballot.

If the proponent's measure is to appear on the 2004 ballot, is it the proponent's intent to have the title set at the title board meeting on December 4, 2002?