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MEMORANDUM

January 21, 2008

TO: Jon Caldera and Linda Gorman

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #58, concerning health care choice

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 prohibit the state or its political subdivisions from requiring any person to participate in a public or private health care insurance plan or system;
2. To prohibit the state or its political subdivisions from denying any person the right to pay directly, in cash, for health care services lawfully provided to the person;
3. To prohibit the state or its political subdivisions from denying any person the right to purchase lawful private health insurance products for sale in other states.

Comments and Questions

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

Technical questions:

1. To align the initiative's language with the mandates of Article V, section 1 (8) of the Colorado constitution, which requires each initiated measure to contain the following enacting clause:

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

Would the proponents consider making the following changes to the enacting clause on line 1 of the initiative:

- a. The first word of the enacting clause seems to be misspelled. Would the proponents consider changing "BEe" to "Be"?
 - b. The second word of the enacting clause is capitalized (to wit: "It"), although Article V, section 1 (8) dictates that this word be in lower-case lettering. Would the proponents consider changing "It" to "it"?
2. In order to conform to the style and form in which existing law is written, would the proponents consider changing the order and capitalization of the amending clause on lines 3 and 4 of the draft language from "THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE ADDITION OF A NEW SECTION OF ARTICLE II TO READ:" to "Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:"
 3. Would the proponents consider modifying the section number and heading for the proposed language to conform to the standard used in the constitution, in which section numbers and headings appear in bold typeface and are not capitalized? For example, "SECTION 32. RIGHT TO HEALTH CARE CHOICE" could be rewritten as "**Section 32. Right to health care choice.**"
 4. The proposed Section 32 is written in a ALL CAPS. To conform to the standard drafting practice of showing the new language being added to the state constitution in small capital letters, would the proponents consider changing the ALL CAPS to SMALL CAPS? [THIS IS AN EXAMPLE OF NEW LANGUAGE IN SMALL CAPITAL LETTERS]?
 5. The proposed Section 32 consists of one long sentence. Would the proponents consider dividing the current draft language into shorter sentences, for the sake of simplifying and clarifying the initiative?

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires an initiative petition to have a single subject reflected in the title. What is the single subject of this proposed initiative?
2. What entities do the proponents intend to include in the phrase "political subdivisions" on lines 7-8 of the proposed initiative? Does this phrase include counties and municipalities? Does it include special taxing districts? Does it include a state board or commission? Does it include the General Assembly? Does it include an authority? Would the proponents consider defining this term, or is it the proponents' intent that the General Assembly would define the term in implementing legislation?
3. On lines 8-9 of the proposed initiative:
 - a. What is meant by the term "participate" in any public or private health care insurance plan or system? Do the proponents intend that "participate" include enrolling in or receiving services through a public or private health care plan, or do the proponents intend that "participate" include activities such as paying taxes that may support government health care programs?
 - b. What is meant by the term "public . . . health care insurance plan or system"? Does this term include the state Medicaid program? Does it include Medicare? Does it include any state health care plan or program that could be established in the future to provide health care coverage to Colorado residents?
4. On line 10 of the proposed initiative, with regard to the phrase "direct cash payment:"
 - a. Do the proponents mean to refer to persons tendering payment on a case-by-case basis to a health care provider who provided health care services to the person, as opposed to a third party, like an insurance company, paying the health care provider? Would the proponents consider clarifying to whom persons would be paying in cash?
 - b. Does use of the word "cash" limit the applicability of this prohibition to situations where the person makes payment for health care services in cash? Would the state be allowed to limit the ability of a person to pay for health care services using other forms of payment, such as credit? If other methods of payment are intended to be included in the prohibition, would the proponents consider removing the word "cash" or otherwise clarifying this phrase?
5. On line 10 of the proposed initiative, what is meant by the phrase "lawful health care services"? What health care services would be "unlawful"? Could the state deny a person the right to directly pay for *unlawful* health care services? Is the term "lawful" intended to limit the scope of the prohibition?

6. On lines 11-12 of the proposed initiative, what is meant by the phrase "private health insurance products legal for sale"? Do the proponents mean the procurement of health insurance sold in, and regulated by, a state other than Colorado? If so, would the proponents consider altering this language to clarify their intent?
7. By allowing persons the right to purchase health insurance that is legally sold in another state, is it the proponents' intent that the out-of-state health insurance will not be subject to Colorado laws and regulations? Do the proponents intend to remove the regulatory authority of the state with regard to such out-of-state health insurance products if sold in Colorado? Who would have regulatory authority over the out-of-state insurance product? To whom would consumers file complaints regarding the out-of-state insurance product? Would the Colorado Commissioner of Insurance and the Division of Insurance, which licenses, regulates, and accepts consumer complaints regarding insurance companies that sell insurance products in Colorado, have any authority to address consumer complaints filed against an insurance company that does not otherwise sell insurance products in Colorado?
8. Would an out-of-state insurance product have to comply with the requirements of Colorado law? While the initiative precludes the state from limiting a person from buying an out-of-state insurance product, the initiative does not specifically preclude the state from limiting the right of an insurance company to *sell* an insurance product in Colorado if, for example, the insurance product does not comply with the provisions of section 10-16-104, Colorado Revised Statutes, which specifies certain types of coverages that must be included in health insurance products sold in Colorado. Do the proponents intend the initiative to also prohibit the state from limiting the ability of insurance companies to sell insurance products in Colorado? If so, would the proponents consider clarifying the language of the initiative to address this issue?