

STATE OF COLORADO

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MEMORANDUM

January 25, 2008

TO: Charles Bader and Christina Gonnella

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #63, concerning Fair Share Health Care

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 require every business entity in the state that employs at least twenty employees to provide major medical health care coverage for the entity's employees and their dependents;
2. To specify that a business entity is to provide major medical health care coverage either directly or indirectly;
3. To require the state to establish an insurance authority to provide health care coverage to employees and dependents of employees whose employers do not provide major medical health care coverage as required by the measure;

4. To require employers that do not directly or indirectly provide major medical health care coverage to their employees and their dependents to pay premiums to the state-established insurance authority for purposes of providing health care coverage to their employees and dependents;
5. To prohibit the use of state general fund dollars to pay the costs of administering the insurance authority or providing health care coverage through the insurance authority;
6. To require the general assembly to enact laws that are necessary to facilitate the requirement imposed on business entities to provide major medical health care coverage to employees and dependents or to pay premiums for health care coverage provided by the insurance authority for their employees and dependents; and
7. To require the general assembly to enact laws that are necessary to facilitate the administration of the insurance authority.

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 used for all laws adopted by initiative:

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

To comply with this constitutional requirement, would the proponents consider adding such an enacting clause to the beginning of the proposed measure?
2. An amending clause, which follows the enacting clause, is used to identify what law is being amended so as to provide notice to the public of the proposed changes to the law. For an amendment to the Colorado constitution, the standard amending clause would read: "Article XVIII of the constitution of the State of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:" Would the proponents consider adding the appropriate amending clause to the measure, immediately following the enacting clause? The amending clause would replace the language in the proposed measure that provides: "ARTICLE XVIII, SECTION 16, OF THE COLORADO CONSTITUTION:"
3. Each section of the Colorado constitution begins with a section heading that includes the section number and a short description of the section contents, all of which appears in bold-face type. For example, a section heading for the proposed new section 16 of article XVIII of the Colorado constitution could be as follows: "**Section 16. Fair share health**

care.". Would the proponents consider adding a section heading, including the section number and brief description of the section contents, to the beginning of the proposed new language? This would replace the heading at the top of the page "FAIR SHARE HEALTH CARE".

4. In subsection (2), would the proponents consider adding "of this section" after "subsection (1)" for proper citation format and to indicate that the subsection referred to is within the new section 16? In subsection (3), would the proponents consider adding "of this section" after "subsection (2)" for proper citation format and to indicate that the subsection referred to is within the new section 16?
5. The standard drafting practice is to capitalize only the initial letter of words that are proper nouns or the first word of a sentence. Would the proponents consider following this standard practice for capitalization? Specifically, would the proponents consider using lower case letters for the initial letters of "general assembly" in subsection (3)?

Substantive questions:

1. The measure contains numerous terms that are not defined. The scope of the measure, including to whom it applies and what is required of those subject to the measure, would be clearer if certain terms were defined, like "business entity", "major medical health care coverage", "employers", and "health care coverage". Would the proponents consider defining these terms? Is it the proponents intent that these terms be defined by the General Assembly in implementing legislation?
2. In subsection (1), the term "business entity" is used. However, in subsection (2), the term "employers" is used. It appears that these two different terms are intended to refer to the same persons or entities that are subject to the requirements of subsection (1). If that is accurate, would the proponents consider using consistent terminology in the measure when referring to the same person or entity?
3. It appears that the term "business entity" is intended to refer to employers who employ at least twenty employees. Do the proponents intend the term "business entity" to include an *individual* who employs twenty employees? If so, would the proponents clarify the meaning and scope of the term "business entity"? Alternatively, the proponents may want to consider using the term "employer" instead of "business entity".
4. The measure specifies that business entities that employ "twenty or more people" are subject to the requirement to provide major medical health care coverage. If a business entity employs nineteen employees for eleven months of a calendar year, but for one month of the year, employs twenty employees, would the business entity be subject to the requirements? Is there a certain period for which a business entity would have to employ twenty employees in order to be subject to the measure's requirements? Would the proponents consider clarifying this issue? Do the proponents intend the general assembly to clarify this issue in implementing legislation?

5. Do the proponents intend the measure's requirements to apply to both public and private employers? In other words, would the state or other governmental entities be subject to the measure or do the proponents intend the measure to apply only to private sector employers? Would the proponents consider defining the term "employer" or "business entity" to clarify whether public and private employers are included? Is this something the proponents intend the general assembly to clarify in legislation enacted to implement the measure?
6. In subsection (1), the measure requires certain employers to provide major medical health care coverage to employees and dependents either "directly or indirectly". What is meant by "directly" providing major medical health care coverage? Does this mean that the employer provides coverage through a health coverage plan that is self-funded by the employer? What is meant by "indirectly" providing major medical health care coverage? Does this mean that the employer contracts with a health insurance carrier to provide a fully funded health coverage plan to employees and dependents? Would the proponents consider clarifying what these terms are intended to mean?
7. Does the requirement that employers "provide, directly or indirectly, major medical health care coverage for its employees and their dependents" mean that the employer is required only to make coverage available, or would the employer also be required to pay for the coverage? If the employer is required to pay for the coverage, does this require the employer to pay the full cost of the premium or a portion of the premium for the employees' coverage? Would the employer have to pay any portion of the premium cost for dependents' coverage? Would the proponents consider clarifying the scope of the requirement to provide health care coverage?
8. Subsection (2) requires employers that don't provide major medical health care coverage to employees and dependents to pay premiums to the insurance authority to provide health care coverage to the employer's employees and dependents. What amount of premiums would the employer be obligated to pay? Is the employer required to pay the full cost of the premium for the coverage provided to its employees? Would the employer be required to pay the full cost of the premium for coverage provided to dependents of its employees? If the employer doesn't provide major medical coverage, would the employer only have to pay to the insurance authority the cost that would be applicable for major medical health care coverage for its employees and their dependents, or would the employer have to pay the cost of coverage provided by the insurance authority, even if it's more comprehensive than and would cost more than major medical coverage?
9. Is the insurance authority a state governmental entity? Who administers the authority? Can the state contract with a private organization or entity to administer the authority and provide health care coverage? Could the state contract with a health insurance carrier to operate the authority and provide health care coverage? Is this something the proponents intend the general assembly to clarify in legislation enacted to implement the measure?

10. Would the insurance authority be governed by a board of directors? If so, who would appoint the board members? How many members would be on the board? Are these issues the proponents intend the general assembly to determine through implementing legislation?
11. Is it the proponents intent that the insurance authority be a health insurance company, or could the authority contract with a health insurance company to provide health care coverage?
12. Would health care coverage provided by or through the insurance authority only be available to employees and dependents of employees whose employers are required to but do not provide major medical health care coverage? Could individuals who are employed by employers who are not subject to the requirements of subsection (1) or who are unemployed obtain health care coverage for themselves and their dependents through the insurance authority? If so, who is responsible for paying the premiums for such coverage?
13. Would the state be able to use moneys other than general fund dollars to pay for the costs of administering the insurance authority and providing health care coverage, for example cash funds generated from a fee or gifts, grants, and donations to the state? Would the state be precluded from using a dedicated source of funds, like a new tax or fee, for funding the authority and health care coverage costs? Do the proponents intend to prohibit the use of all state funds, or just general fund dollars?
14. With regard to implementing legislation, would the general assembly have the authority to define terms used in the measure? Could the general assembly clarify the scope and applicability of the measure?
15. What is the effective date of the measure? Would the proponents consider specifying an effective date? Do the proponents intend that, as of the effective date of the measure, all requirements of the measure would apply? Would the proponents consider allowing the state and employers a specified amount of time to implement the requirements of the measure? Could the general assembly, in its legislation, delay implementation of the measure?