

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

April 3, 2013

TO: Donna Smith and Nathan Wilkes

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #12, concerning the right to 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.

This initiative was submitted with another initiative, 2013-2014 #11. The comments and questions raised in this memorandum will not include technical comments and questions that were addressed in the memorandum for proposed initiative 2013-2014, #11, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To create a public health insurance program (program) for all Coloradans to provide the same level of necessary medical, mental health, dental, and long-term care services at least as

broad or broader in scope as required under the federal "Patient Protection and Affordable Care Act" (Affordable Care Act);

2. To require premiums to be collected to cover the costs of the program, and to state requirements for how the premiums will be set;
3. To require the state, once the proposed initiative passes, to commence plans to use the state exchange/marketplace set up under the federal Affordable Care Act for converting to the program;
4. To state that Colorado residents have the freedom to select their own health care providers under the program; and
5. To allow state agencies to negotiate pharmaceutical prices and reimbursement rates for providers with direct input from providers.

Technical Comments

The technical comments and questions set forth in the review and comment memorandum on proposed initiative 2013-2014 #11 are applicable to proposed initiative 2011-2012 #12 and, as such, will not be repeated. However, the following new technical comments and questions have arisen in this 2013-2014 #12. 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. To conform to the standard format for amending clauses, the amending clause in the proposed initiative should be changed as follows:

In the constitution of the state of Colorado, **add** section 32 to article II as follows:

2. The program created in the proposed initiative is referred to in the initiative several different ways, including the "public health insurance program," "public health insurance plan," "public/social insurance plan," "public program," "public health coverage," "publicly funded, privately and publicly delivered health care system," "public health plan," "plan," and "program." The proponents should choose one name for the program and use that term consistently throughout the initiative. For consistency, the proponents should either always refer to the "program" or should always refer to the "plan."
3. In the fifth sentence of subsection (3) of the proposed initiative, "their" should be spelled "there."
4. In subsection (4) of the proposed initiative, the first sentence should read, "the same level of necessary," using correct grammar.
5. Slashes are ambiguous.

- a. Instead of using "public/social," use only one of such terms or use the terms "public or social" or "public and social," depending on the proponents' intent.
- b. Instead of using "exchange/marketplace" use only one of such terms or use the terms "exchange or marketplace" or "exchange and marketplace," depending on the proponents' intent.
- c. Instead of using "and/or," use "or." Use the word "**or**" to connect two or more phrases, events, conditions, etc., when only one or more, but not all, need occur.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Article 16 of title 10, Colorado Revised Statutes, governs the private insurance industry. Article 22 of title 10, Colorado Revised Statutes, creates the Colorado Health Benefit Exchange. Is it your intent that this proposed constitutional amendment preempt this existing state law?
3. Is it your intent to preempt existing state laws governing the private health insurance industry and the establishment and implementation of the Colorado Health Benefit Exchange?
4. What entity will collect the premiums required by subsection (3) of the proposed constitutional amendment? How will the premiums be collected?
5. What is meant by "progressive financing model" in subsection (3)?
6. In subsection (4) of the proposed initiative, what is meant by the "same level of" necessary services "at least as broad in scope" as required under the Affordable Care Act?
7. Subsection (4) states that the governor and the state legislature shall designate the appropriate state agencies to promulgate rules to achieve full implementation of public health coverage. What is the procedure for both the governor and the legislature to make these designations?
8. Section 1332 of the Affordable Care Act allows a state to opt out of implementing a state exchange or from participating in a national exchange if certain conditions are met and the state is granted a waiver by the federal government. Would you like to include a section that repeals this proposed constitutional amendment if the necessary waivers are not granted?
9. Subsection (5) requires the state to use the state exchange to make a "seamless" conversion to the publicly funded health care system. How do the proponents propose to make a seamless conversion from a private health insurance market to a public system after the state exchange has been up and running for three years prior to the earliest date that the necessary

waivers may be granted by the federal government?

10. Subsection (5) allows Colorado residents to select their own health care providers. Is it the intent to include all health care providers, including alternative health care providers that may not be licensed or otherwise regulated by the state? What if the providers do not agree to reimbursement rates under the public plan?
11. What is meant by the last sentence of subsection (6) which states "Colorado pledges with the passage of this initiative to advance the promise of this U.S. backed commitment to human rights for all"? Who is making the pledge? Is it meant to advance human rights beyond the provision of health care services?