

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
TDD 303-866-3472



Sharon L. Eubanks, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

### MEMORANDUM

**TO:** David Silverstein and Andrew Graham  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** January 23, 2018  
**SUBJECT:** Proposed initiative measure 2017-2018 #122, concerning Transparency in Billing by Healthcare Providers

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.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #85, was the subject of a memorandum dated December 19, 2017. Proposed initiative 2017-2018 #85 was discussed at a public hearing on December 21, 2017. The substantive and technical comments and questions raised in this memorandum do not include comments and questions on initiative 2017-2018 #85 not addressed in this revised proposal. To the extent applicable, those comments and questions are hereby incorporated.

This initiative is one of a series identified as initiatives 2017-2018 #118 to #122. The comments and questions raised in this memorandum do not include comments and questions addressed in the memoranda for proposed initiatives 2017-2018 #118 to #121, except as necessary to fully understand the issues raised by the revised proposed initiative.

## **Purposes**

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

1. To require health care providers maintaining a physical presence to receive and treat patients, including individual providers in private practice settings and health care facilities such as hospitals and community clinics, to publish, in a public, easy-to-find, and easy-to-access location, their fee schedules or other lists of gross billed charges the providers bill for specific health care services before applying any discounts, rebates, or other charge adjustment mechanisms;
2. To specify that publishing requires, at a minimum, that the provider make the fee schedule available in printed form, upon request, for use while an individual is present at the provider's location, in commonly used downloadable formats on the provider's website, and as specified by the executive director of the Colorado Department of Public Health and Environment;
3. To specify that if the provider does not maintain a website, the provider is required to provide the fee schedule in printed or electronic format upon request of an individual;
4. To require a provider that does not maintain its own physical presence and instead delivers health care services at a health care facility to provide the provider's list of gross billed charges to the facility, and to require the facility to post the provider's charges list as specified by the executive director of the Colorado Department of Public Health and Environment;
5. To specify the minimum information providers must include in the fee schedule and allow the executive director of the Colorado Department of

Public Health and Environment to further specify the information required to be included;

6. To except a provider from the requirement to post its entire fee schedule if the provider's entire fee schedule is based on a percentage of the CMS fee schedule; require a provider to publish any portion of the fee schedule that is not based on the CMS fee schedule; and require a provider that bases a portion of its fee schedule on a percentage of the CMS fee schedule to publish information specified by the executive director of the Colorado Department of Public Health and Environment, which must include, as a minimum, the date of the CMS schedule the provider used, the percentage amount that is the basis of the charges in the provider's fee schedule, and any other information necessary to determine charges;
7. To require a provider to include information about its billing policies and practices with the published fee schedule;
8. To require a provider to publish a list of all health care professionals or professional practice groups that provide health care services and include information about the nature of the relationship between the professional or practice group and the provider, and any other information specified by the executive director of the Colorado Department of Public Health and Environment;
9. To require a provider to update its published fee schedules promptly upon any change in the information and maintain records of all changes to charges listed in its published fee schedule;
10. To prohibit a provider from billing a patient or third-party payer for health care services rendered to the patient if the provider has failed to publish its fee schedule as required by the proposed measure but allow the noncomplying provider to bill the insurance carrier as long as the patient is held harmless for any balance not paid by the insurance carrier;
11. To require a provider to include in every bill sent to a patient an itemized detail of each health care service provided, the charge for the service, and how any payment or adjustment by the patient's health insurer was applied to each line item in the bill;

12. In situations where an individual provides health insurance information to the provider, to require the health care provider to disclose whether the provider participates in the individual's health insurance plan; whether the services the provider will render will be covered as an in-network or out-of-network benefit; and whether the individual will receive a service for an out-of-network provider at an in-network facility;
13. To repeal article 49 of title 25 of the Colorado Revised Statutes, which is the "Transparency in Health Care Prices Act."
14. To prohibit any contract between a health insurer and health care provider issued, amended, or renewed on or after April 30, 2019, from including any provision that restricts the ability of a provider or health insurer to provide patients with the health care service charge information required to be published by the proposal and to specify any such provision is void and unenforceable;
15. To require the executive director of the of the Colorado Department of Public Health and Environment to adopt any rules necessary to implement, administer, and enforce the measure;
16. To define terms used in the proposed initiative; and
17. To specify that the measure takes effect on April 30, 2019.

## **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?

## **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. The term "healthcare" is used throughout the proposed initiative. However, throughout the Colorado Revised Statutes, the term is spelled "health care." Consider changing all instances of "healthcare" to "health care."
2. Sections 1, 4, and 5 of the proposed initiative each add a new part 1 to article 20 of title 6. Because the entire part is being repealed and reenacted in section 2 of the proposed initiative, the language in sections 1, 4, and 5 should be moved to and combined with section 2 under a single amending clause, with the new sections 6-20-100, 6-20-106, and 6-20-107 included under the single amending clause.
3. Citations to sections in the Colorado Revised Statutes should have a space between the section number and the subsection number. For example, the citation in 6-20-102 (10) should be "10-16-102 (34)" instead of "10-16-102(34)."
4. A reference to a subsection of the Colorado Revised Statutes should indicate every element of the subsection referenced as well as the section in which that subsection can be found. For example, the reference in 6-20-102 (12)(f) should, presumably, be "To the extent not covered by subsections (12)(a) through (12)(e) of this section..."
5. The word "section" or "subsection," as appropriate, should precede a citation to the Colorado Revised Statutes. For example, the reference in 6-20-106 in section 5 of the measure should be written "...except for section 6-20-106 ..."
6. The word "shall" means "has a duty." Because the subject before "shall" in 6-20-103 (5) is an object ("The list") and can't have a duty, the word "shall" should be changed to "must."
7. There is no need for a colon in 6-20-103 (5). The language that follows the colon consists of a single element the executive director must include in the list, therefore it can simply follow the words "at a minimum."
8. Because the language that begins section 6-20-105 is an introductory portion leading to other subsections, it must begin with a (1), and subsections (1), (2), and (3) that follow should be relabeled as (a), (b), and (c). Additionally, because the current subsections (1), (2), and (3) are elements of a list that are only one sentence long, they should each end with a semi-colon instead of a period. The end of subsection (2) should end with either an "and" or an "or" after the semi-colon, depending on the meaning the proponents wish to convey.

9. Statutory text should immediately follow each headnote. For example, the text in subsection (1) of section 6-20-106 should be moved to follow "**contacts.**" instead of appearing on the next line.