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Colorado General Assembly

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MEMORANDUM

To: Erin Lee and Michele Austin

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 17, 2025

Subject: Proposed initiative measure 2025-2026 #71, concerning Prohibiting Certain Surgeries on Minors

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Purposes

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

1. To prohibit a health-care professional from knowingly performing, prescribing, administering, or providing any surgery to a minor for the purpose of altering the minor's biological sex characteristics; and
2. To prohibit state or federal money and private insurance from being used to pay for a minor's surgery that alters the minor's biological sex characteristics.

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?
2. What does "other person" mean in section 12-30-125 (b)?
3. Article II, section 11 of the Colorado Constitution prohibits laws that impair the obligations of contracts. The proposed initiative states that insurance coverage may not be used to pay for any prohibited medical interventions described in the proposed initiative. If there is an insurance contract that covers a prohibited medical intervention described in the proposed initiative, would the application of the proposed initiative in that case violate the constitution?

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 hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. Please add a headnote in bold-face type to indicate **Section 1** of the proposed initiative is a legislative declaration and add a subsection (1) before the first phrase of the legislative declaration as follows:

SECTION 1. Legislative declaration. (1) The people of Colorado do hereby find and declare that:

2. Subsections (1) and (2) of the legislative declaration should end in a semi-colon and subsection (3) of the legislative declaration should end with a semi-colon and the word "and."
3. Each section of the Colorado Revised Statutes has a headnote, appearing after the section number and in bold, that briefly describes the content of the section. Section 12-30-125 C.R.S. should have a headnote. For example:

12-30-125. Prohibition on surgery for minors – prohibition on state funding for surgery - short title – definitions.

4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

5. Section 12-30-125 (E), also known as a short title, should appear as the first subsection of section 12-30-125 and use the following standard drafting language:

(1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE “PROTECT CHILDREN FROM IRREVERSIBLE SEX CHANGE SURGERY ACT”.

6. Section 12-30-125 (a) should appear in normal bold-face type, not small capitalization.
7. The following is the standard drafting language used for creating a definitions section and appears after the bold-face type headnote: “As used in this section, unless the context otherwise requires:”
8. The definitions should appear in alphabetical order.
9. Please add a hyphen to the phrase “health care professional” so that it reads “health-care professional.”
10. The headnote of section 12-30-125(b) should appear in normal bold-face type, not small capitalization.
11. Since there is only one prohibition listed in section 12-30-125 (b), paragraph (b)(1) should be combined with the introductory language in subsection (b) so it becomes one sentence, as follows:

(3) **Prohibition on medical interventions on minors.** A health-care professional shall not knowingly perform, prescribe, administer, or provide any surgery to a minor for the purpose of altering biological sex characteristics.
12. The term “Medicaid” should not be capitalized.
13. Standard drafting language used when referring to internal statutory citations is “...subsection (x) of this section.” In section 12-30-125 (3), the reference to “subsections (1) above” should instead read “subsection (3) of this section.”
14. Section 12-30-125 (d) should be renumbered as subsection (5) and the headnote should appear in normal bold-face type, not small capitalization.
15. The reference to “this initiative” in section 12-30-125 (d) should instead reference “this section.”