

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, 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
Email: lcs.ga@state.co.us



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: Edward Ramey and Natasia Poinatte
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 30, 2021

SUBJECT: Proposed initiative measure 2021-2022 #49, Access to Natural Medicine

Section 1-40-105 (1), C.R.S., 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 regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of the Colorado 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 to the **Colorado Revised Statutes** appear to be:

1. To require the department of regulatory agencies (department) to regulate the manufacture, testing, storage, transport, delivery, sale, and purchase of natural medicines;

2. To require the department to adopt rules to establish the qualifications, education, and training requirements for facilitators who wish to provide natural medicine services;
3. To require the department to adopt rules to establish the requirements for the licensure of healing centers and facilitators;
4. To create the natural medicine advisory board within the department to advise the department as to the implementation of the regulated access program;
5. To create the regulated access program fund;
6. To prohibit a county, municipality, or city and county from prohibiting:
 - a. The establishment of authorization of healing centers;
 - b. A licensed health facility or individual from providing natural medicine services; or
 - c. The transportation of natural medicine.
7. To allow a county, municipality, or city and county to enact laws imposing lesser criminal or civil penalties than provided in the proposed initiative;
8. To provide criminal immunity, civil immunity, and protection from action against a professional licensee for the use of natural medicine or the provision of natural medicine services;
9. To allow the personal use of natural medicine; and
10. To retroactively remove and reduce criminal penalties related to the possession, use, and sale of natural medicine.

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. The short title of the proposed new part is the "Natural Medicine Health Act of 2022". Because that short title is used in various conforming amendments, add it to the proposed new part by making it the first section, and then renumber the next sections and update any internal references:

18-18-701. Short title. THE SHORT TITLE OF THIS PART 7 IS THE "NATURAL MEDICINE HEALTH ACT OF 2022".

3. The measure proposes adding a new part to article 18 of title 18. Title 18 is the criminal code. Would you consider relocating your proposed measure to title 12, which regulates professions and occupations?
4. Section 18-18-702 (1) creates a definition for the term "administration session". However, in the paragraph below the definition of "facilitator" and in section 18-18-703 (5) (a)(V) and (5)(a)(VI), the term "administrative session" is used. Consider using the defined term in these instances.
5. In the definition of "healing center" in section 18-18-702 (4) of the proposed initiative:
 - a. The lengthy list may be made clear by changing the commas to semicolons so that it reads "that acquires, possesses, cultivates, manufacturers, delivers, transfers, transports, supplies, sells, dispenses natural medicine and related supplies; provides natural medicine for natural medicine services at locations permitted by the department; or engages in two or more of these activities;".
 - b. Consider adding an "and" or "or" after subsection (4)(b) to clarify whether an entity is required to meet only one or all of the specifications of subsections (4)(a) through (4)(c) in order to be a healing center.
6. In section 18-18-702 (9), the word "which" should be "that".
7. In section 18-18-703 (1) of the proposed initiative, should the list of activities that the department is required to regulate match the list of activity that is described in the definition of healing center?
8. In section 18-18-703 (1) of the proposed initiative, should "persons twenty-one (21) years of age and older" be the defined term of "participant"?
9. Section 18-18-703 (5)(a)(IV) requires a healing center to sign a form. How would a healing center sign a form?
10. Section 18-18-703 (5)(b)(II)(B) includes requirements for education and training in a variety of areas, including "set and setting". What is "set and setting"?
11. Section 18-18-703 (5)(d) includes a list that is difficult to understand. Some of the language refers back to "communities" and other language seems to refer back to "persons". Consider rewording this subsection for clarity.

12. Section 18-18-703 (5)(d)(III) appears to require the department to set prices for natural medicine services, but only for services provided to low income individuals. The initiative does not appear to require these set prices for any other individuals. Is that your intent?
13. The citation in section 18-18-709 (3) is incorrect; the cross-reference should be to 18-18-708 (1)(b), not 18-18-706 (1)(b).
14. In section 18-18-708 of the proposed initiative, subsection (3) includes definitions of "allowable amount" and "personal use". Consider relocating these definitions to the definition section in section 18-18-702 of the proposed initiative.
15. Section 18-18-703 (5)(a)(VII) of the proposed initiative requires the department to promulgate rules to allow a facilitator or a healing center to refuse to provide natural medicine services to a participant. The definition of "natural medicine services" in section 18-18-102 contemplates services provided only by a facilitator. However, in reading the measure, it appears that a healing center or other location may also provide these services. Consider expanding the definition of natural medicine services to include services provided by a healing center or other location.
16. Section 18-18-703 (5)(c)(IX) of the proposed initiative would allow natural medicine services to be provided at locations not owned by a healing center, "AS PERMITTED BY THE DEPARTMENT". Is this language meant to require other locations to obtain a permit or licensure by the department in order to provide these services?
17. Section 18-18-703 (5)(g) of the proposed initiative requires the department to promulgate rules to study and deliver recommendations regarding the regulation of dosage for off-site use of natural medicines. This responsibility does not seem to fit within rulemaking authority. Consider moving this language from this subsection and into the section related to the department's powers and duties. Additionally, consider specifying who in the legislature should receive these recommendations, such as a specific committee of reference.
18. Section 18-18-704 of the proposed initiative creates the natural medicine advisory board. Section 2-3-1203 (1)(a), C.R.S., limits the existence of a newly created advisory board to no more than 10 years before going through the sunset review process by the department. That section further requires each newly created advisory board to include a corresponding repeal date. Consider amending your proposed initiative to include an amendment to section 2-3-

1203 to require the department to review the existence of the advisory board and also amend section 18-18-704 of the proposed initiative to add a repeal date.

19. Section 24-34-104 (4), C.R.S., limits the existence of a newly created function in the department to no more than 10 years before going through the sunset review process. That section further requires the function to include a corresponding repeal date. Consider amending your proposed initiative to include an amendment to section 24-34-104 to require the department to review the existence of part 7 and also add a repeal date to part 7.
20. The items listed in section 18-18-704 (1)(b) of the proposed initiative do not follow the IP. Is it your intent that being a "first responder" or "veteran" would qualify a person to serve on the board?
21. Section 18-18-704 (3)(d) references "plant medicine". Is this different from "natural medicine"? If so, consider defining this term. If not, consider using the defined term.
22. Section 18-18-705 (5) refers to the "office of financial management and budget". It is unclear to what office you are referring. In what agency is this office located?
23. Section 18-18-706 (5) prohibits a locality from adopting ordinances or regulations that are "unreasonable". Who determines whether an ordinance or regulation is "unreasonable"?
24. Section 18-18-705 (2) of the proposed initiative specifies that the regulated access program fund consists of fees collected under this part. However, section 18-18-705 (4) of the proposed initiative requires an advance from the general fund to the regulated access program fund. Would you consider amending section 18-18-705 (2) to allow money transferred from the general fund to go into the regulated access program fund?
25. Section 18-18-707 provides immunity from actions and conduct by a person acting pursuant to a "license or registration issued by the department". The proposed initiative creates a licensure program. Are you intending this immunity to apply to other professions who are registered? Additionally, it could be useful to break out subsection (1) into smaller subsections in order to provide clarity as to exactly what conduct is authorized and who is able to claim the protections provided in this section.
26. Section 18-18-707 (3) refers to the holder of a professional or occupational license or certification. There are also health-care professionals who are

- "registered". If your intent is to protect all health-care professionals, you should add the holder of a registration as well.
27. Section 18-18-707 (5) refers to "a licensed premises". What is a licensed premises? Consider defining this term.
 28. Consider breaking section 18-18-708 (1) of the proposed initiative into subsections in order to make the subsection more reader-friendly and help reduce the likelihood of misinterpretation.
 29. Subsections 18-18-708 (1)(d) through (1)(h) of the proposed initiative do not follow the IP. These subsections should be new subsections.
 30. Sections 11 through 14 of the proposed initiative include statutory language without a reference to where in statute the language belongs. Would you consider specifying where in statute this language should be added?
 31. Section 15 of the proposed initiative specifies that "THE REMOVAL AND REDUCTION OF CRIMINAL PENALTIES BY THIS ACT IS INTENDED TO HAVE A RETROACTIVE EFFECT." Consider relocating this substantive law to part 7 of the proposed initiative and specifying how this retroactive application of the law would work.
 32. There are several terms used throughout the proposed measure that are not defined for purposes of the measure. Consider adding definitions for the following terms for clarity:
 - a. Regulated access program;
 - b. Health facility;
 - c. Health-related services; and
 - d. Licensee.

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. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado Revised Statutes.
2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
3. Paragraphs that follow an introductory portion (IP) that are not complete sentences on their own should end with a semicolon; except that, when a paragraph follows an IP and contains more than one sentence, the paragraph ends with a period. For example:

18-18-701. Legislative declaration. (1) The voters of the state of Colorado find and declare that:

(b) Coloradans are experiencing problematic mental health issues, including suicidality, addiction, depression, and anxiety;

Also, consider adding an "and" or an "or", whichever is appropriate, to the second-to-last provision in every list that follows an IP. The last provision of the list following the IP should end with a period.

Note that it is standard drafting practice to use subsection numbers for each IP that begins a section, except for the definitions section. For example:

18-18-707. Protections. (1) Subject to the limitations in this part 7:

(a) Actions and conduct ...

4. The comma after "APPROACHES" in section 18-18-701 (1) appears to be an error; the proponents should also consider, depending on how the provision should be read, whether the comma is needed after "MEDICINES" in that same paragraph.
5. Should the phrase "SUBSTANCE USE DISORDER" be "SUBSTANCE USE DISORDERS" when used in section 18-18-701 (3) and (10)?
6. The definitions in section 18-18-702 should be reordered alphabetically: "NATURAL MEDICINE" should be subsection (7); "NATURAL MEDICINE SERVICES," subsection (8); "PARTICIPANT," subsection (9); and "PERMITTED ORGANIZATION," subsection (10).

7. In section 18-18-702, the sentence that begins "A FACILITATOR MAY BE PAID COMPENSATION ..." does not appear to be connected to any other provision. Consider relocating this substantive law to a more appropriate section.

Similarly, in section 18-18-702 (4)(c), if the sentence "A HEALING CENTER MAY RECEIVE PAYMENT FOR SERVICES PROVIDED" does not follow the IP, consider relocating this substantive law as well.

8. Section 18-18-702 (9) refers to the "Colorado uniform controlled substances act". The proper way to cite this act is the "Uniform Controlled Substances Act of 2013", article 18 of title 18".
9. Is there a word missing in the IP of the definition of "NATURAL MEDICINE SERVICES" in section 18-18-702 (10)? Should there be an "AT" after the word "MINIMUM"?
10. 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:

Note that subsection (1) is an introductory portion (IP) and must end in a colon, and the paragraphs below it are read as part of the IP. In section 18-18-704, subsection (1) does not end in a semicolon and paragraph (a) appears to be its own discrete provision. The section should be reorganized to have the following subsections, paragraphs, etc.:

- (1).
- (2).
- (3):
 - (a); (b); ... (k); and (l).
- (4).

And so on.

11. Consider simplifying phrases like "INCLUDING, BUT NOT NECESSARILY LIMITED TO," to be consistent with the similar, and preferred, phrase that the proponents also use in the proposed initiative, "INCLUDING BUT NOT LIMITED TO". Related to this issue, should section 18-18-704 (3) read "... THE BOARD SHALL MAKE

RECOMMENDATIONS TO THE DEPARTMENT RELATED TO, BUT NOT LIMITED TO, ALL OF THE FOLLOWING AREAS:"?

12. The roman numerals for subparagraphs in section 18-18-703 (5)(a), (5)(b), (5)(c), (5)(d), and (5)(e) and throughout section 18-18-704 (1) need to be numbered correctly.
13. In section 18-18-707 (2), consider rephrasing, for readability, the double-negative in the phrase "NO CONTRACT IS UNENFORCEABLE" to "A CONTRACT IS NOT UNENFORCEABLE ...".
14. The word "PERSONS" in section 18-18-708 (1) should be "PERSON".
15. In section 18-18-708 of the proposed initiative, the introductory portion reads, in part, "SUBJECT TO THE LIMITATIONS IN THIS PART ... THE FOLLOWING ACTS ARE NOT AN OFFENSE ..."; while paragraphs (a) to (c) appear to follow the IP, paragraphs (d) to (g) appear to be discrete provisions. Paragraphs (d) to (g) should be renumbered as subsections (2) to (5), and the subsections after should be renumbered.
16. A proviso contains the words "provided that", "provided, however, that", or "provided further, that" before a sentence or clause, usually to state an exception to the preceding sentence or clause. The best practice is to avoid using provisos and instead to use a simple exception, with words such as "but," "except that," "if," or "so long as." For example, the phrase in section 18-18-708 (1)(b) that reads "PROVIDED THAT THE PLANTS AND FUNGI" could be rephrased to read "IF THE PLANTS AND FUNGI ...".
17. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, section 18-18-709 (1) of the proposed initiative reads: " ... BY § 18-18-706 OF THIS PART". The cross-reference should instead read "BY SECTION 18-18-706 ...". Note, also, that there is no need to refer to "of this part" because "706" indicates that the provisions placement is in part 7.
18. Subsection 18-18-709 (1) includes a series that is difficult to follow. Consider rewording this subsection to make it clear exactly who is subject to a drug petty offense and what actions are prohibited.
19. In section 18-18-709 (2), the reference to "SUBPARAGRAPH (1)" is worded incorrectly; should it be "IN THIS SUBSECTION (1)"? Or should it reference a different subsection or section?

20. When setting off "or" phrases by commas, make sure to include the last comma. For example, section 18-18-709 (4) reads:

(4) A PERSON WHO POSSESSES NOT MORE THAN TWICE THE ALLOWABLE AMOUNT OF NATURAL MEDICINE, OR DELIVERS WITHOUT CONSIDERATION NOT MORE THAN TWICE THE ALLOWABLE AMOUNT OF NATURAL MEDICINE TO A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE OR OLDER IS SUBJECT TO ...

The provision should instead read:

(4) A PERSON WHO POSSESSES NOT MORE THAN TWICE THE ALLOWABLE AMOUNT OF NATURAL MEDICINE, OR DELIVERS WITHOUT CONSIDERATION NOT MORE THAN TWICE THE ALLOWABLE AMOUNT OF NATURAL MEDICINE, TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IS SUBJECT TO ...

Consider addressing this issue in section 18-18-708 (1)(b) and (1)(f).

21. Section 18-18-709 (5) refers to a person not being subject to increased punishment for "their" conduct permitted by this part. The word "their" as used here does not agree with the subject. Use "person" instead.
22. Section 18-18-710 states that "This act may not be construed:". If your intent is to create a duty not to construe the act in one of the ways that is prohibited, "may" should be "shall".
23. Section 18-18-710 (6) allows employers to restrict the use of natural medicines by employees. Would you like to limit this to the use of natural medicines by employees *while at work*?
24. Because the effective date of the proposed initiative is not being added to statute, it does not need to be in SMALL CAPS.
25. Instead of referring to "THIS ACT" in the new part 7 created in the proposed initiative, it is standard practice to refer to the statutory location of the law. In this case, you should refer to "this part 7".
26. Consider using the words "THIS PART 7" instead of the less specific "this part" or "HEREIN".
27. Section 24-4-102 (15), C.R.S., of the State Administrative Procedure Act provides that "rule" includes "regulation." Therefore, it is unnecessary to authorize an agency to promulgate "rules and regulations". Throughout the measure, the reference to "and regulations" should be eliminated.

28. When referring to a person's age, the phrase "PERSON WHO IS UNDER TWENTY-ONE (21) YEARS OF AGE" is used throughout the proposed initiative. Standard drafting practice does not include using a numeric parenthetical when referring to a number. In addition, at certain times throughout the proposed initiative, age is expressed as "UNDER THE AGE OF TWENTY-ONE YEARS"; consider rephrasing these phrases throughout the proposed initiative as "UNDER TWENTY-ONE YEARS OF AGE".
29. The amending clauses of the conforming amendments in sections 2 to 10 of the proposed initiative should be structured as follows:

SECTION 2. In Colorado Revised Statutes, 18-18-403.5, **amend** (1) as follows:

Also, each section in the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to sections 2 to 10 of the proposed initiative and be in boldface type.

18-18-403.5. Unlawful possession of a controlled substance. (1) Except as authorized by part 1 or 3 of article 280 of title 12, part 2 of article 80 of title 27, section 18-1-711, section 18-18-428(1)(b), ~~or~~ part 2 or 3 of this article 18, OR THE "NATURAL MEDICINE AND HEALTH ACT OF 2022", PART 7 OF ARTICLE 18 OF TITLE 18.

In the above example, the "Natural Medicine and Health Act of 2022" is in quotation marks, and a cross-reference, "part 7 of article 18 of title 18", has been provided to ensure that readers know where to find the language in the Colorado Revised Statutes. Consider adding these cross-references to each reference to the "Natural Medicine and Health Act of 2022" in the conforming amendments. And note that the short title should always be in quotation marks when in statute (see section 18-18-701 (11)).