

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Garry Van Genderen and Dale Kim
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 4, 2022
SUBJECT: Proposed initiative measure 2021-2022 #78, concerning Minimum Reimbursement Fee for Covered Dental Procedures Performed by Medicaid 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.

Purposes

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be:

1. To create a standard process to set a minimum reimbursement fee for covered Medicaid dental procedures performed by Medicaid providers in Colorado at a

rate that is equal to or greater than the lowest tenth percentile of fees according to the most recent American Dental Association "Survey of Dental Fees."

Substantive Comments and Questions

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

1. Under article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or state law (i.e. the Colorado Revised Statutes).
 - a. Does the proposed initiative amend the Colorado constitution or the Colorado Revised Statutes?
 - b. Additionally, in accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? (Please indicate through an amending clause where the proposed initiative will be placed.)
2. 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?
3. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
4. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute.
 - a. The text of the proposed initiative appears to be a ballot title/submission clause, rather than actual language that would be included in the Colorado constitution or the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.

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

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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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g. SECTION 1., SECTION 2.). For example:

SECTION 1. In Colorado Revised Statutes, **add** article XXX as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:"
3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the new section of the proposed initiative and be in bold-face type.
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

(3) Subsection

5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears

as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.