

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 17, 2022
SUBJECT: Proposed initiative measure 2021-2022 #82, 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.

An earlier version of this proposed initiative, proposed initiative 2021-2022 #78, was the subject of a memorandum dated March 4, 2022. Proposed initiative 2021-2022 #78 was discussed at a public meeting on March 9, 2022. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are incorporated by reference in this memorandum.

Purposes

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

1. To create a minimum reimbursement fee for Medicaid dental procedures performed by Medicaid providers in Colorado at a rate that is equal to 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. What will be the effective date of the proposed initiative?
2. The "Survey of Dental Fees" by the American Dental Association seems to be accessible only to those who have a username and password. Is this something the Department of Health Care Policy and Financing (HCPF) has access to? If not, how will HCPF know what the lowest tenth percentile of fees is?
3. The proposed initiative states "any reimbursement fees that fail this test." The proposed initiative does not create a test that can be failed but rather a standard to be set. Would the proponents consider rephrasing for clarity?

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. 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.

2. The enacting clause should be placed at the beginning of the initiative.
3. The amending clause should specify what is being added to statute. For instance: "In Colorado Revised Statutes, 25.5-4-401.5, **add** (1)(d) as follows:"