

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Veronica Perez and Kevin Thomas Matthews  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 1, 2022  
**SUBJECT:** Proposed initiative measure 2021-2022 #58, concerning Access to Natural Medicine

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 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.

This initiative was submitted with proposed initiative 2021-2022 #59. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memoranda for proposed initiative 2021-2022 #59, except as necessary to fully understand the issues raised by proposed initiative 2021-2022 #59. Comments and questions addressed in that other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

## 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, cultivation, testing, storage, transfer, 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 natural medicine access program;
5. To create the regulated natural medicine access program fund;
6. To prohibit a county, municipality, or city and county from prohibiting:
  - a. The establishment or operation of healing centers;
  - b. A licensed health-care 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 persons to seal certain records of convictions that occurred prior to this proposed initiative; and
10. To allow the personal use 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. "Natural medicine" is defined in section 12-170-103 (8) as "dimethyltryptamine; ibogaine; mescaline (excluding lophophora williamsii ("peyote")); psilocybin; or psilocyn." However, section 12-170-104 (4)(a) states that the definition of "natural medicine" includes only psilocybin and psilocyn, but that the definition may change as of June 1, 2026, depending on whether the department of regulatory agencies (department) has expanded the definition. Consider moving the language that relates to the definition of "natural medicine" to 12-170-103 (8).
3. In section 12-170-104 (1), should the list of activities that the department is required to regulate match the list of activities that is described in the definition of healing center in section 12-170-103 (4)?
4. Section 12-170-104 (6)(d)(II) appears to require the department to set prices for natural medicine services, but only for services provided to low-income individuals. The proposed initiative does not appear to require these set prices for any other individuals. Is that your intent?
5. Section 12-170-104 (6)(g) requires the department to promulgate rules to study and deliver recommendations regarding the regulation of dosage for off-site use of natural medicines; consider specifying who in the legislature should receive these recommendations, such as a specific committee of reference.

Similarly, Section 12-170-105 (6) requires the natural medicine advisory board to "publish an annual report describing its activities, including the recommendations and advice provided to the department and the legislature." Where should the report be published? Or to whom should the report be submitted?

6. Section 12-170-108 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 that are licensed or registered or only the licenses and registrations created by the department as authorized in the

proposed initiative? In that same section, 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 that section.

7. Section 12-170-108 (4) references "Health First Colorado." Consider using a statutory citation to Colorado's Medicaid program, the "'Colorado Medical Assistance Act,' articles 4 to 6 of title 25.5."
8. The second sentence of section 12-170-115 provides: "The removal and reduction of criminal penalties by this act is intended to have retroactive effect." Consider specifying how this retroactive application of the law would work.
9. In section 12-170-109, subsection (2) includes the definition of "personal use." Because this definition applies to all of article 170, consider relocating it to section 12-170-103, the definitions section.
10. There are several terms used throughout the proposed initiative that are not defined for purposes of the initiative. Consider adding definitions for the following terms for clarity:
  - a. Regulated access program;
  - b. Health-related services; and
  - c. 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 appears that "psilocin" is the common way to spell "psilocyn." Should the references to "psilocyn" be updated to read "psilocin"?
2. Before the amending clause, each section, part, etc. that is being amended or added is preceded by a section number (e.g., SECTION 1., SECTION 2.). A period, rather than a colon, should follow that number. For example:

**SECTION 1.** In Colorado Revised Statutes, **add** article 170 to title 12 as follows:

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

**12-170-102. Legislative declaration.** (1) The voters of the state of Colorado find and declare that:

(a) Coloradans current approach to mental health has failed ... ;

**12-170-103. Definitions.** As used in this article 170, unless the context otherwise requires:

(1) "Administration session" ...

...

**12-170-108. Protections.** (1) Subject to the limitations of ...:

(a) Actions ... pursuant to a license ... shall not be ... ;

...

**12-170-111. Limitations.** (1) This article 170 shall not be construed:

(a) To permit ... ;

4. Paragraphs that follow an IP should end with a semicolon. For example:

**12-170-104. Regulated natural medicine access program.** (6) The rules adopted ... shall include ... rules to:

(a) Establish the requirements ... that include:

...

(X) The standards for advertising services;

(XI) The standards set forth in section 12-170-102.

In the above example in 12-170-104, consider adding an "and" or an "or," whichever is appropriate, at the end of subsection (6)(a)(X) and to the second-to-last provision in every list that follows an IP

5. In section 12-170-102 (10), the lettered paragraphs (a), (b), and (c) should be formatted as separate paragraphs following the introductory portion in subsection (10).

(10) The purpose of ... is to establish ... by:

(a) Adopting a public health ... ;

6. In section 12-170-103 (4)(a), there appears to be a missing word between the words "sells" and "dispenses." In section 12-170-109 (1)(a), there appears to be a missing word between the words "obtaining" and "ingesting."

7. Section 12-170-103 (1) creates a definition for the term "administration session." However, in section 12-170-104 (6)(b)(II)(G), the term "administrative session" is used. Consider using the defined term in this instance.
8. In section 12-170-103 (11), "section 104 of this article" should be changed to "section 12-170-104," and in section 12-170-104 (6)(a)(XI), "section 102 of this article" should be changed to "section 12-170-102."

In section 12-170-105, subsection (3)(f) refers to "section 12-170-104 (4)(b) of this article." However, the section number contains the title (12), article (170), and part (1) numbers, so there is no need to include "of this article," and the cross-reference can simply read "section 12-170-104 (4)(b)."

9. It is standard drafting practice, when referencing subsections or smaller provisions within a section, to specify where those sections are located within the larger structure of the section. In section 12-170-104, subsection (4)(c) ends "under subsection (b)"; to ensure that the reader knows exactly where to look for the information, instead use "under subsection (4)(b) of this section."
10. In section 12-170-104 (6)(d)(VI), "this subdivision" should be "this subsection (6)" or "this subsection (6)(d)" or "this subsection (6)(d)(VI)," depending on which reference is appropriate.
11. The amending clause in section 6 of the proposed initiative should be drafted as follows:

In Colorado Revised Statutes, 18-18-411, **add** (5) as follows:

The amending clauses in sections 7 through 10 of the proposed initiative should be updated similarly by moving the section number to precede the **bold** instruction and then deleting the word "subsection".

12. In section 12-170-105 (1), paragraphs (a) and (b) are formatted as if subsection (1) is an IP; however, with a true introductory portion, the paragraphs that follow are incomplete sentences and must be read in conjunction with the introductory portion to form a complete sentence. In this case, paragraphs (a) and (b) are complete, independent thoughts; therefore, paragraphs (a) and (b) should be renumbered as subsections (2) and (3), and subparagraphs (I) and (II) following paragraph (b) should be renumbered as paragraphs (a) and (b).

**12-170-105. Natural Medicine Advisory Board** (1) THE NATURAL MEDICINE ADVISORY BOARD SHALL BE ESTABLISHED . . . .

(2) THE BOARD SHALL CONSIST OF FIFTEEN MEMBERS . . . .

(3) MEMBERS OF THE INITIAL BOARD MUST BE APPOINTED BY JANUARY 31, 2023. IN MAKING THE APPOINTMENTS, THE GOVERNOR SHALL APPOINT:

(a) AT LEAST SEVEN MEMBERS ...

13. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "must" does not mean that a person has a duty.
14. It is standard drafting practice to avoid vague words such as "herein", "thereunder", and "thereof." Instead, more specific words should be used such as "in this section" or "under this article 170."
15. Section 2-4-102 in the rules of statutory construction states: "The singular includes the plural, and the plural includes the singular." Consequently, it is not necessary to state "person or persons" in section 12-170-109 (1)(a). The singular "person" is sufficient.
16. In section 18-18-410, which is amended in section 5 of the proposed initiative, the word "ANY" is shown in all caps; however "any" is part of the current law and should be shown in lower case type.
17. In section 18-18-430.5, which is amended in section 8 of the proposed initiative:
  - a. The headnote reads "**Drug paraphernalia - exception.**" In current law, the headnote reads "**Drug paraphernalia - exemption.**" Was it your intention to change the last word in the headnote?
  - b. In subsection (1), the word "if" is missing from current law following the internal reference "18-18-430."
  - c. In subsection (1)(c), the federal cite should be "21 U.S.C. 863 **sec.** (f)."