



County: \_\_\_\_\_

Number: \_\_\_\_\_

## ***INITIATIVE PETITION***

Amendment to the Constitution

Proposed by Initiative Petition

To be Submitted Directly to the Electors

## ***AMENDMENT***

### ***TITLE***

Kidney Dialysis Patient Protection Amendment

### ***SUMMARY***

This amendment would add section 1 to a new Article XIX of the Ohio Constitution to require certain minimum patient care standards in dialysis clinics and to require rebates of excessive charges for dialysis treatment.

More specifically, the amendment would, among other things:

- Declare that the People of the State of Ohio find that it is vital to ensure that individuals suffering from end-stage renal disease have access to affordable high quality kidney dialysis treatment, and that the purpose of this amendment is to ensure that kidney dialysis clinics provide quality and affordable patient care to these individuals;
- Require the State to conduct annual inspections of kidney dialysis clinics. Set forth criteria for inspections, including but not limited to adequate hygiene, sanitation and infection control policies and procedures, provision of adequate quality of care to dialysis patients, and compliance with applicable law;
- Require that a dialysis clinic or dialysis clinic operating entity rebate payers the amount that dialysis treatment charges exceed the “reasonable charges for dialysis treatments,” defined as 115 percent of certain defined costs;
- Specify the costs included within the calculation of reasonable charges for dialysis treatments;
- Establish timelines and other requirements for issuing rebates to payers of “unfair excess charged amount”;
- Require the Ohio Department of Health or its successor to provide by regulation for the excusal of payment of rebates under a certain amount and to require calculation of interest due with rebates;
- Authorize dialysis clinics and dialysis clinic operating entities to petition the Ohio Department of Health or its successor to calculate the reasonable charges for dialysis treatments using a percentage higher than 115 percent if necessary to avoid a due process violation or a taking of private property without just compensation;
- Require dialysis clinics and dialysis clinic operating entities to maintain and report to the Ohio Department of Health or its successor information regarding their compliance with the constitutional amendment, laws and regulations issued under the amendment, and other laws governing dialysis clinics;
- Provide that reports submitted by dialysis clinics and dialysis clinic operating entities to the Ohio Department of Health or its successor are public information except to the extent necessary to protect patient confidentiality;



- Require that all costs associated with implementing the constitutional amendment and laws and regulations issued pursuant to the amendment be paid for through assessment and collection of licensure fees on dialysis clinics;
- Authorize the imposition of penalties and fines on dialysis clinics and dialysis clinic operating entities for violation of the constitutional amendment, laws and regulations issued under the amendment, and other laws governing dialysis clinics; and
- Supersede any conflicting state and local laws, charters, and regulations or other provisions of the Constitution.

The Amendment contains certain declarations and findings that are relevant to the Amendment, contains a severability clause, and defines “dialysis clinic,” “dialysis clinic operating entity,” “dialysis station,” “direct patient care service costs,” “health care quality improvement costs,” “payer,” “reasonable charges for dialysis treatments,” “treatment,” “treatment revenue,” and “unfair excess charged amount.”

### ***CERTIFICATION OF THE ATTORNEY GENERAL***

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General’s Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed law.

MIKE DEWINE  
Ohio Attorney General  
February 9, 2018

### ***COMMITTEE TO REPRESENT THE PETITIONERS***

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

Anthony Caldwell	5112 Maple Valley Drive	Columbus, OH 43228
Mary Jo Ivan	7414 Madison Walnut Road	Ashville, OH 43103
Samara Knight	4633 S Lyn Circle	South Euclid, OH 44121



**NOTICE**

**Whoever knowingly signs this petition more than once; except as provided in section 3501.382 of the Revised Code, signs a name other than one's own on this petition; or signs this petition when not a qualified voter, is liable to prosecution.**

**MUST USE ADDRESS ON FILE WITH BOARD OF ELECTIONS  
(Sign with ink. Your name, residence, and date of signing must be given)**

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## ***FULL TEXT OF PROPOSED AMENDMENT***

Be it Resolved by the People of the State of Ohio that the Constitution of the State of Ohio is hereby amended to add new Section 1 of a new Article XIX to read as follows:

### **Article XIX. Kidney Dialysis Patient Protection**

#### **Section 1. Kidney Dialysis Patient Protection**

##### **(A) Findings, Declarations, and Purpose.**

The People of the State of Ohio find and declare that individuals suffering from end-stage renal disease are an especially vulnerable group of patients because they require frequent and chronic kidney dialysis. It is a vital state interest that these individuals have access to affordable high quality kidney dialysis treatment, because without such treatment, toxins will build up in their bodies, leading to death. Dialysis involves the cleaning of blood to remove waste and excess water, usually through a machine outside the patient's body, and it is therefore critical that the treatment be provided in a clean and safe manner. The purpose of this Section is to ensure that kidney dialysis clinics provide safe, quality, and affordable patient care to people suffering from end-stage renal disease.

##### **(B) Enhancement of Patient Safety and Quality of Patient Care.**

The state Department of Health or its successor shall inspect each dialysis clinic at least once per year, and shall conduct such inspections as often as necessary to ensure the existence of and compliance with adequate hygiene, sanitation, and infection control policies and procedures; compliance with this Section and statutes and regulations issued hereunder and other federal, state, and local laws governing dialysis clinics; and the adequacy of the quality of care being provided. Inspections shall include a review of each dialysis clinic's procedures for handling and disposal of biohazardous and potentially infectious waste; cleaning and maintenance of equipment; cleaning and disinfection of surfaces in patient-care areas; and adherence to patient care plans.

##### **(C) Ensuring Reasonable Limits on Charges for Patient Care by Dialysis Clinics.**

A dialysis clinic or dialysis clinic operating entity shall annually issue rebates to payers based on care provided and amounts charged and collected in a fiscal year, as follows:

- (1) Subject to Division (C)(5), the dialysis clinic operating entity shall calculate the "unfair excess charged amount," which shall be the amount, if any, by which treatment revenue from treatments provided by all of the dialysis clinic operating entity's dialysis clinics in a fiscal year exceeds the "reasonable charges for dialysis treatments," which shall be 115 percent of the sum of all direct patient care services costs and all health care quality improvement costs incurred by a dialysis clinic operating entity and all of its dialysis clinics in that same fiscal year.
- (2) The dialysis clinic or dialysis clinic operating entity shall issue rebates to payers (other than federal, state, or local government payers such as Medicare and Medicaid) in amounts that total the unfair excess charged amount. The rebates shall be issued to payers on a pro rata basis based on the amounts payers have paid or are reasonably expected to pay for treatments provided in the fiscal year, and shall be issued with interest thereon at an annual rate set by regulation promulgated pursuant to Division (F)(3).
- (3) For purposes of this Section, "direct patient care services costs" shall include only those costs directly associated with operating a dialysis clinic in Ohio and providing care to patients in Ohio; and "health care quality improvement costs" shall include only those costs other than direct patient care services costs that are actually spent on services offered at a dialysis clinic to dialysis patients and are spent on activities that are designed to improve health quality and to increase the likelihood of desired health outcomes in ways that are capable of being objectively measured and of producing verifiable results and achievements. The



state Department of Health or its successor may by regulation specify costs included within direct patient care services costs and health care quality improvement costs for purposes of this Section.

- (4) Dialysis clinics and dialysis clinic operating entities shall issue rebates required under this Division (C) no later than 210 days after the end of the relevant fiscal year. The state Department of Health or its successor may by regulation provide for a deadline shorter than 210 days.
- (5) The state Department of Health or its successor shall issue regulations permitting a dialysis clinic or dialysis clinic operating entity to petition the department for permission to calculate the reasonable charges for dialysis treatments using a percentage higher than 115 percent upon proof that the proposed replacement number is the lowest whole number necessary to prevent this Section from violating due process or effecting a taking of private property requiring just compensation under this Constitution or the Constitution of the United States with respect to the petitioner for the fiscal year in question; and the department shall be authorized to grant such a petition upon such proof.

(D) Required Recordkeeping and Reporting of Information.

- (1) Subject to regulations promulgated pursuant to Division (F), a dialysis clinic operating entity and its dialysis clinics shall be required to maintain, and either the dialysis clinic operating entity or its dialysis clinics shall submit to the state Department of Health or its successor, information regarding (a) amounts charged for dialysis treatment and rebates issued pursuant to Division (C) and laws and regulations issued thereunder; and (b) compliance with other federal, state, and local laws governing dialysis clinics.
- (2) Information required to be submitted pursuant to Division (D)(1) shall be made public except to the extent necessary to protect patient confidentiality.

(E) No Cost to Taxpayers.

Licensure fees on dialysis clinics shall be sufficient to cover all costs to the State associated with implementing and enforcing this Section and laws and regulations issued pursuant to this Section. The state Department of Health or its successor shall provide by regulation for the calculation, assessment, and collection of licensure fees on dialysis clinics.

(F) Implementing Law and Regulations.

The state Department of Health or its successor shall provide by regulation for the following:

- (1) The content, form, and deadline for submission of reports that dialysis clinics and dialysis clinic operating entities must submit to the state Department of Health or its successor under Division (D).
- (2) Imposition of penalties and fines on dialysis clinics and dialysis clinic operating entities for noncompliance with this Section, laws and regulations issued under this Section, and other laws and regulations governing dialysis treatment, including the basis and amounts of such penalties or fines.
- (3) The period and rate of interest applicable to rebates issued by a dialysis clinic or dialysis clinic operating entity required by Division (C), provided that for fiscal years starting on or after January 1, 2020, the rate of interest shall not be less than three percent per annum.
- (4) The excusal of the issuance of rebates required by Division (C) if rebates are below a specified amount, provided that such amount shall not exceed twenty dollars; and whether the dialysis clinic or dialysis clinic operating entity shall provide to other payers in accordance with Division (C)(2) the total amount of rebates excused from issuance under this Division (F)(4).

(G) Definitions.



For purposes of this Section:

- (1) “Dialysis clinic” means a facility that provides chronic maintenance dialysis to end-stage renal disease patients on an outpatient basis, including the provision of dialysis services in the patient’s place of residence, but does not include a facility that is associated with a hospital and that is reviewed, accredited, or certified as part of the hospital’s accreditation or certification.
- (2) “Dialysis clinic operating entity” means a person, firm, association, partnership, corporation, or other entity that owns or operates a dialysis clinic for which a license has been issued, without respect to whether the person or entity itself directly holds that license.
- (3) “Dialysis station” means the equipment used to provide chronic maintenance dialysis for a single patient at a given time, including equipment used for self-dialysis and isolation stations.
- (4) “Payer” means the person or persons who paid or are financially responsible for payments for a treatment provided to a particular patient, and may include the patient or other individuals, primary insurers, secondary insurers, and other entities, including Medicare and any other federal, state, county, city, or other local government payer.
- (5) “Treatment” means each instance when the dialysis clinic provides services to a patient.
- (6) “Treatment revenue” for a particular fiscal year means all amounts actually received and estimated realizable revenue for treatments provided in that fiscal year. Estimated realizable revenue shall be calculated in accordance with generally accepted accounting principles, and shall be a reasonable estimate based on (a) contractual terms for patients covered under commercial healthcare plans with which the governing entity or clinics have formal agreements; (b) revenue from Medicare or Medicaid based on rates set by statute or regulation, and estimates of amounts ultimately collectible from government payers, commercial healthcare plan secondary coverage, patients, and other payers; and (c) historical collection experience.

(H) Liberal Construction.

This Section shall be liberally construed to effectuate its purpose.

(I) Conflicting Laws.

This Section shall supersede any conflicting state and local laws, charters, and regulations or other provisions of this Constitution.

(J) Any provision of this Section that is not contrary to the provisions of a separate initiative that receives a higher total vote on the same statewide ballot is valid.

(K) It is the intent of the People that the provisions of this Section are severable and that if any provision of this Section or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision or application of this Section that can be given effect without the invalid provision or application.



**STATEMENT OF CIRCULATOR**

I, \_\_\_\_\_, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of \_\_\_\_\_ electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

\_\_\_\_\_  
(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Address of circulator's permanent residence in this state)  
Number and Street, Road or Rural Route

\_\_\_\_\_  
City, Village or Township

\_\_\_\_\_  
State ZIP Code

**WHOEVER COMMITS ELECTION FALSIFICATION IS  
GUILTY OF A FELONY OF THE FIFTH DEGREE.**