

Proposition 23

Regulation of Kidney Dialysis Clinics

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Purpose

Proposition 23 would establish new regulations for chronic dialysis clinics in California. The measure would require clinics to have a doctor present during treatment hours, to report data regarding dialysis-related infections to the California Department of Public Health (CDPH), and to obtain consent from the CDPH before closing clinics.

Background

Dialysis is a treatment for kidney failure. Each month, about 80,000 California residents receive dialysis from approximately 600 licensed chronic dialysis clinics (CDCs) located throughout the state.¹ Patients usually require treatments three times per week and each treatment lasts about four hours. The patient's own doctor oversees treatment and federal rules require the doctor to visit the patient during treatment at least once a month.²

Two for-profit companies, DaVita, Inc. and Fresenius Medical Care, own or operate nearly three-quarters of the licensed CDCs in California.³

The CDPH licenses CDCs to operate in California and certifies CDCs on behalf of the federal government to allow them to receive payment from Medicare and Medi-Cal. Medicare pays for the majority of dialysis treatment in California. Medi-Cal and group and individual insurers also pay for dialysis treatments.

California relies primarily on federal regulations as the basis for its licensing program.⁴ The federal regulations require each CDC to have a board-certified physician as its medical director, with responsibilities equal to one-quarter of a full-time position, and to report infection-related information to the National Healthcare Safety Network at the Center for Disease Control.

For years, dialysis companies have been engaged in a struggle with the United Health Care Workers Union (UHW), which has tried, without success, to unionize clinics. Two years ago, the UHW proposed an initiative that would have limited profits of dialysis companies. The

¹ Legislative Analyst's Office, "Proposition 23: Ballot Analysis," n.d., <https://lao.ca.gov/BallotAnalysis/Proposition?number=23&year=2020>

² Ibid.

³ Ibid.

⁴ Ibid.

companies spent more than \$111 million to oppose the measure, and voters rejected it by a 60-40 percent margin. The union has returned this year with a new measure, Proposition 23.⁵

Proposal

Prop 23 tasks the CDPH to adopt new regulations for CDCs. The regulations would:

- Require a licensed physician on-site during all treatment hours. CDCs can apply for a one-year exemption to use a nurse practitioner or physicians' assistant if there is a valid shortage of doctors in the area.
- Require CDCs to report infection-related data to the CDPH.
- Impose penalties if CDCs fail to report data regarding dialysis-related infections.
- Require CDCs to receive consent from the CDPH before closing clinics or reducing services.
- Prohibit CDCs from turning away patients based on who pays for patient treatment.

Fiscal Impact

This measure would increase costs for CDCs across California and could lead to higher rates charged for dialysis treatment, decreasing profits, and closure of clinics. The California Legislative Analyst estimates that the implementation of Prop 23 would lead to increased costs in the low tens of millions of dollars per year for state and local governments. Medi-Cal costs could increase due to higher costs for dialysis and due to more patients requiring hospital treatment (as CDCs may close down). In addition, the CDPH would face increased administrative costs due to its new regulatory responsibilities estimated in the low millions of dollars annually. These costs would represent less than 1 percent of California's General Fund expenditures.⁶

Supporters

Prop 23's supporters include:

- SEIU United Health Care Workers West
- California Labor Federation
- California Democratic Party

As of September 19, 2020, supporters raised approximately \$6.2 million in total contributions, nearly all of which came from the Health Care Workers Union.⁷

Arguments of Supporters

Supporters say Prop 23 would:

- Improve staffing by requiring a doctor in the clinics during treatment.

⁵ Precious J. Green, "California Proposition 23: Dialysis Clinics, Round 2," KALW Morning Edition, August 4, 2020. <https://www.kalw.org/post/california-proposition-23-dialysis-clinics-round-2#stream/0>.

⁶ Legislative Analyst's Office, "Proposition 23."

⁷ Ballotpedia, "California Proposition 23 Dialysis Clinic Requirements Initiative (2020)," [https://ballotpedia.org/California_Proposition_23_Dialysis_Clinic_Requirements_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_23_Dialysis_Clinic_Requirements_Initiative_(2020)).

- Combat poor hygiene in CDCs by requiring infection reporting.
- Prevent clinics from closing and leaving patients stranded.
- Ensure that all dialysis patients receive treatment without discrimination based on who is paying for the treatment.⁸

Opponents

Opponents include:

- DaVita Inc.
- Fresenius Medical Care
- U.S. Renal Care, Inc.
- California Medical Association
- Chronic Disease Coalition
- Minority Health Institute
- California Senior Advocates League
- AMVETS Department of California
- American Legion Department of California
- California NAACP State Conference
- Women Voters Alliance

As of September 19, 2020, opponents raised approximately \$93 million in total contributions, with DaVita Inc. (\$59.8 million) and Fresenius Medical Care (\$26 million) contributing the lion's share.⁹

Arguments of Opponents

Opponents say Prop 23 would:

- Add unnecessary rules to an industry that is already highly regulated.
- Increase healthcare costs.
- Lead to a shortage of doctors, who would be taken away from caring for other patients.
- Force community dialysis clinics to close or reduce services.
- Allow special interests to put dialysis patients' lives at risk.¹⁰

Conclusion

A **YES** vote on Prop 23 would require chronic dialysis clinics to have a doctor on-site during all treatments, report data regarding infections to the CDPH, and prohibit discrimination based on payment for treatment.

A **NO** vote on Prop 23 would mean that these proposed regulations would not go into effect.

⁸ California Secretary of State, "Official Voter Information Guide, November 3, 2020 General Election: Proposition 23." <https://voterguide.sos.ca.gov/>

⁹ Ballotpedia, "Proposition 23."

¹⁰ California Secretary of State, "Official Voter Information Guide."