

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 86 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 health and professions and occupations.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 16-18-2-84 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 84. "Council" refers to
- 8 the following:
- 9 (1) For purposes of IC 16-21, the hospital council.
- 10 (2) For purposes of IC 16-25 and IC 16-27, the home health care
- 11 services and hospice services council.
- 12 **(3) For purposes of IC 16-25.5, the dialysis facility council.**
- 13 ~~(4)~~ (4) For purposes of IC 16-28 and IC 16-29, the Indiana health
- 14 facilities council.
- 15 ~~(5)~~ (5) For purposes of IC 16-46-6, the interagency state council
- 16 on black and minority health.
- 17 SECTION 2. IC 16-18-2-94.5 IS ADDED TO THE INDIANA
- 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 19 [EFFECTIVE JULY 1, 2009]: **Sec. 94.5. "Dialysis facility", for**
- 20 **purposes of IC 16-25.5, means an entity that provides therapeutic**
- 21 **or rehabilitative dialysis services required for the care of**
- 22 **individuals with renal disease."**
- 23 Page 3, between lines 38 and 39, begin a new paragraph and insert:
- 24 "SECTION 4. IC 16-25.5 IS ADDED TO THE INDIANA CODE

1 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2009]:

3 **ARTICLE 25.5. DIALYSIS FACILITIES**

4 **Chapter 1. Dialysis Facility Council**

5 **Sec. 1. (a) The dialysis facility council is established. The state**  
6 **department shall staff the council.**

7 **(b) The council consists of nine (9) members appointed by the**  
8 **governor as follows:**

9 **(1) Two (2) physicians, each of whom is:**

10 **(A) licensed under IC 25-22.5; and**

11 **(B) either:**

12 **(i) a qualified nephrologist; or**

13 **(ii) experienced in the care of patients with renal disease.**

14 **(2) One (1) registered nurse licensed under IC 25-23 and**  
15 **experienced in the care of patients with renal disease.**

16 **(3) Two (2) individuals engaged in the administration of**  
17 **facilities that provide dialysis services.**

18 **(4) One (1) individual engaged in hospital administration.**

19 **(5) The state health commissioner or the commissioner's**  
20 **designee.**

21 **(6) One (1) representative of a statewide organization or**  
22 **association that assists kidney patients.**

23 **(7) One (1) individual who is not associated with a hospital or**  
24 **facility that provides dialysis, except as a consumer.**

25 **Sec. 2. (a) An appointment to the council is for four (4) years,**  
26 **beginning July 1 of the year of appointment. However, in the case**  
27 **of a vacancy, the appointee shall serve the remainder of the**  
28 **unexpired term. A vacancy shall be filled from the group**  
29 **represented by the outgoing member.**

30 **(b) The governor shall appoint a chairperson from the members**  
31 **of the council.**

32 **Sec. 3. A member of the council who is not a state employee is**  
33 **entitled to the minimum salary per diem provided by**  
34 **IC 4-10-11-2.1(b). A member is entitled to reimbursement for**  
35 **traveling expenses provided under IC 4-13-1-4 and other expenses**  
36 **actually incurred in connection with the member's duties, as**  
37 **provided in the state policies and procedures established by the**  
38 **Indiana department of administration and approved by the budget**  
39 **agency.**

40 **Sec. 4. (a) The first meeting of the council shall be called by the**  
41 **chairperson and held not later than thirty (30) days after the**  
42 **appointment of the members of the council. The council shall meet**  
43 **at least two (2) times each calendar year on dates fixed by the**  
44 **chairperson.**

45 **(b) Special meetings of the council shall be called by the**  
46 **chairperson at the request of any three (3) members of the council.**

47 **(c) Five (5) members constitute a quorum for the transaction of**

1 business.

2       **Sec. 5. In the first meeting of the council and in the first annual**  
3 **meeting during each subsequent year, the council shall elect from**  
4 **the members a secretary who shall keep a record of all meetings.**  
5 **The term of secretary is one (1) year.**

6       **Sec. 6. At the request of the council, the state department may**  
7 **obtain the services of experts or other persons to assist the council**  
8 **in the formulation of policy or in conducting the council's business.**

9       **Sec. 7. (a) Except as provided in subsection (b), the council shall**  
10 **propose and the executive board may adopt rules under IC 4-22-2**  
11 **necessary to protect the health, safety, rights, and welfare of**  
12 **patients, including the following:**

13           **(1) Rules pertaining to the licensure, operation, and**  
14 **management of a dialysis facility.**

15           **(2) Rules establishing standards for equipment, facilities, and**  
16 **staffing required for efficient and quality care of patients of**  
17 **a dialysis facility.**

18       **(b) The state department may request the council to propose a**  
19 **new rule or an amendment to an existing rule necessary to protect**  
20 **the health, safety, rights, and welfare of patients of a dialysis**  
21 **facility. If the council does not propose a rule within ninety (90)**  
22 **days of the state department's request, the state department may**  
23 **propose the department's own rule.**

24       **(c) The state department shall consider the rules proposed by**  
25 **the council and may adopt, modify, remand, or reject specific rules**  
26 **or parts of rules proposed by the council.**

27       **Sec. 8. (a) The executive board may, upon recommendation by**  
28 **the state health commissioner and for good cause, waive a rule**  
29 **adopted under this chapter.**

30       **(b) Disapproval of a waiver request requires executive board**  
31 **action.**

32       **(c) A waiver may not adversely affect the health, safety, rights,**  
33 **or welfare of the patients.**

34       **Sec. 9. If a dialysis facility is part of a hospital, IC 16-21 applies.**

35       **Sec. 10. (a) Licensure inspections of a dialysis facility shall be**  
36 **made regularly in accordance with rules adopted under this**  
37 **chapter. The state department shall make all health and sanitation**  
38 **inspections, including inspections in response to an alleged breach**  
39 **of this chapter or rules adopted under this chapter. The division of**  
40 **fire and building safety shall make all fire safety inspections. The**  
41 **council may provide for other inspections necessary to implement**  
42 **this chapter.**

43       **(b) An employee of the state department who knowingly or**  
44 **intentionally informs a dialysis facility of the exact date of an**  
45 **unannounced inspection shall be suspended without pay for five (5)**  
46 **days for a first offense and shall be dismissed for a subsequent**  
47 **offense.**

1 (c) Reports of all inspections must be in writing and sent to the  
2 inspected dialysis facility.

3 (d) The report of an inspection and records relating to the  
4 inspection may not be released to the public until the conditions set  
5 forth in IC 16-19-3-25 are satisfied.

6 Sec. 11. (a) The state department shall prepare an annual report  
7 concerning dialysis facilities. The report must provide a consumer  
8 with information concerning dialysis facilities in Indiana and  
9 include the following:

10 (1) The location of each licensed dialysis facility and the  
11 services provided at the facility.

12 (2) The inspection results of each dialysis facility.

13 (3) Any remedial or licensure action taken against a dialysis  
14 facility.

15 (4) Any other information the state department believes  
16 would assist a consumer.

17 (b) The state department shall post the report required in  
18 subsection (a) on the state department's Internet web site and  
19 provide a written copy of the report to an individual upon request.

## 20 Chapter 2. Licensure of Dialysis Facilities

21 Sec. 1. (a) The state department shall license and regulate  
22 dialysis facilities.

23 (b) A dialysis facility must be licensed by the state department  
24 in order to operate in the state.

25 Sec. 2. The council may determine if a dialysis facility is covered  
26 by this chapter. A decision of the council under this section is  
27 subject to review under IC 4-21.5.

28 Sec. 3. The state department shall administer this chapter with  
29 the advice of the council.

30 Sec. 4. (a) An applicant for a license under this chapter must  
31 submit an application for a license on a form prescribed by the  
32 state department showing that:

33 (1) the applicant is of reputable and responsible character;  
34 and

35 (2) the applicant is able to comply with the minimum  
36 standards for a dialysis facility and with rules adopted under  
37 this chapter.

38 (b) The submitted application must contain the following  
39 information:

40 (1) The name of the applicant.

41 (2) The location of the dialysis facility.

42 (3) The name of the person to be in charge of the dialysis  
43 facility.

44 (4) Other information required by the state department.

45 Sec. 5. An application for a license under this chapter must be  
46 accompanied by a licensing fee at a rate adopted by the council  
47 under IC 4-22-2.

- 1           **Sec. 6. The state health commissioner may:**  
 2           (1) issue a license upon receipt of the application without  
 3           further evidence; or  
 4           (2) request additional information concerning the application  
 5           and conduct an investigation to determine whether a license  
 6           should be granted.

- 7           **Sec. 7. A license issued under this chapter:**  
 8           (1) expires one (1) year after the date of issuance;  
 9           (2) is not assignable or transferable;  
 10          (3) is issued only for the premises named on the application;  
 11          (4) must be posted in a conspicuous place in the dialysis  
 12          facility for which the license was issued; and  
 13          (5) may be renewed each year upon the payment of a renewal  
 14          fee at the renewal rate adopted by the council under  
 15          IC 4-22-2.

- 16          **Sec. 8. A dialysis facility that provides to a patient notice**  
 17          **concerning a third party billing for a service provided to the**  
 18          **patient shall ensure that the notice:**  
 19          (1) conspicuously states that the notice is not a bill;  
 20          (2) does not include a tear-off portion; and  
 21          (3) is not accompanied by a return mailing envelope.

22          **Chapter 3. Remedies for Violations**

- 23          **Sec. 1. The state health commissioner may take any of the**  
 24          **following actions on any of the grounds listed in section 2 of this**  
 25          **chapter:**  
 26          (1) Issue a letter of correction.  
 27          (2) Issue a probationary license.  
 28          (3) Conduct a resurvey.  
 29          (4) Deny renewal of a license.  
 30          (5) Revoke a license.  
 31          (6) Impose a civil penalty in an amount not to exceed ten  
 32          thousand dollars (\$10,000).

- 33          **Sec. 2. The state health commissioner may take action under**  
 34          **section 1 of this chapter on any of the following grounds:**  
 35          (1) Violation of any of the provisions of this article or the  
 36          rules adopted under this article.  
 37          (2) Permitting, aiding, or abetting the commission of an illegal  
 38          act in a dialysis facility.  
 39          (3) Knowingly collecting or attempting to collect from a  
 40          subscriber (as defined in IC 27-13-1-32) or an enrollee (as  
 41          defined in IC 27-13-1-12) of a health maintenance  
 42          organization (as defined in IC 27-13-1-19) any amounts that  
 43          are owed by the health maintenance organization.  
 44          (4) Conduct or practice found by the council to be detrimental  
 45          to the health, safety, rights, and welfare of the patients of a  
 46          dialysis facility.

- 47          **Sec. 3. (a) IC 4-21.5 applies to an action under this chapter.**

1           (b) A licensee or an applicant for a license aggrieved by an  
2 action under this article may request review under IC 4-21.5.

3           **Sec. 4. The state department shall investigate a report of an**  
4 **unlicensed dialysis facility and report the findings to the attorney**  
5 **general. The attorney general may seek any of the following:**

6           (1) An injunction in a court with jurisdiction in the county in  
7 which the unlicensed dialysis facility is located or in the  
8 circuit or superior court of Marion County.

9           (2) Relief under IC 4-21.5, including a civil penalty not to  
10 exceed an amount of twenty-five thousand dollars (\$25,000)  
11 for each day of unlicensed operation.

12           (3) Criminal penalties as provided in section 5 of this chapter.

13           **Sec. 5. A person who knowingly or intentionally:**

14           (1) operates a dialysis facility that is required to be licensed  
15 under this article that is not licensed under this article; or

16           (2) advertises the operation of a dialysis facility that is  
17 required to be licensed under this article and that is not  
18 licensed under this article;

19 **commits a Class A misdemeanor."**

20           Page 33, after line 6, begin a new paragraph and insert:

21           "SECTION 36. [EFFECTIVE UPON PASSAGE] (a) As used in  
22 this SECTION, "council" refers to the dialysis facility council  
23 established by IC 16-25.5-1-1(a), as added by this act.

24           (b) The governor shall make the initial appointments to the  
25 council not later than July 1, 2009. In making the initial  
26 appointment, the governor shall indicate the length of the term for  
27 which the individual is appointed.

28           (c) Notwithstanding IC 16-25.5-1-2, as added by this act, the  
29 initial terms of the members of the council, except for the state  
30 health commissioner appointed under IC 16-25.5-1-1(b)(5), shall be  
31 staggered as follows:

32           (1) Two (2) members of the council appointed for a term of  
33 two (2) years.

34           (2) Three (3) members of the council appointed for a term of  
35 three (3) years.

36           (3) Three (3) members of the council appointed for a term of  
37 four (4) years.

38           (d) The initial term for council members begins July 1, 2009.

39           (e) This SECTION expires December 31, 2013.

40           SECTION 37. [EFFECTIVE UPON PASSAGE] (a) If the state  
41 department of health grants an exemption to a person that is  
42 required to be licensed, or that meets the definition of a person  
43 licensed under:

44           (1) IC 16-21-2-2(4); or

45           (2) IC 16-25.5, as added by this act;

46 **from a physical plant standard requirement under the person's**  
47 **licensure, the state department may not grant the exemption for a**

1     **period ending later than December 31, 2011, and the person must**  
2     **meet the physical plant standards required for the person's**  
3     **licensure not later than January 1, 2013.**

4         **(b) This SECTION expires December 31, 2013.**  
5         **SECTION 38. An emergency is declared for this act."**

6         Renumber all SECTIONS consecutively.  
          (Reference is to ESB 86 as printed April 10, 2009.)

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Representative Thompson