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SECTION 1. In the Constitution of the State of Colorado, **add** article XXX as follows:

ColoradoCare

Section 1. Purpose and findings.

- (1) The people of the State of Colorado find and declare that:
 - (a) Coloradans need the security of knowing that they can afford health care for themselves and their families;
 - (b) Businesses need relief from the unsustainable financial and administrative burdens of providing health insurance for their employees;
 - (c) Annual insurance changes disrupt coordinated lifetime health care;
 - (d) Health care costs have been increasing at unsustainable rates and must be stabilized;
 - (e) Colorado needs a health care delivery system that prioritizes value over volume and that encourages quality, efficient, and accessible health care;
 - (f) Colorado health care providers need relief from the administrative burdens that interfere with quality health care;
 - (g) Section 1332 of the Affordable Care Act allows Colorado to obtain waivers from the insurance exchange program in order to create a unique Colorado health care system; and therefore, that
- (2) Colorado will finance health care through ColoradoCare, a political subdivision of the state governed by a twenty-one member board of trustees that will administer a coordinated payment system for health care services and control the per capita cost of health care, thereby improving access to health care for all Coloradans, enhancing their health care experiences, giving Coloradans the right to choose their primary health care providers, and improving the working lives of providers.

Section 2. Definitions. For the purpose of this article:

- (1) "**Affordable Care Act**" means the federal "Patient Protection and Affordable Care Act", pub.l. 111-148, as amended by the federal "Health Care and Education Reconciliation Act of 2010", pub.l. 111-152, and as may be further amended, including any federal regulations adopted under the act.
- (2) "**beneficiary**" means an individual whose primary residence is in Colorado.
- (3) "**board**" means the elected board of trustees established in section 5 of this article unless the context indicates that "board" means the interim board defined in subsection (9) of this section.
- (4) "**Children's Basic Health Plan**" means the health benefit plan established in Article 8 of Title 25.5, Colorado Revised Statutes.
- (5) "**Colorado Health Benefit Exchange**" means the Colorado Health Benefit Exchange created in Article 22 of Title 10, Colorado Revised Statutes, or its successor entity.
- (6) "**effective date**" means the effective date of this article as specified in Section 14 of this article.
- (7) "**employee**" means an individual who works or resides in Colorado and who receives wages, salaries, tips, or any other income which must be reported on internal revenue service form W-2.

- (8) "**employer**" means an individual, a governmental entity, and any organization defined in Title 7, Colorado Revised Statutes, that:
- (a) Pays compensation to one or more individuals for work performed; and
 - (b) Is required by Colorado law to withhold a portion of the compensation for the payment of Colorado income taxes, or to report those earnings to the Colorado Department of Revenue.
- (9) "**interim board**" means the board of trustees appointed pursuant to section 4 of this article .
- (10) "**Medicaid program**" means the medical assistance program authorized in Title XIX of the federal "Social Security Act", 42 u.s.c. sections 1305 et seq., as amended, and under the "Colorado Medical Assistance Act", Articles 4, 5, and 6 of Title 25.5, Colorado Revised Statutes, or any successor statutes.
- (11) "**member**" means a beneficiary who is at least eighteen years of age and whose primary residence has been in Colorado for at least one continuous year.
- (12) "**nonpayroll income**" means total income from all sources specified on lines 8 through 10, 12 through 18, and 20 through 21 of the Internal Revenue Service form 1040 for the tax year 2014 or the corresponding lines of any successor form. "Nonpayroll income" does not include any pension or annuity income which is not subject to Colorado income taxes pursuant to section 39-22-104(f)(4), Colorado Revised Statutes, or any successor statute.
- (13) "**payroll income**" means wages, tips, salaries, and all other income that must be reported on Internal Revenue Service form W-2.
- (14) "**premium tax**" means the tax specified in section 9(2) of this article.
- (15) "**provider**" means a health care professional licensed by the state of Colorado and includes individuals, hospitals, and other health care facilities licensed or certified by the state. "Provider" includes an individual or entity that provides services, medical interventions, pharmaceuticals, or equipment used to treat beneficiaries.
- (16) "**transitional operating fund tax**" means the tax specified in section 9 (1) of this article.
- (17) "**trustee**" means an individual appointed or elected to serve on the interim or elected board of trustees.

Section 3. ColoradoCare - establishment.

- (1) There is hereby established a political subdivision of the state called ColoradoCare. ColoradoCare is not an agency of the state and is not subject to administrative direction or control by any state executive, department, commission, board, bureau, or agency.
- (2) The purpose of ColoradoCare is to finance health care services for all Colorado residents, to administer state and federal health care funds, and to institute fiscally sound payment policies that improve and maintain high standards for value, quality, and healthy outcomes for all beneficiaries.

Section 4. Interim board - governance and responsibilities.

- (1) (a) Within sixty days after the effective date of this article, the president of the Colorado Senate, the minority leader of the Colorado Senate, the speaker of the Colorado House of Representatives, the minority leader of the Colorado House of Representatives, and the Governor of the state of Colorado shall each appoint three trustees to serve on the interim board. In making the appointments to the interim board, the appointing authorities shall make good- faith efforts to ensure that:

- (I) Each trustee will strive to represent the interests of all Coloradans;
 - (II) Their appointments reflect the social, demographic, and geographic diversity of the state; and
 - (III) Their appointees are committed to successfully implementing this article.
- (b) An interim trustee may be removed for cause by a majority vote of the other trustees.
 - (c) If a vacancy occurs on the interim board, the appointing authority shall appoint a new trustee to fill the vacancy within thirty days after the vacancy occurs.
- (2) (a) The interim board shall carry out all duties and responsibilities of the board until the elected board assumes responsibility for the operation of ColoradoCare on the date specified in paragraph (i) of this subsection.
 - (b) The interim board shall:
 - (I) Promulgate bylaws, procedures, rules, and policies. The bylaws, procedures, rules, and policies of the interim board shall expire one hundred twenty days after the elected board takes office unless the elected board ratifies them.
 - (II) Approve an operating budget;
 - (III) Hire employees and consultants; and
 - (IV) Promulgate rules to ensure transparency in its operations and decision making, which rules must be at least as strict as the requirements in the "Colorado Open Records Act", part 2 of article 72 of title 24, Colorado Revised Statutes, or its successor act.
 - (c) As soon as it is allowed under federal law, the interim board shall seek a waiver to allow the state to suspend operation of the Colorado Health Benefit Exchange and transfer its resources to ColoradoCare no later than the date on which ColoradoCare assumes responsibility for health care payments.
 - (d) No later than ninety days prior to the date ColoradoCare is to assume responsibility for health care payments, the board shall provide written certification to the governor and the Colorado Department of Revenue of the date ColoradoCare intends to assume this responsibility.
 - (e) For purposes of electing the board of trustees, the interim board shall use the most recent United States decennial census figures to divide the state into seven compact contiguous districts with substantially the same number of residents in each district.
 - (f) Elections shall be nonpartisan.
 - (g) The interim board shall promulgate rules governing the selection of trustee candidates and the conduct of elections, including rules that regulate campaign contributions and expenditures, and the certification of election results.
 - (h) Trustee candidates must be members of ColoradoCare who live in the district from which they are seeking election.
 - (i) The interim board shall schedule the first election within three years after the effective date of this article. The elected board shall assume responsibility for the operation of ColoradoCare within forty-five days after the interim board certifies the election results. Interim trustees shall continue to serve as ex officio, nonvoting trustees for ninety days after the elected board assumes responsibility for the operation of ColoradoCare.

Section 5. Elected board of trustees - duties and responsibilities.

- (1) A member-elected board of twenty-one trustees shall govern ColoradoCare. Three trustees shall be elected from among the members residing in each district.
 - (2) (a) Elected trustees shall serve four year terms of office, except that, of the trustees first elected to the board, one trustee from each district shall serve an initial two year term and two trustees from each district shall serve initial four year terms. The chairperson of the interim board shall determine by lot which trustees-elect will serve initial two year terms and which will serve initial four year terms. Trustees who serve initial two year terms are eligible to serve two consecutive four year terms after completing their initial terms. Trustees elected to serve an initial term of four years may not serve more than two consecutive terms.
 - (b) A trustee may be removed for cause by a majority vote of the other trustees.
 - (c) Trustees are not subject to recall elections.
 - (d) If a vacancy occurs on the board, the board, by majority vote, shall appoint a trustee from the departing trustee's district to complete the remainder of the departing trustee's term of office.
- (3) Not more often than once per decennium, the elected board may modify the boundaries of the seven districts, but only if it does so within one year after decennial census figures are published by the United States census bureau. Each new district shall be compact and contiguous and all districts shall have substantially the same number of residents.
- (4) The board shall:
 - (a) Promulgate bylaws, procedures, rules, and policies, and ratify, amend, or reject those bylaws, procedures, rules and policies promulgated by the interim board;
 - (b) Hire an executive team to administer the operations of ColoradoCare. The executive team shall include a chief executive officer, a chief financial officer, and a chief medical officer.
 - (c) Establish a central purchasing authority responsible for negotiating favorable prices for prescription drugs, medical equipment and other products and services required by ColoradoCare;
 - (d) Provide funds to the commissioner of insurance for the operation of separate ombudsman offices for beneficiaries and providers. Funding shall be sufficient to allow the timely completion of all investigations. Each office shall have the capacity to investigate and respond to inquiries and complaints and make recommendations to the board.
 - (e) Establish and fund an office for the investigation and prevention of fraud. The office shall have the power to bring civil actions in the name of ColoradoCare to recover any monies or the value of any benefits obtained by fraud or mistake and may refer fraudulent conduct to a district attorney for criminal prosecution.
 - (f) Establish procedures for managing surplus funding by maintaining necessary operating reserves, increasing benefits, or issuing refunds to members;

- (g) Establish procedures for ensuring financial sustainability by adjusting payments and benefits;
 - (h) Promulgate rules for independent annual performance and financial audits;
 - (i) Promulgate rules that protect beneficiary confidentiality while allowing for publicly available research of ColoradoCare's databases;
 - (j) Promulgate rules to ensure transparency in its operations and decision making, which rules must be at least as strict as the requirements in the "Colorado Open Records Act", part 2 of Article 72 of title 24, Colorado Revised Statutes, or its successor act;
 - (k) Approve and make publicly available an annual budget;
 - (l) Facilitate creation of efficient medical records and billing records systems that:
 - (I) Can be easily accessed by providers and beneficiaries;
 - (II) Allow ColoradoCare to maintain a central database of medical records for management and research purposes; and
 - (III) Ensure the confidentiality of beneficiaries' medical records in compliance with all federal and state health care laws, regulations, and rules concerning the confidentiality of patient medical records.
 - (m) Administer all state funds for health care services provided to beneficiaries;
 - (n) Establish policies and procedures to pay benefits for health care services rendered to a beneficiary who is temporarily living or traveling in another state; and
 - (o) Establish an appeals procedure that allows beneficiaries and providers to challenge coverage and payment decisions. Final action on an appeal shall be subject to judicial review according to Colorado law and the Colorado rules of civil and appellate procedure for the review of final agency actions.
- (5) The board may:
- (a) Authorize reasonable compensation and expense reimbursement for the trustees;
 - (b) Seek waivers from state and federal laws, rules, and regulations; and
 - (c) Seek and accept gifts, grants, and donations on behalf of ColoradoCare.
- (6) The board is granted all powers necessary and proper to fulfill ColoradoCare's responsibilities, including the power to promulgate such rules as the board finds necessary for the proper administration and enforcement of this article.

Section 6. Health care benefits paid by ColoradoCare.

- (1) (a) ColoradoCare shall contract with providers to pay for health care services to beneficiaries that must include:
- (I) Ambulatory patient services, including primary and specialty care;
 - (II) Hospitalization;
 - (III) Prescription drugs and durable medical equipment;
 - (IV) Mental health and substance use disorder services, including behavioral health treatment;
 - (V) Emergency and urgent care;
 - (VI) Preventive and wellness services and chronic disease management;

- (VII) Rehabilitative and habilitative services and devices;
- (VIII) Pediatric services, including oral, vision, and hearing care;
- (IX) Laboratory services;
- (X) Maternity and newborn care; and
- (XI) Palliative and end-of-life care.

(b) the board may authorize payment for benefits not specified in paragraph (a) of subsection 1 of this section.

(2) (a) ColoradoCare shall pay for health care services to beneficiaries regardless of the cause of their injuries or illnesses.

(b) ColoradoCare shall assume responsibility for payment of all reasonable and necessary medical expenses incurred by workers who suffer injuries or illnesses arising out of and in the course of their employment on and after the date ColoradoCare assumes responsibility for health care payments. ColoradoCare's responsibility extends only to employees whose employers are required by the "Workers' Compensation Act of Colorado", Articles 40 to 47 of title 8, Colorado Revised Statutes, to provide workers' compensation insurance for their employees. Workers suffering from injuries or illnesses arising out of and in the course of their employment are entitled to the same benefits and have the same rights and responsibilities as other beneficiaries.

(c) For individuals eligible for the Medicaid program, the Children's Basic Health Plan, and any other federal health care programs to be administered by ColoradoCare, the benefit package under ColoradoCare must include:

- (I) The benefits required by federal law;
- (II) Any optional Medicaid program benefits authorized under 42 U.S.C. Sec. 1396d or the "Colorado Medical Assistance Act", Articles 4 to 6 of title 25.5, Colorado Revised Statutes, or services covered under the state plan for the Children's Basic Health Plan as provided in 42 U.S.C. Sec. 1397cc, for which these individuals are eligible; and
- (III) Any additional benefits provided in ColoradoCare's benefit package.

(d) An individual who loses eligibility for state or federal benefits under the Medicaid program or the Children's Basic Health Plan shall receive the same benefits as any other beneficiary of ColoradoCare.

(3) ColoradoCare shall not charge beneficiaries any deductibles.

(4) The board shall promulgate rules for waiving copayments when they will cause financial hardship for a beneficiary. The board shall not require copayments for designated primary and preventive care services.

(5) A provider may not require a beneficiary to make a copayment or submit to any other cost-sharing arrangement without ColoradoCare's approval.

(6) ColoradoCare shall allow beneficiaries to choose their own primary care providers.

(7) ColoradoCare may provide funding and other support to improve access to health care services for all beneficiaries regardless of where they live in Colorado.

(8) ColoradoCare may provide funding and other support for statewide access to emergency and trauma care services.

Section 7. Delivery of service models.

- (1) ColoradoCare shall begin operation by assuming payment for health care services in a manner designed to minimize disruptions to current delivery and payment systems.
- (2) ColoradoCare shall phase in payment reforms and a unified billing system.
- (3) ColoradoCare shall use payment models that optimize quality, value, and healthy outcomes for beneficiaries.

Section 8. Transition to ColoradoCare.

- (1)(a) The Colorado Department of Health Care Policy and Financing, the Colorado Health Benefit Exchange, and any other necessary state department or agency shall assist the interim and elected boards in seeking all waivers, exemptions, and agreements from the state and federal governments that are necessary to transfer health care funding from the federal government and from any state departments and agencies to ColoradoCare.
 - (b) To the extent allowable under federal law, ColoradoCare and all involved state departments and agencies shall arrange for federal funds to be delivered directly to ColoradoCare. If these funds cannot be delivered directly to ColoradoCare, the state shall transfer them to ColoradoCare within ten days after it receives them.
- (2) No later than the date ColoradoCare is to assume responsibility for health care payments, the state shall transfer to ColoradoCare all state and federal funds for the Medicaid, Children's Basic Health Plan, and any other program to be administered by ColoradoCare. The state may retain any funds necessary to meet payment obligations which exist as of the date of transfer. Upon receipt of this funding, ColoradoCare shall be responsible for paying for all benefits and services previously paid by the state and federal government with those funds.
- (3) ColoradoCare shall assume responsibility for the proper administration and distribution of state and federal funds pursuant to state and federal law.
- (4) The board may apply for ColoradoCare to become a Medicare Advantage program, a Medicare supplemental program, or any successor program.
- (5) The board is authorized to apply for funds and enroll in any program that does not alter the purpose of ColoradoCare as set forth in section 3(2) of this article.

Section 9. Funding of ColoradoCare - collection of premiums.

- (1) On and after July 1 of the year following the effective date of this article, and until thirty days before ColoradoCare assumes responsibility for health care payments, the Colorado Department of Revenue shall collect a transitional operating fund tax of:
 - (a) Six-tenths percent of total payroll from each employer;
 - (b) Three-tenths percent of all payroll income from each employee ;and
 - (c) Nine-tenths percent of all nonpayroll income from all beneficiaries.
 - (d) From July 1 until December 31 of the first year in which the taxes in this subsection (1) are levied, they shall be levied on fifty percent of the beneficiary's total nonpayroll income.

(2) Thirty days before CoradoCare is to assume responsibility for health care payments, the Colorado Department of Revenue shall cease collecting transitional operating fund taxes and shall begin collecting a premium tax of:

- (a) Six and sixty-seven-one-hundredths percent of total payroll from all employers, which satisfies their obligation to provide health care insurance for their employees;
 - (b) Three and thirty-three-one-hundredths percent of all payroll income from each employee; and
 - (c) Ten percent of all non-payroll income from all beneficiaries.
- (d) If the premium tax levied pursuant to this subsection (2) is first levied on a date other than January 1, it shall be levied on the beneficiary's total nonpayroll income multiplied by the percentage of the calendar year in which the tax is first levied.

(3) Payment of the premium tax does not constitute the purchase of a health insurance policy by an employer or taxpayer.

(4) The taxes levied pursuant to this section 9 shall be levied against the income of nonresident individuals in the manner specified in section 39-22-109, Colorado Revised Statutes or any successor statute, and against the income of part-year residents in the manner specified in Section 39-22-110, Colorado Revised Statutes or any successor statute.

(5) An employer may pay all or part of an employee's share of the taxes levied pursuant to this section.

(6) The total amount of payroll earnings by employees and of nonpayroll income subject to the taxes levied pursuant to this section shall not exceed three hundred fifty thousand dollars for those filing individual income tax returns and four hundred fifty thousand dollars for couples filing jointly. The Department of Revenue shall annually adjust these limits for inflation using the consumer price index published by the bureau of labor statistics of the United States Department of Labor for the Boulder-Greeley-Denver metropolitan statistical area. Adjustments shall be effective on January 1 of each year, beginning with the calendar year 2018 and using the calendar year 2017 as the base year.

(7) The board shall conduct an annual assessment of revenues and costs and prepare a public report regarding the financial status of ColoradoCare and options considered for economies, benefits, refunds, building necessary reserves, and premium adjustments.

(8) If the board determines that a premium increase is necessary to maintain the fiscal stability of ColoradoCare, the board may increase the premium taxes specified in subsection (2) of this section not more often than once per fiscal year, but only if a majority of the members of ColoradoCare who cast votes on the proposed increase approve it.

Section 10. Exemption. ColoradoCare and this Article are exempt from section 20 of article X of the Colorado constitution.

Section 11. ColoradoCare secondary payor- subrogation rights.

(1) ColoradoCare serves as a secondary payor to any health insurance plan in which a beneficiary is enrolled or which may be responsible for a beneficiary’s health care expenses. The total of ColoradoCare’s payment and all other payments shall not exceed the amount that ColoradoCare would pay if it were the only payor.

(2) ColoradoCare shall serve as a state health plan that pays for designated supplemental health care services for Medicare beneficiaries; except that ColoradoCare shall not pay for services:

- (a) Covered by Medicare parts a, b and d ; or
- (b) Covered by a Medicare Advantage plan that a beneficiary has with an entity other than ColoradoCare ; or
- (c) That would have been paid by Medicare parts b or d had the beneficiary purchased those optional Medicare coverages, unless:
 - (I) ColoradoCare has an agreement with the center for Medicare and Medicaid Services that requires it to pay for services that would have been paid under parts b and d ; or
 - (II) ColoradoCare offers a Medicare Advantage plan and the beneficiary voluntarily enrolls in this plan.

(3)(a) ColoradoCare has full rights of subrogation, ahead of the rights of a workers' compensation or other insurer or health care plan, including the right to bring an independent lawsuit or to intervene in a lawsuit filed by a beneficiary, in order to recover health care costs from collateral sources for which the beneficiary has a right of action for compensation against the person or entity that caused his or her illness or injury. ColoradoCare may assert a lien against any proceeds recovered by the beneficiary.

(b) ColoradoCare may recover health care payments from any other collateral source, such as a health insurance plan, health benefit plan, or other payor that is primary to ColoradoCare.

Section 12. Legislation.

(1) In the first regular session of the general assembly that convenes after the effective date of this article, the general assembly shall enact legislation:

- (a) To enable the Colorado Department of Revenue to collect and transfer to ColoradoCare the taxes levied pursuant to section 9 of this article. The general assembly shall appropriate sufficient funds to the department of revenue to ensure that it can begin collecting these taxes on and after July 1 of the year following the effective date of this article, and to ensure that funds are transferred to ColoradoCare within ten days of collection;
- (b) To suspend operations of the Colorado Health Benefit Exchange, transfer its resources to ColoradoCare pursuant to section 8 of this article, and repeal article 22 of title 10, Colorado Revised Statutes;
- (c) To transfer responsibility for administering the Medicaid program and the Children’s Basic Health Plan to ColoradoCare;
- (d) To transfer responsibility for administering any other state and federal health care programs to

ColoradoCare;

(e) To enable ColoradoCare to receive the appropriate federal fund contribution in lieu of the federal premium tax credits, cost-sharing subsidies, and small business tax credits provided in the affordable care act;

(f) To repeal or amend, as appropriate, those provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, Colorado Revised Statutes, and any other provisions of law that concern the provision of medical care for workers who suffer injuries or illnesses arising out of and in the course of their employment and for the payment of premiums for medical benefits, whether by employers or insurers covered under the workers' compensation act, or that otherwise conflict with this article;

(g) To ensure that the state's expenditures for health care services, including the state's responsibility for providing matching funds for Medicaid and other federally supported health care programs, do not fall below the expenditure levels for health care services in the year preceding the effective date of this article. The base year expenditure levels shall be adjusted annually for changes in the consumer price index for the Denver-Boulder-Greeley metropolitan statistical area and in the state's population; and

(h) Necessary to implement this article.

(2) The legislation specified in paragraphs (b), (c) and (d) of subsection (1) of this section shall include the transfer of all state and federal funds for these programs to ColoradoCare.

(3) The general assembly shall appropriate sufficient funds to ensure a smooth and efficient transfer of the programs specified in paragraphs (b), (c) and (d) of subsection 1 of this section and to enable the agencies specified in section 8(1) of this article to assist ColoradoCare in the manner specified by that section.

Section 13. Subject to Colorado sunshine laws. The meetings of the board and the interim board are subject to article 6 of title 24, Colorado Revised Statutes, the "Colorado Sunshine Act of 1972", or its successor act.

Section 14. Effective Date. This article shall take full force and effect upon the governor's proclamation pursuant to Section 1, Article V of this constitution.

Section 15. Severability. If the courts of this state or of the United States declare any section, provision, paragraph, clause, or part of this article unconstitutional or invalid, the decision of the court affects only the section, provision, paragraph, clause, or part declared unconstitutional or invalid and does not affect any other part of this article.

Section 16. Termination of ColoradoCare's operations.

(1) If the board determines that ColoradoCare has not received the waivers, exemptions, and agreements from the federal government sufficient for its fiscally sound operation, the board shall:

(a) Shut down operations and return unused funds;

- (b) Notify the governor of the state of Colorado of ColoradoCare's inability to function; and
- (c) Notify the revisor of statutes in writing of the date the operations are shut down.

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