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Attorneys for Petitioner
Aref Aziz

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO
(UNLIMITED JURISDICTION)

AREF AZIZ,

Petitioner,

vs.

ALEX PADILLA, in his official capacity as
Secretary of State of the State of California,

Respondent.

DAVID GERALD HILL, in his official capacity
as State Printer of the State of California, and
MAC TAYLOR, in his official capacity as the
Legislative Analyst of the State of California,

Real Parties in Interest.

No.: _____

Action Filed: August 8, 2016

**VERIFIED PETITION FOR WRIT
OF MANDATE**

(Proposition 61)

**PRIORITY ELECTIONS MATTER
PURSUANT TO ELECTIONS CODE
SECTION 13314(a)(3) –
IMMEDIATE ACTION REQUESTED**

Hearing:

Date: _____

Time: _____

Dept.: _____

(The Honorable _____)

1 Petitioner Aref Aziz petitions this Court pursuant to California Government Code
2 section 88006 and Elections Code sections 9092 and 13314 for a writ of mandate directed to
3 respondent ALEX PADILLA, Secretary of State for the State of California, to revise a misleading
4 phrase concerning Proposition 61 which is proposed to appear in the Legislative Analyst's analysis of
5 Proposition 61 in the ballot pamphlet for the November 8, 2016 statewide election. If left unchanged,
6 this phrase is bound to confuse voters and create prejudice against Proposition 61.

7 By this verified petition, petitioner alleges:

8 **THE PARTIES**

9 1. Petitioner AREF AZIZ is an elector residing in Sacramento County. He is also a
10 consumer advocate who has served on the Alameda County Consumer Affairs Commission, and wants
11 voters to be presented with accurate information that is neither misleading nor prejudicial concerning
12 Proposition 61.

13 2. Respondent ALEX PADILLA is the Secretary of State of the State of California.
14 The Secretary of State is directed by Elections Code sections 9081-9096 and Government Code
15 sections 88000-88007 to prepare and distribute to the voters of California a ballot pamphlet for each
16 statewide election. Mr. PADILLA is sued in his official capacity only.

17 3. Real party in interest DAVID GERALD HILL is the California State Printer.
18 The State Printer is designated by Elections Code section 9082 to print the ballot pamphlet, and is
19 required by Elections Code section 9092 to be named as a real party in interest in any writ of mandate
20 seeking to amend or delete any copy from the ballot pamphlet. Mr. HILL is sued in his official capacity
21 only.

22 4. Real party in interest MAC TAYLOR is the Legislative Analyst. The
23 Legislative Analyst's Office ("LAO") is required by Elections Code section 9087 to prepare an
24 impartial analysis of each ballot measure to be included in the ballot pamphlet. The LAO authored the
25 copy that is challenged through this writ. Mr. TAYLOR is required by Elections Code section 9092 to
26 be named as a real party in interest in any writ of mandate challenging material authored by his Office.
27 Mr. TAYLOR is sued in his official capacity only.
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6. The proper venue for this action is the County of Sacramento pursuant to Elections Code sections 9092 and 13314.

7. A statewide general election will be held in California on November 8, 2016. The California Drug Price Relief Act is a ballot measure that has been certified to appear on the November 8, 2016 ballot as Proposition 61. Proposition 61 would require the State of California to negotiate with drug companies for prices that are no more than the amounts paid for the same drugs by the U.S. Department of Veterans Affairs (“VA”). A true and correct copy of Proposition 61 is attached as Exhibit A to this petition and is incorporated herein by reference.

9. The purpose of Proposition 61 is to lower prescription drug prices for the State of California, leading to significant costs savings for California tax payers and patients, with potential life-saving consequences. Throughout the campaign, however, opponents of Proposition 61 have argued that the measure will lead to increased prescription drug prices for veterans because drug manufacturers will raise drug prices on veterans rather than agree to provide the State with the drug prices currently offered to the VA. Yet, because nothing in the measure requires that result, or necessarily leads to that result, the only reason why prescription drug prices would increase for veterans is if drug manufacturers choose to increase prescription drug prices on veterans.

10. Furthermore, even if drug manufacturers choose to increase prices on veterans, the timing and size of those increases would be strictly limited by federal law in the following ways:

1 a. The Veterans Healthcare Act of 1992 controls the price of all “covered
2 drugs” – basically, brand-name drugs – purchased by the “Big Four” federal agencies, including the
3 VA. (38 U.S.C. § 8126.) That Act requires drug manufacturers that wish to sell drugs to certain
4 federal programs including Medicaid to enter into “master agreements” with the VA that cap drug
5 prices at no more than 76 percent of the non-Federal average manufacturer price, minus any additional
6 discounts as determined each year. (38 U.S.C. § 8126(a)(2).) This is called the Federal Ceiling Price.

7 b. The Act also requires drug manufacturers to extend an additional
8 discount if they raise the price faster than the rate of inflation based on the Consumer Price Index
9 (“CPI”), and it limits annual price increases on drugs covered by multi-year master agreements to the
10 rate of inflation based on CPI. (38 U.S.C. § 8126(c) & (d).)

11 c. The Act leaves the VA free to negotiate further discounts with drug
12 manufacturers, given that the Federal Ceiling Price is only a ceiling, not a floor. Thus, the VA enters
13 into “VA national contracts” with some drug manufacturers to bring some VA drug prices below the
14 Federal Ceiling Price.

15 d. The VA also negotiates Federal Supply Schedule (“FSS”) prices and
16 contracts for prescription drugs on behalf of all direct federal purchasers, with the goal of securing
17 prices that are no more than the price given by the manufacturer to its “most favored customer.”
18 During a multi-year contract for an FSS price, manufacturers must limit annual price increases on
19 covered drugs to the rate of inflation based on CPI. The VA may use FSS prices that are lower than
20 the Federal Ceiling Price.

21 11. Thus, if drug manufacturers choose to raise prescription drug prices, federal law
22 and any applicable federal contracts may constrain their ability to increase drug prices at all, at least in
23 the near-term, and federal law and applicable contracts will constrain the extent to which such prices
24 can eventually be raised. Specifically, if the drug is currently subject to a master agreement pursuant
25 to the Veterans Healthcare Act of 1992, an FSS contract price, or a VA national contract, a drug
26 company could only raise the price of that drug if allowed to do so by the contract, and to the extent
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1 permitted by federal law. And federal law strictly prohibits drug manufacturers from raising the price
2 of covered brand-name drugs above the Federal Ceiling Price. (28 U.S.C. § 8126(a).) With respect to
3 non-covered generic drugs, the category of drugs that are not covered by the Federal Ceiling Price, the
4 VA has other tools to keep these prices down, including purchasing from a competitor that
5 manufacturers the same generic drug, entering into subsequent VA national contracts covering that
6 drug, or negotiating a new FSS contract price for that prescription drug.

7
8 12. The LAO analysis addresses this possibility that drug manufacturers might
9 choose to raise VA drug prices with the following statements:

10 ***Drug Manufacturers Might Raise VA Drug Prices.*** Knowing that the
11 measure makes VA prices the upper limit for what the state can pay,
12 ***drug manufacturers might choose to raise VA drug prices.*** This would
13 allow drug manufacturers to continue to offer prescription drugs to state
14 agencies while minimizing any reductions to their profits. Should
15 manufacturers respond in this manner, potential savings related to state
16 prescription drug spending would be reduced.

17 (Exh. B at 7-8, first emphasis in original,
18 second emphasis added.)

19 13. The phrase “drug manufacturers might choose to raise VA drug prices” is
20 misleading because it suggests that drug manufacturers could respond to Proposition 61 by raising VA
21 drug prices at any time to any amount chosen by the drug manufacturer, without limitation. This
22 impression is enhanced by the following statement that by raising their prices, drug manufacturers
23 would “minimiz[e] any reductions to their profits.” The average voter will assume that drug
24 manufacturers are free to raise drug prices on veterans as much as they want, in order to maximize
25 their profits. Voters reading this analysis would be surprised to learn that federal law strictly limits all
26 covered drug prices to no more than 76 percent of the non-Federal average manufacturer price, and
27 strictly limits annual increases to the increase in the rate of inflation.

28 14. Unless ordered otherwise by this Court, respondent PADILLA will, on or
around August 15, 2016, submit to the State Printer the proposed ballot pamphlet copy with the
misleading phrase described above.

1 15. Pursuant to Government Code section 88006 and Elections Code section 9092,
2 petitioner therefore brings this petition for writ of mandate to require the phrase “drug manufacturers
3 might choose to raise VA drug prices” in LAO’s Analysis to be modified on the grounds that it is
4 misleading. **Proponents urge the Court to modify the statement by adding the following caveat:**
5 **“... drug manufacturers might choose to raise VA drug prices, *subject to federal price caps on***
6 ***brand-name drugs.*”**

7 16. The issuance of this writ will not substantially interfere with the printing and
8 distribution of the ballot pamphlet as required by law. The 20-day period specified by Government
9 Code section 88006 and Elections Code section 9092 for public examination of and challenges to the
10 proposed ballot pamphlet copy will expire on August 15, 2016. The Secretary of State’s Office has
11 stated that August 15, 2016 is the latest date on which it plans to deliver the final ballot pamphlet copy
12 to the State Printer. Petitioner is seeking emergency relief before that date.

13 17. Petitioner has no speedy or adequate remedy at law other than the mandate
14 action authorized by Government Code section 88006 and Elections Code section 9092. Unless this
15 Court orders amendments to the ballot pamphlet copy described above, petitioner and the voters of
16 California will suffer irreparable injury and damage in that a misleading statement will be distributed
17 to voters which will have irreparable effects on the outcome of the vote on Proposition 61.

18 CAUSE OF ACTION

19 (Writ of Mandate)

20 18. Petitioner incorporates by reference each and every allegation made in
21 paragraphs 1-17 above as though fully set forth herein.

22 19. Accordingly, petitioner is entitled to a writ of mandate amending the misleading
23 and prejudicial statement contained in the Legislative Analyst’s analysis of Proposition 61.

24 WHEREFORE petitioner prays:

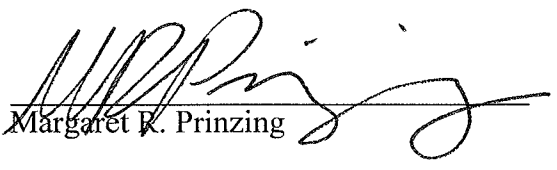
25 1. That this Court issue a writ of mandate compelling respondent PADILLA, his
26 officers, agents and all other persons acting on his behalf and through his orders, to modify the above-
27 described phrase according to proof;
28

- 1 2. For costs of suit, including reasonable attorney's fees; and
2
3 3. For such other and further relief as the Court deems just and equitable.

4 Dated: August 8, 2016

Respectfully submitted,

5 James C. Harrison
6 Margaret R. Prinzing
7 REMCHO, JOHANSEN & PURCELL, LLP

8 By: 
9 Margaret R. Prinzing

10 Attorneys for Petitioner Aref Aziz
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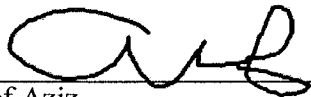
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VERIFICATION

I, Aref Aziz, hereby declare as follows:

I am the petitioner in this action. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof. I certify that the same is true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of August, 2016, at Sacramento, California.


Aref Aziz

SIGNATURE BY FACSIMILE

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On August 8, 2016, I served a true copy of the following document(s):

Verified Petition for Writ of Mandate

on the following party(ies) in said action:

Nancy Doig
Deputy Attorney General
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919
Phone: (916) 323-8230
Email: nancy.doig.@doj.ca.gov

*Counsel for Respondent Secretary of State Alex
Padilla and Real Party in Interest State Printer
David Gerald Hill*

Daniel Kessler
Deputy Legislative Counsel
Office of the Legislative Analyst
925 "L" Street, Suite 700
Sacramento, CA 95814
Phone: (916) 341-8362
Email: Daniel.Kessler@legislativecounsel.ca.gov

*Counsel for Real Party in Interest Legislative
Analyst Mac Taylor*

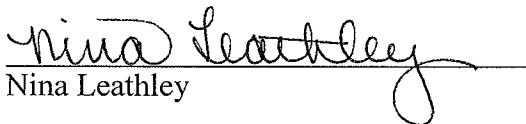
- ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.

☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

- 1 ☐ **BY PROCESS SERVER:** By placing the document(s) in an envelope or
2 package addressed to the persons at the addresses listed and providing them to a
3 professional process server for service.
4 ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
5 at the fax numbers listed based on an agreement of the parties to accept service by
6 fax transmission. No error was reported by the fax machine used. A copy of the
7 fax transmission is maintained in our files.
8 ☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at
9 the email addresses listed based on a court order or an agreement of the parties to
10 accept service by email. No electronic message or other indication that the
11 transmission was unsuccessful was received within a reasonable time after the
12 transmission.

13 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
14 August 8, 2016, in Oakland, California.

15 
16 Nina Leathley

17 (00283131-4)

EXHIBIT A

The California Drug Price Relief Act

The People of the State of California do hereby ordain as follows:

Section 1. Title.

This Act shall be known and may be cited as "The California Drug Price Relief Act" (the "Act").

Section 2. Findings and Declarations.

The People of the State of California hereby find and declare all of the following:

- (a) Prescription drug costs have been, and continue to be, one of the greatest drivers of rising health care costs in California.
- (b) Nationally, prescription drug spending increased more than 800 percent between 1990 and 2013, making it one of the fastest growing segments of health care.
- (c) Spending on specialty medications, such as those used to treat HIV/AIDS, Hepatitis C, and cancers, are rising faster than other types of medications. In 2014 alone, total spending on specialty medications increased by more than 23 percent.
- (d) The pharmaceutical industry's practice of charging inflated drug prices has resulted in pharmaceutical company profits exceeding those of even the oil and investment banking industries.
- (e) Inflated drug pricing has led to drug companies lavishing excessive pay on their executives.
- (f) Excessively priced drugs continue to be an unnecessary burden on California taxpayers that ultimately results in cuts to health care services and providers for people in need.
- (g) Although California has engaged in efforts to reduce prescription drug costs through rebates, drug manufacturers are still able to charge the State more than other government payers for the same medications, resulting in a dramatic imbalance that must be rectified.
- (h) If California is able to pay the same prices for prescription drugs as the amounts paid by the United States Department of Veterans Affairs, it would result in significant savings to California and its taxpayers. This Act is necessary and appropriate to address these public concerns.

Section 3. Purposes and Intent.

The People of the State of California hereby declare the following purposes and intent in enacting this Act:

- (a) To enable the State of California to pay the same prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs, thus rectifying the imbalance among government payers.

(b) To enable significant cost savings to California and its taxpayers for prescription drugs, thus helping to stem the tide of rising health care costs in California.

(c) To provide for the Act's proper legal defense should it be adopted and thereafter challenged in court.

Section 4. The California Drug Price Relief Act shall be codified by adding the following Section to the California Welfare and Institutions Code:

Section 14105.32. Drug Pricing

(a) Notwithstanding any other provision of law and insofar as may be permissible under federal law, neither the State of California, nor any state administrative agency or other state entity, including, but not limited to, the California Department of Health Care Services, shall enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, or any other discounts or credits, as determined by the California Department of Health Care Services, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

(b) The price ceiling described in subsection (a) above also shall apply to all programs where the State of California or any state administrative agency or other state entity is the ultimate payer for the drug, even if it did not purchase the drug directly. This includes, but is not limited to, California's Medi-Cal fee-for-service outpatient drug program, and California's AIDS Drug Assistance Program. In addition to agreements for any cash discounts, free goods, volume discounts, rebates, or any other discounts or credits already in place for these programs, the responsible state agency shall enter into additional agreements with drug manufacturers for further price reductions so that the net cost of the drug, as determined by the California Department of Health Care Services, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs. The requirements of this Section shall not be applicable to drugs purchased or procured, or rates developed, pursuant to or under any Medi-Cal managed care program.

(c) It is the intent of the People of the State of California that the State of California, and all state agencies and other state entities that enter into one or more agreements with the manufacturer of any drug for the purchase of prescribed drugs, shall implement this section in a timely manner, and to that end the State of California and all such state agencies and other state entities are required to implement and comply with this law no later than July 1, 2017.

(d) The State of California, and each and every state administrative agency or other state entity, may adopt rules and/or regulations to implement the provisions of this Section, and may seek any waivers of federal law, rule, and/or regulation necessary to implement the provisions of this Section.

Section 5. Liberal Construction.

This Act is an exercise of the public power of the People of the State of California for the protection of their health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

Section 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the People of the State of California that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

Section 7. Proponent Accountability.

The People of the State of California hereby declare that the proponent of this Act should be held civilly liable in the event this Act is struck down, after passage, in whole or in part, by a court of law for being constitutionally or statutorily impermissible. Such a constitutionally or statutorily impermissible initiative is a misuse of taxpayer funds and electoral resources and the Act's proponent, as drafter of the Act, must be held accountable for such an occurrence.

In the event this Act, after passage, is struck down in a court of law, in whole or in part, as unconstitutional or statutorily invalid, and all avenues for appeal have been exhausted, the proponent shall pay a civil penalty of \$10,000 to the General Fund of the State of California for failure to draft and sponsor a wholly constitutionally or statutorily permissible initiative law but shall have no other liability to any person or entity with respect to, related to, or arising from the Act. No party or entity may waive this civil penalty.

Section 8. Amendment and Repeal.

This Act may be amended to further its purposes by statute passed by a two-thirds (2/3) vote of the Legislature and signed by the Governor.

Section 9. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

Section 10. Legal Defense.

The People of the State of California desire that the Act, if approved by the voters, and thereafter challenged in court, be defended by the State of California. The People of the State of California, by enacting this Act, hereby declare that the proponent of this Act have a direct and personal stake in defending this Act from constitutional or statutory challenges to the Act's validity. In the event the Attorney General fails to defend this Act, or the Attorney General fails to appeal an adverse judgment against the constitutionality or statutory permissibility of this Act, in whole or in part, in any court of law, the Act's proponent shall be entitled to assert its direct and personal stake by defending the Act's validity in any court of law and shall be empowered by the citizens through this Act to act as agents of the citizens of the State of California subject to the following conditions: (1) The proponent shall not be considered an "at-will" employee of the State of California, but the Legislature shall have the authority to remove the proponent from their agency role by a majority vote of each house of the Legislature when "good cause" exists to do so, as that term is defined by California case law; (2) The proponent shall take the Oath of Office under California Constitution, Article XX, §3 as an employee of the State of California; (3) The proponent shall be subject to all fiduciary, ethical, and legal duties prescribed by law; and (4) The proponent shall be indemnified by the State of California for only reasonable expenses and other losses incurred by the proponent, as agent, in defending the validity of the challenged Act. The rate of indemnification shall be no more than the amount it would cost the State to perform the defense itself.

Section 11. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters.

EXHIBIT B

Proposition 61
State Prescription Drug Purchases. Pricing Standards.
Initiative Statute.

BACKGROUND

The State Payments for Prescription Drugs

State Pays for Prescription Drugs Under Many Different State Programs. Typically, the state pays for prescription drugs under programs that provide health care or health insurance to certain state populations. For example, the state pays for prescription drugs through the health care coverage it provides to the state's low-income residents through the Medi-Cal program and to current and retired state employees. The state also provides and pays for the health care of prison inmates, including their prescription drug costs.

State Pays for Prescription Drugs in a Variety of Ways. In some cases, the state purchases prescription drugs directly from drug manufacturers. In other cases, the state pays for prescription drugs even though it is not the direct purchaser of them. For example, the state reimburses retail pharmacies for the cost of prescription drugs purchased by the pharmacies and dispensed to individuals enrolled in certain state programs.

Annual State Drug Expenditures Totaled Almost \$3.8 Billion in 2014-15. As shown in Figure 1, the state spent almost \$3.8 billion on prescription drugs in 2014-15 under a variety of state programs. State funds pay for roughly half of overall state prescription drug spending, and the remainder is paid with federal and other nonstate revenues.

**SUBJECT TO COURT
ORDERED CHANGES**

Figure 1 Annual State Drug Spending ^a		
2014-15, All Fund Sources		
Agency/Program	Population Served	Drug Spending (in Millions)
Medi-Cal	State's low-income residents	\$1,809 ^c
Public Employees' Retirement System	Public employees, dependents, and retirees	1,328 ^d
University of California	Students, clinics, and hospital patients	334
Corrections	Inmates	211
Public Health	Underinsured individuals who are HIV-positive	57
State Hospitals	State hospital patients	35
Developmental Services	Developmental center residents	8
California State University	Students	4
Total		\$3,786

^a Figure excludes some state agencies or programs with relatively small prescription drug spending amounts.
^b Amounts listed generally account for any discounts or rebates that lower the agencies' or programs' prescription drug spending.
^c Amount does not include Medi-Cal managed care drug spending.
^d Amount excludes expenditures on behalf of local public employees.

Prescription Drug Pricing in General

Prices Actually Paid Often Differ From the Drugs' "List Prices." Prescription drugs sold in the United States have list prices that are similar to the manufacturer's suggested retail price (MSRP) for automobiles. Purchasers of the drugs typically negotiate the prices and often receive discounts. As a result, the final price paid for a prescription drug is typically lower than its list price.

Different Payers Often Pay Different Prices for the Same Prescription Drug. Often there is no single price paid by all payers for a particular prescription drug. Instead, different payers may regularly pay different prices for the same drug, which reflect the results of negotiations between the drugs' buyers and sellers. For example, two different insurance companies may pay different prices for the same drug, as may two separate state agencies such as the California Department of Health Care Services (DHCS) and the California Department of Public Health.

**SUBJECT TO COURT
ORDERED CHANGES**

Prices Paid for Prescription Drugs Are Often Subject to Confidentiality Agreements.

Prescription drug purchase agreements often contain confidentiality clauses that are intended to prohibit public disclosure of the agreed prices. As a result, the prescription drug prices paid by a particular entity, including a government agency, may be unavailable to the public.

State Prescription Drug Pricing

State Strategies to Reduce Prescription Drug Prices. California state agencies pursue a variety of strategies to reduce the prices they pay for prescription drugs, which typically involve negotiating with drug manufacturers and wholesalers. The particular strategies vary depending on program structure and the manner in which the state programs pay for drugs. For example, multiple California state departments jointly negotiate drug prices with manufacturers. By negotiating as a single, larger entity, the participating state departments are able to obtain lower drug prices. Another state strategy is to negotiate discounts from drug manufacturers in exchange for reducing the overall administrative burden on doctors prescribing these manufacturers' drugs.

United States Department of Veteran Affairs (VA) Prescription Drug Pricing

VA Provides Health Care to Veterans. The VA provides comprehensive health care to approximately nine million veterans nationwide. In doing so, the VA generally purchases the prescription drugs that it makes available to VA health care beneficiaries.

Programs to Reduce Federal Prescription Drug Expenditures. The federal government has established discount programs that place upper limits on the prices paid for prescription drugs by selected federal payers, including the VA. These programs generally result in lower prices than those available to private payers.

**SUBJECT TO COURT
ORDERED CHANGES**

VA Obtains Additional Discounts From Drug Manufacturers or Sellers. On top of the federal discount programs described above, the VA often negotiates additional discounts from drug manufacturers or sellers that lower its prices below what other federal departments pay. Manufacturers or sellers provide these discounts in return for their drugs being made readily available to VA patients.

VA Publishes Some of Its Prescription Drug Pricing Information. The VA maintains a public database that lists the prices paid by the VA for most of the prescription drugs it purchases. According to the VA, however, the database may not display the lowest prices paid for some of the drugs for which the VA obtains additional negotiated discounts. The VA may not publish this pricing information in the database due to confidentiality clauses that are included in certain drugs' purchase agreements and are intended to prohibit public disclosure of the negotiated prices.

PROPOSAL

Measure Sets an Upper Limit on Amount State Can Pay for Prescription Drugs. This measure generally prohibits state agencies from paying more for a prescription drug than the lowest price paid by the VA for the same drug after all discounts are factored in for both California state agencies and the VA.

Measure Applies Whenever the State Is the Payer of Prescription Drugs. The measure's upper limit on state prescription drug prices applies regardless of how the state pays for the prescription drugs. It applies, for example, whether the state purchases prescription drugs directly from a manufacturer or instead reimburses pharmacies for the drugs they provide to enrollees of state programs.

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Measure Exempts a Portion of the State's Largest Health Care Program From Its Drug Pricing Requirements. The state's Medi-Cal program offers comprehensive health coverage to the state's low-income residents. The state operates Medi-Cal under two distinct service delivery systems: the fee-for-service system (which serves approximately 25 percent of Medi-Cal enrollees) and the managed care system (which serves approximately 75 percent of enrollees). While the measure applies to the fee-for-service system, it exempts the managed care system from its drug pricing requirements described above.

DHCS Required to Verify That State Agencies Are Complying With Measure's Drug Pricing Requirements. The measure requires DHCS to verify that state agencies are paying the same or less than the lowest price paid by the VA on a drug-by-drug basis.

FISCAL EFFECTS

By prohibiting the state from paying more for a prescription drug than the lowest price paid by the VA, there is the potential for the state to realize reductions in its drug costs. There are, however, major uncertainties concerning (1) the implementation of the measure's lowest-cost requirement and (2) how drug manufacturers would respond in the market. We discuss these concerns below.

Potential Implementation Challenges Create Fiscal Uncertainty

Some VA Drug Pricing Information May Not Be Publicly Accessible. The measure generally requires that the prescription drug prices paid by the state not exceed the lowest prices paid by the VA on a drug-by-drug basis. As mentioned above, the VA's public database information on the prices of the prescription drugs it purchases does not *always* identify the lowest prices the VA pays. This is because, at least for some drugs, the VA has negotiated a

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lower price than that shown in the public database and is keeping that pricing information confidential. It is uncertain whether the VA could be nonetheless required to disclose these lower prices to an entity—such as DHCS—requesting such information under a federal Freedom of Information Act (FOIA) request. A FOIA exemption covering trade secrets and financial information may apply to prevent the VA from having to disclose these currently confidential prices to the state.

Confidentiality of VA Drug Prices Could Compromise the State's Ability to Implement the Measure. If the VA is legally allowed to keep some of its prescription drug pricing information confidential, DHCS would be unable to assess in all cases whether state agencies are paying less than or equal to the lowest price paid by the VA for the same drug. This would limit the state's ability to implement the measure as it is written. However, to address challenges in implementing laws, courts sometimes grant state agencies latitude to implement laws to the degree that is practicable as long as implementation is consistent with the laws' intent. For example, courts might allow the state to pay for drugs at a price not exceeding the lowest *known* price paid by the VA, rather than the actual lowest price, to allow the measure to be implemented.

Potential Confidentiality of Lowest VA Drug Prices Reduces but Does Not Eliminate Potential State Savings. The potential confidentiality of at least some of the lowest VA prices reduces but does not eliminate the measure's potential to generate savings related to state prescription drug spending. Though pricing information may be unavailable for some of the VA's lowest-priced prescription drugs, publicly available VA drug prices have historically been lower than the prices paid by some California state agencies for some drugs. To the extent that

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the VA's publicly available drug prices for particular drugs are lower than those paid by California state agencies and manufacturers choose to offer these prices to the state, the measure would help the state achieve prescription drug-related savings.

Potential Drug Manufacturer Responses Limit Potential Savings***Drug Manufacturer Responses Under Measure Could Significantly Affect Fiscal Impact.***

In order to maintain similar levels of profits on their products, drug manufacturers would likely take actions that mitigate the impact of the measure. A key reason why drug manufacturers might take actions in response to the measure relates to how federal law regulates state Medicaid programs' prescription drug prices. (Medi-Cal is California's Medicaid program.) Federal law entitles all state Medicaid programs to the lowest prescription drug prices available to most public and private payers in the United States (excluding certain payers, such as the VA). If certain California state agencies receive VA prices, as the measure intends, this would set new prescription drug price limits at VA prices for *all* state Medicaid programs. As a result, the measure could extend the VA's favorable drug prices to health programs serving tens of millions of additional people nationwide, placing added pressure on drug manufacturers to take actions to protect their profits under the measure.

Below are two possible manufacturer responses. (We note that manufacturers might ultimately pursue both strategies, while at the same time offering some drugs at favorable VA prices.)

- ***Drug Manufacturers Might Raise VA Drug Prices.*** Knowing that the measure makes VA prices the upper limit for what the state can pay, drug manufacturers might choose to raise VA drug prices. This would allow drug manufacturers to continue to

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offer prescription drugs to state agencies while minimizing any reductions to their profits. Should manufacturers respond in this manner, potential savings related to state prescription drug spending would be reduced.

- ***Drug Manufacturers Might Decline to Offer Lowest VA Prices to the State for Some Drugs.*** The measure places no requirement on drug manufacturers to offer prescription drugs to the state at the lowest VA prices. Rather, the measure restricts actions that the *state* can take (namely, prohibiting the state from paying more than the lowest VA prices for prescription drugs). Therefore, if manufacturers decide it is in their interest not to extend the VA's favorable pricing to California state agencies (for example, to avoid consequences such as those described above), drug manufacturers could decline to offer the state some drugs purchased by the VA. In such cases, these drugs would be unavailable to most state payers. Instead, the state would be limited to paying for drugs that either the VA does not purchase or drugs that manufacturers will offer at the lowest VA prices. (However, to comply with federal law, Medi-Cal might have to disregard the measure's price limits and pay for prescription drugs regardless of whether manufacturers offer their drugs at or below VA prices.) This manufacturer response could reduce potential state savings under the measure since it might limit the drugs the state can pay for to those that, while meeting the measure's price requirements, are actually more expensive than those currently paid for by the state.

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Summary of Overall Fiscal Effect

As discussed above, if adopted, the measure could generate annual state savings. However, the amount of any savings is highly uncertain as it would depend on (1) how the measure's implementation challenges are addressed and (2) the uncertain market responses of drug manufacturers to the measure. As a result, the fiscal impact of this measure on the state is unknown. It could range from relatively little effect to significant annual savings. For example, if the measure lowered total state prescription drug spending by even a few percent, it would result in state savings in the high tens of millions of dollars annually.

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