PROPOSITION 78
Discounts on Prescription Drugs.
Initiative Statute.
Proponent: Ashlee N. Brown

Date: July 21, 2005

BALLOT LABEL

DISCOUNTS ON PRESCRIPTION DRUGS.
INITIATIVE STATUTE.

Establishes discount prescription drug program for certain low- and moderate-income Californians. Authorizes Department of Health Services to contract with participating pharmacies for discounts and with participating drug manufacturers for rebates. Fiscal Impact: State costs for administration and outreach in the millions to low tens of millions of dollars annually. State costs for advance funding for rebates. Unknown potentially significant savings for state and county health programs.

SUBJECT TO COURT
ORDERED CHANGES

Proposition 78

Prescription Drugs. Discounts. Initiative Statute.

Yes/No Statement

A **YES** vote on this measure means: A new state drug discount program would be created to reduce the costs that certain residents of the state, including persons in families with an income at or below 300 percent of the federal poverty level, would pay for prescription drugs purchased at pharmacies.

A **NO** vote on this measure means: The state would not expand its drug discount program beyond an existing state program that assists elderly and disabled persons on Medicare.

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BALLOT MEASURE SUMMARY INFORMATION

Argument **in favor of** Proposition #78.

Include text of summary argument here (50 word maximum):

Proposition 78 provides that millions of seniors and low income, uninsured Californians can buy prescription drugs at discounts of 40%. Adapted from a successful program operating in Ohio, Prop. 78 can take effect immediately without a big government bureaucracy. Seniors, taxpayers, nurses, doctors and patient advocates say Yes on Proposition 78. www.calrxnow.org.

"*Whom to Contact for More Information*"
(This information will appear in the voter information guide)

Contact Name: _____

Organization: Californians for Affordable Prescriptions

Address: 1415 L Street, Suite 1250

Sacramento, CA 95814

Phone: _____

E-mail: info@calrxnow.org

Web site: www.calrxnow.org

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BALLOT MEASURE SUMMARY INFORMATION

Argument **in favor/against** (circle one) of proposition # 78.

Include text of summary argument here (50 word maximum):

ATTACHED

"Whom to Contact for More Information".
(This information will appear in the voter information guide)

Contact Name: Anthony Wright

Organization: Health Access California

Address: 414 13th Street, Suite 450
Oakland, CA 94612

Phone: 510-873-8787

E-mail: awright@health-access.org

Web site: www.VoteNoOnProp78.com

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BALLOT SUMMARY FOR NO ON PROP 78

SPONSORED BY THE PRESCRIPTION DRUG COMPANIES, Prop. 78 is a SMOKESCREEN to stop Prop. 79, a real, enforceable plan backed by consumer groups. Under the "voluntary" Prop. 78, drug companies don't have to provide a single discount, and the plan can END AT ANY TIME. VOTE NO on Prop. 78.

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Date: July 21, 2005

OFFICIAL TITLE AND SUMMARY
PREPARED BY THE ATTORNEY GENERAL

BALLOT TITLE AND SUMMARY

DISCOUNTS ON PRESCRIPTION DRUGS. INITIATIVE STATUTE.

- Establishes discount prescription drug program, overseen by California Department of Health Services.
- Enables certain low- and moderate-income California residents to purchase prescription drugs at reduced prices.
- Authorizes Department: to contract with participating pharmacies to sell prescription drugs at agreed-upon discounts negotiated in advance; to negotiate rebate agreements with participating drug manufacturers.
- Imposes $15 annual application fee.
- Creates state fund for deposit of drug manufacturers' rebate payments.
- Requires Department's prompt determination of residents' eligibility, based on listed qualifications.
- Permits outreach programs to increase public awareness.
- Allows program to be terminated under specified conditions.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- One-time and ongoing state costs, potentially in the millions to low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.

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- State costs, potentially in the low tens of millions of dollars, to cover the funding gap between when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.

- Unknown potentially significant savings for state and county health programs due to the availability of drug discounts.

- Potential unknown effects on state revenues and expenditures from changes in prices and quantities of drugs sold in California.

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Proposition 78
Prescription Drugs. Discounts. Initiative Statute.

Background

Prescription Drug Coverage. Currently, several state and federal programs provide prescription drug coverage to eligible individuals. The state's Medi-Cal Program, which is administered by the Department of Health Services (DHS), provides prescription drugs for low-income children and adults. The state's Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides prescription drugs for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Beginning January 2006, the federal government will provide prescription drug coverage to persons enrolled in Medicare, a federal health program for elderly and disabled persons. (This would include some persons enrolled in Medi-Cal who are also enrolled in Medicare.) Various other programs funded with state or federal funds also provide assistance to help pay part or all of the cost of drugs for specified individuals.

In addition, many Californians receive coverage for prescription drugs through private insurance that is purchased by individuals or provided by their employer or the employer of a member of their family.

Drug Discount Programs. California, a number of other states, and private associations and drug makers have established drug discount programs. These programs help certain consumers, including individuals who are not eligible for state

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and federal programs that provide drug coverage, purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs at a discount to elderly and disabled persons enrolled in Medicare as a condition of a pharmacy's participation in the Medi-Cal Program.

Proposal

This proposition creates a new state drug discount program to reduce the costs that certain residents of the state would pay for prescription drugs purchased at pharmacies. The major components of the measure are outlined below.

Discount Card Program. Under the new drug discount program, eligible persons could obtain a card that would qualify them for discounts on their drug purchases at pharmacies. The program would be open to California residents in families with an income at or below 300 percent of the federal poverty level—up to almost $29,000 a year for an individual or about $58,000 for a family of four. Persons enrolled in Medicare could obtain discount cards for drugs not covered by Medicare. Persons could not participate in the new drug discount program if they receive their drug coverage from private health insurance, from the Medi-Cal or Healthy Families Programs, or from other public programs supported with state or federal funding. Persons generally could not obtain a drug discount card for at least three months after leaving these private or public sources of drug coverage.

The new drug discount program would be administered by DHS, which could contract with a private vendor for assistance. Participants would enroll in the program

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by paying a $15 fee, and would pay an annual renewal fee of the same amount. Eligible persons could enroll or reenroll in the program at any pharmacy, doctor's office, or clinic, which chose to participate in the drug discount program. Applications and renewals could also be handled through an Internet Web site or through a telephone call center. The DHS would review applications and mail the drug discount cards to eligible persons, usually within four days.

The state would seek two types of discounts in order to obtain lower prices for persons with the new drug discount cards. First, pharmacies that voluntarily chose to participate in the program would agree to sell prescription drugs to cardholders at an agreed-upon discount negotiated in advance with the state. In addition, pharmacies would further discount the price to reflect any rebates the state negotiated with drug makers. (The pharmacies would subsequently be reimbursed for this second type of discount with rebates collected by the state from drug makers.)

The DHS could end the drug discount program if it found there were insufficient discounts to make the program work, if too few persons enrolled in the program, or if DHS could not find a vendor to help run the program.

Private Drug Discount Programs. The measure directs DHS to implement agreements with drug discount programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

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Outreach Efforts. The measure directs DHS to conduct an outreach program to inform state residents about the new drug discount program.

Related Provisions in Proposition 79. Proposition 79 on this ballot also establishes a new state drug discount program. The key differences between Proposition 78 and Proposition 79 are shown in Figure 1.

<INSERT FIGURE 1>

The State Constitution provides that if a particular provision of a proposition that has been approved by the voters is in conflict with a particular provision of another proposition approved by the voters, only the provision in the measure with the higher number of yes votes would take effect. Proposition 78 specifies that its provisions would go into effect in their entirety, and that none of the provisions of a competing measure such as Proposition 79 would take effect, if Proposition 78 received the higher number of yes votes.

Fiscal Effects

This measure could have a number of fiscal effects on state and local government. We discuss several major factors below that could result in costs or savings.

State Costs for Administration and Outreach Activities. The DHS would incur significant startup costs, as well as ongoing costs, for administrative and outreach activities to implement the new drug discount program created by this proposition.

This would include administrative costs to:

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- Establish the new program, including any new information technology systems that would be needed for its operation.
- Operate the Internet Web site and the call center to receive applications for drug discount cards.
- Process applications and renewals of drug discount cards.
- Negotiate and collect rebates from drug manufacturers and make advance rebate payments to pharmacies.
- Coordinate the state's drug discount program with other private drug discount programs.

The state could also incur additional costs for the proposed outreach activities, potentially including costs for radio or television advertising, written materials, and other promotional efforts to make consumers aware of the drug discount program.

In the aggregate, these administrative and outreach costs would probably range from the millions to low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of outreach efforts and the number of consumers who chose to participate in the drug discount program.

These costs could be partly offset by (1) any funds available for this purpose from a new special fund created by this measure, (2) any private donations received for this purpose, and (3) a portion of the enrollment fees collected for the program. The amount of donations that the state would receive on an ongoing basis for outreach activities is

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unknown. The amount of available special funds or the fee revenues that would be collected by the state is also unknown. In view of the above, it appears likely that a significant share of the cost of this program would be borne by the General Fund.

Costs for "Float." This measure requires the state to reimburse pharmacies for part of the amount that they discounted their drugs. This reimbursement reflects discounts for which the state receives rebates from drug makers.

The reimbursement to pharmacies must be made within two weeks after their claims are filed with the state. However, drug makers are required by the measure to pay rebates to the state on at least a quarterly basis. This means that the state could, in many cases, pay out rebates to pharmacies before it actually collects the rebate funds from drug makers. Moreover, any disputes that arise over the actual amounts owed for rebates could further slow payments of rebate funds by drug makers to the state.

This recurring gap in funding between when rebate money is collected by the state and when the state has to pay pharmacies is commonly referred to as float. The cost of the float is unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the program. Float costs would occur mainly in the early years of implementing this new program. After the program has been fully implemented, rebate funds collected from drug makers should be largely sufficient to reimburse pharmacies.

This measure permits the state to enter into agreements with drug makers to collect some rebate funds in advance. The amount of funding that the state would receive

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through such advance payments is unknown. Any float costs that exceeded these advance rebate payments would be borne by the state General Fund.

Potential Savings for State and County Health Programs. The drug discount program established under this proposition could reduce costs to the state and counties for health programs.

Absent the discounts available under such a drug discount program, some lower-income individuals who lack drug coverage might forego the purchase of their prescribed drugs. Such individuals might eventually require hospitalization as a result of their untreated medical conditions, thereby adding to Medi-Cal Program costs. Other individuals might "spend down" their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact amount of savings to the Medi-Cal Program from a drug discount program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of a drug discount program could reduce costs for other state health programs. It could also do so for county indigent care by decreasing out-of-pocket drug expenses for low-income persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings is unknown.

Other Fiscal Effects. This measure would affect both the prices and quantities of prescription drugs sold in California. In turn, this could affect taxable profits of drug makers and businesses that provide health care for their employees, as well as

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consumers' disposable income. These changes could affect state revenues. Changes in the prices and quantities of drugs sold could affect state expenditures as well. The net impact of these factors on state revenues and expenditures is unknown.

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Figure 1

Key Differences Between Propositions 78 and 79

	Proposition 78	Proposition 79
General eligibility requirements	• California residents in families with an income at or below 300 percent of the federal poverty level. (About $29,000 annually for an individual and $58,000 for a family of four.) • No such provision.	• California residents in families with an income at or below 400 percent of the federal poverty level. (About $38,000 annually for an individual and $77,000 for a family of four.) • Also, persons in families with medical expenses at or above 5 percent of their family's income.
Persons excluded from coverage	• Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries). • Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card.	• Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries). • No such provision.
Application and renewal fee	• $15 per year.	• $10 per year.
Method of obtaining rebates from drug makers	• Negotiated with drug makers. • No such provision.	• Negotiated with drug makers. • Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.
Assistance to business and labor organizations	• No such provision.	• Establishes drug discount program to assist certain business and labor entities.
Prescription Drug Advisory Board	• No such provision.	• Creates new nine-member panel to review the access to and pricing of drugs.
Lawsuits over drug profiteering law	• No such provision.	• Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.

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Argument in Favor of Proposition 78

Proposition 78 offers Californians struggling with high prescription drug costs real help, right now. Prop. 78 is a proven program that can take effect immediately, and will deliver critically needed prescription drug discounts to millions of seniors and low income, uninsured Californians.

Known as Cal Rx, Proposition 78 offers Californians the best prescription drug discount program in the country. It is an improved version of a successful program already operating in Ohio that is delivering discounts averaging 31%, saving consumers $15.31 on every covered prescription. Every major prescription drug manufacturer participates in the Ohio program.

"This program is a lifesaver. My family saves $150 a month on prescription drugs for my husband's heart condition. For us, it's a miracle."

Robin Ford
Canton, Ohio

Proposition 78 is even better than the Ohio program. The California Department of Health Services concludes that the Cal Rx program enacted by Proposition 78 will result in discounts of over 40% to millions of eligible Californians. State officials say that Cal Rx prices will compare favorably to prices in Canada.

Here's how Proposition 78 works:

- The program covers seniors and the uninsured with family incomes up to $58,000 annually.
- Manufacturers will provide prescription drugs to the Cal Rx program at the lowest commercial price they sell to anyone in California and pharmacists will provide additional discounts. According to state officials, the average discount will be at least 40% off regular retail prices.
- Prop. 78 also makes it easier for people to get access to new and existing free drug programs, meaning even more savings for consumers.
- Enrollment is simple. People can sign up at their local pharmacy.
- Prop. 78 does not require a big government bureaucracy to implement. The discounts go right to the patient in their community.
- ALL drugs are eligible for discounts under Proposition 78, not just those on a government determined list.

"Proposition 78 offers real hope to millions of Californians who currently don't have access to affordable prescription medications. We want all Californians in need to have access to prescription medications and Proposition 78 will do that."

Rick Roberts
HIV/AIDS Patient and Activist

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Proposition 78 enjoys bi-partisan support. It is supported by groups representing seniors, patients, taxpayers, and small businesses across the state. A Los Angeles Times news report found Prop. 78, "would offer one of the most extensive discounts in the country."

Proposition 78 will bring real help, right now. It can go into effect immediately and begin delivering deep discounts on prescription drugs, helping millions of seniors and low income, uninsured Californians.

There are two prescription drug discount proposals on the ballot, but only Proposition 78 will work. Unlike the other proposal, Prop. 78 doesn't require federal approval, provides discounts on a wider range of drugs, doesn't depend on a big government bureaucracy to be implemented, and won't result in costly litigation by trial lawyers.

Please, join seniors, taxpayers, consumers, patient advocates, health care professionals and small businesses, and VOTE YES on Proposition 78.

Kristine Yahn, RN
Executive Director
Californians for Patient Care

Carolyn Peterson, RN, MS, AOCN
Chief Operating Officer
Community Hospice

Doris Luna, RN
Certified Pediatric Oncology Nurse
UC Davis Medical Center

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REBUTTAL TO ARGUMENT IN FAVOR OF

PROPOSITION 78

~~NO ON PROP 78 REBUTTAL TO YES ON PROP 78 BALLOT ARGUMENT~~

Why are Californians struggling with high drug prices? Because the drug companies funding Prop. 78 charge high prices.

If drug companies want to offer discounts voluntarily, they can do it today, without an initiative, without a new program.

- Prop. 78 provides smaller discounts to fewer people and does not allow the state to enforce the discounts. This approach already failed in California.

- Prop. 79 builds on existing efforts that have saved taxpayers billions. It gives more middle and low income Californians bigger discounts that can be enforced.

PROP. 78 USES AN APPROACH THAT HAS FAILED IN CALIFORNIA AND ELSEWHERE

In 2001, California created the Golden Bear State Pharmacy which relied on drug companies to voluntarily lower their prices. The state shut it down because very few drug companies agreed to participate.

Prop. 78 uses the same failed approach.

PROP. 78: SMALLER DISCOUNTS, FEWER PEOPLE, NO ENFORCEMENT

Drug companies face no penalty under Prop. 78 if they fail to provide discounts and the industry can shut down Prop. 78 at any time by failing to participate. Prop. 78 does not require any, much less all, drugs to be discounted, and it offers smaller discounts to fewer people.

DON'T BE FOOLED: *If Prop. 78 gets more votes than Prop. 79, drug companies win and Californians lose.*

That's why drug companies contributed more than $50 million to pass Prop. 78 and defeat Prop. 79. That's why consumers, seniors, unions, nurses, and doctors, say VOTE NO on 78 and YES on 79.

Barbara A. Brenner, *Executive Director, Breast Cancer Action*
Ramón Castellblanch, *Policy Advisor, Senior Action Network*
Kathy J. Sackman, RN, *President, United Nurses Association of California*

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THE DRUG LOBBY IS SPENDING HISTORIC AMOUNTS TO BLOCK THE REAL SOLUTION FOR FAIR DRUG PRICES

Prop. 78 is a smokescreen designed and bankrolled with tens of millions of dollars from the prescription drug lobby to block Prop. 79, a real discount solution put forward by consumer, health, and senior groups. *Under their cynical strategy, if both measures get a majority, the one with more votes becomes law.*

Newspapers report that just one contribution from GlaxoSmithKline for $8.5 million could be "the largest ever from a corporation to a California campaign." *Drug companies donated $50 million to Prop. 78 by mid-July, on track to run what could be the most expensive initiative campaign in California history.*

Jan Faiks, VP with PhRMA, the industry's lobbying arm, told the Los Angeles Times "the industry would spend 'whatever it takes' to defeat [Prop. 79]."

PROP. 78 RELIES ON MANUFACTURERS TO VOLUNTEER DISCOUNTS: A PLAN PROVEN TO FAIL

Prop. 78 relies on drug manufacturers to voluntarily lower their prices and does not allow the state of California to enforce the program.

California tried this voluntary approach in 2001. The Golden Bear State Pharmacy was designed to offer seniors voluntary discounts on prescription medications. More than 500 drug manufacturers were invited to participate, yet only 14 agreed. Unable to implement it successfully, Governor Schwarzenegger closed the program.

According to news reports, the drug companies said they didn't participate in Golden Bear because if they did, they would have to give the federal government the same rebates they were giving California seniors. Have they really changed their minds four years later? Can we trust the manufacturers to voluntarily lower their prices now? No.

PROP. 78'S DISCOUNTS CAN END AT ANY TIME

The drug lobby buried a provision in Prop. 78 that allows them to effectively close their discount program when too few manufacturers voluntarily lower their prices.

As stated in their initiative, Prop. 78 could end at any time if there are too few participating manufacturers, or insufficient discounts, or too few participating consumers.

Make no mistake, this provision was included by the drug companies so they can end the program at any time and protect their profit margins.

FEWER PEOPLE ARE ELIGIBLE, DISCOUNTS ARE LESS

Half as many Californians are eligible for discounts under Prop. 78 as under Prop. 79. Prop. 78 provides no discounts to many uninsured Californians, those with catastrophic medical bills, and the chronically ill such as cancer and diabetes patients with inadequate drug coverage.

The discounts offered by Prop. 78 are based on the "lowest commercial price" set by the drug companies. These discounts could be anywhere from 15 to 40 percent -- significantly less than Prop. 79's discounts.

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ARGUMENT AGAINST PROPOSITION 78

VOTE NO on PROP. 78, a smokescreen by the pharmaceutical industry to block the real solution to high prices.

Instead, VOTE YES on PROP. 79 for fair prescription drug prices.

Nancy J. Brasmer, President, *California Alliance for Retired Americans*
Richard Holober, Executive Director, *Consumer Federation of California*
Jacqueline Jacobberger, President, *League of Women Voters of California*

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Rebuttal to Argument Against Proposition 78

Proposition 78 is based on a successful Ohio program that delivers big discounts to consumers. Every major drug manufacturer participates in Ohio. Proposition 78 is an improved version of Ohio's program and will produce even larger discounts.

Even opponents admit that Proposition 78 could result in 40% discounts for consumers. Because it is adapted from a program already in operation, Proposition 78 won't be subject to lengthy court challenges. Unlike Prop. 79, Proposition 78 doesn't need federal government approval. Prop. 78 can take effect immediately, helping millions of seniors and low income, uninsured Californians get relief from high prescription drug costs.

The comparison to the Golden Bear program is misleading. That program was flawed, couldn't be implemented under federal rules to give Californians the largest discounts possible and was abandoned by the state. Proposition 78 was written to FIX that problem.

This year, the Schwarzenegger administration, working with leading Democrats, came together in the Legislature to support the CalRx program contained in Proposition 78. Had some legislators not succumbed to pressure from special interest groups and defeated CalRx in the Legislature, Californians would already be getting drug discounts.

Opponents falsely claim Proposition 78 can be abolished by drug companies. ONLY THE STATE can end the program if, for example, federal law changes and a new program becomes available that is better for Californians.

Proposition 78 is supported by dozens of groups representing seniors, taxpayers, small businesses, consumers, health care advocates and patient groups. It offers millions of Californians real help, right now on prescription drug prices. Vote YES on Proposition 78.

Tom Murphy
Chair
California Arthritis Foundation Council

Rusty Hammer
President
Los Angeles Area Chamber of Commerce

James S. Grisolia, M.D.
Senior Vice President
Epilepsy Foundation of San Diego County

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This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code ~~and the Penal Code~~; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

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SE 19/98v

#1129

SA2005RF0065

~~INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS~~

SECTION 1. FINDINGS AND DECLARATION OF PURPOSE

The People of the State of California do hereby find and declare that:

(a) Prescription drugs are an integral part to managing acute and chronic illness improving quality of life; and

(b) Prescription drugs are a convenient, cost-effective alternative to more costly medical interventions; and

(c) Increasing the affordability and access of prescription medicines will significantly improve healthcare quality and lower overall healthcare costs.

SECTION 2. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

Division 112 (commencing with Section 130600) is added to the Health and Safety Code, to read as follows:

DIVISION 112. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

Chapter 1. GENERAL PROVISIONS

130600. This division shall be known, and may be cited, as the California State Pharmacy Assistance Program or Cal Rx.

130601. For the purposes of this division, the following definitions shall apply:

(a) "Benchmark price" means the price for an individual drug or aggregate price for a group of drugs offered by a manufacturer equal to the lowest commercial price for the individual drug or group of drugs.

(b) "Cal Rx" means the California State Pharmacy Assistance Program.

(c) "Department" means the State Department of Health Services.

(d) "Fund" means the California State Pharmacy Assistance Program Fund.

(e) "Inpatient" means a person who has been admitted to a hospital for observation, diagnosis, or treatment and who is expected to remain overnight or longer.

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(f) (1) "Lowest commercial price" means the lowest purchase price for an individual drug, including all discounts, rebates, or free goods, available to any wholesale or retail commercial class of trade in California.

(2) Lowest commercial price excludes purchases by government entities, purchases pursuant to Section 340B of the federal Public Health Services Act (42 U.S.C. Sec. 256b), or nominal prices as defined in federal Medicaid drug rebate agreements.

(3) A purchase price provided to an acute care hospital or acute care hospital pharmacy may be excluded if the prescription drug is used exclusively for an inpatient of the hospital.

(4) Wholesale or retail commercial class of trade includes distributors, retail pharmacies, pharmacy benefit managers, health maintenance organizations, or any entities that directly or indirectly sell prescription drugs to consumers through licensed retail pharmacies, physician offices, or clinics.

(g) "Manufacturer" means a drug manufacturer as defined in Section 4033 of the Business and Professions Code.

(h) "Manufacturer's rebate" means the rebate for an individual drug or aggregate rebate for a group of drugs necessary to make the price for the drug ingredients equal to or less than the applicable benchmark price.

(i) "Prescription drug" means any drug that bears the legend "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(j) "Private discount drug program" means a prescription drug discount card or manufacturer patient assistance program that provides discounted or free drugs to eligible individuals. For the purposes of this division, a private discount drug program is not considered insurance or a third–party payer program.

(k) "Recipient" means a resident that has completed an application and has been determined eligible for Cal Rx.

(l) "Resident" means a California resident pursuant to Section 17014 of the Revenue and Taxation Code.

(m) "Third–party vendor" means a public or private entity with whom the department contracts pursuant to subdivision (b) of Section 130602, which may include a pharmacy benefit administration or pharmacy benefit management company.

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130602. (a) There is hereby established the California State Pharmacy Assistance Program or Cal Rx.

(b) The department shall provide oversight of Cal Rx. To implement and administer Cal Rx, the department may contract with a third–party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi–Cal program's fiscal intermediary.

(c) Any resident may enroll in Cal Rx if determined eligible pursuant to Section 130605.

CHAPTER 2. ELIGIBILITY AND APPLICATION PROCESS small caps

130605. (a) To be eligible for Cal Rx, an individual shall meet all of the following requirements at the time of application and reapplication for the program:

(1) Be a resident.

(2) Have family income, as reported pursuant to Section 130606, that does not exceed 300 percent of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. Sec. 9902), as amended.

(3) Not have outpatient prescription drug coverage paid for in whole or in part by any of the following:

(A) A third–party payer.

(B) The Medi–Cal program.

(C) The children's health insurance program.

(D) The disability medical assistance program.

(E) Another health plan or pharmacy assistance program that uses state or federal funds to pay part or all of the cost of the individual's outpatient prescription drugs. Notwithstanding any other provision of this division to the contrary, an individual enrolled in Medicare may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.

(4) Not have had outpatient prescription drug coverage specified in paragraph (3) during any of the three months preceding the month in which the application or reapplication for Cal Rx is made, unless any of the following applies:

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(A) The third–party payer that paid all or part of the coverage filed for bankruptcy under the federal bankruptcy laws.

(B) The individual is no longer eligible for coverage provided through a retirement plan subject to protection under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001), as amended.

(C) The individual is no longer eligible for the Medi–Cal program, children's health insurance program, or disability medical assistance program.

¶ (b) Application and an annual reapplication for Cal Rx shall be made pursuant to subdivision (d) of Section 130606. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

¶ 130606. (a) The department or third–party vendor shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx.

¶ (b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Include a statement printed in bold letters informing the applicant that knowingly making a false statement is punishable under penalty of perjury.

(4) Specify that the application and annual reapplication fee due upon submission of the applicable form is fifteen dollars ($15).

¶ (c) In assessing the income requirement for Cal Rx eligibility, the department shall use the income information reported on the application and not require additional documentation.

¶ (d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx, through a Web site or call center staffed by trained operators approved by the department, or through the third–party vendor. A pharmacy, physician office, clinic, or third–party vendor completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a recipient.

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(e) The department or third–party vendor shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, or through the third–party vendor to enroll applicants in Cal Rx.

(f) During normal hours, the department or third–party vendor shall make a determination of eligibility within four hours of receipt by Cal Rx of a completed application. The department or third–party vendor shall mail the recipient an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department or third–party vendor may issue a recipient identification number for eligible applicants to the pharmacy for immediate access to Cal Rx.

130607. (a) The department or third–party vendor shall attempt to execute agreements with private discount drug programs to provide a single point of entry for eligibility determination and claims processing for drugs available in those private discount drug programs.

(b) (1) Private discount drug programs may require an applicant to provide additional information, beyond that required by Cal Rx, to determine the applicant's eligibility for discount drug programs.

(2) An applicant shall not be, under any circumstances, required to participate in, or to disclose information that would determine the applicant's eligibility to participate in, private discount drug programs in order to participate in Cal Rx.

(3) Notwithstanding paragraph (2), an applicant may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

(c) For those drugs available pursuant to subdivision (a), the department or third–party vendor shall develop a system that provides a recipient with the best prescription drug discounts that are available to them through Cal Rx or through private discount drug programs.

(d) The recipient identification card issued pursuant to subdivision (g) of Section 130606 shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a uniform prescription drug card pursuant to Section 1363.03.

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CHAPTER 3. ADMINISTRATION AND SCOPE

130615. (a) To the extent that funds are available, the department shall conduct outreach programs to inform residents about Cal Rx and private drug discount programs available through the single point of entry as specified in subdivisions (a) and (d) of Section 130607. No outreach material shall contain the name or likeness of a drug. The name of the organization sponsoring the material pursuant to subdivision (b) may appear on the material once and in a font no larger than 10 point.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx. Neither Section 11005 of the Government Code, nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations. For purposes of this section, outreach services may include, but shall not be limited to, coordinating and implementing outreach efforts and plans. Outreach materials may include, but shall not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(c) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

130616. (a) Any pharmacy licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code may participate in Cal Rx.

(b) Any manufacturer, as defined in subdivision (g) of Section 130601, may participate in Cal Rx.

130617. (a) This division shall apply only to prescription drugs dispensed to noninpatient recipients.

(b) The amount a recipient pays for a drug within Cal Rx shall be equal to the pharmacy contract rate pursuant to subdivision (c), plus a dispensing fee that shall be negotiated as part of the rate pursuant to subdivision (c), less the applicable manufacturers rebate.

(c) The department or third–party vendor may contract with participating pharmacies for a rate other than the pharmacist's usual and customary rate. However, the department must approve the contracted rate of a third–party vendor.

(d) The department or third–party vendor shall provide a claims processing system that complies with all of the following requirements:

(1) Charges a price that meets the requirements of subdivision (b).

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(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides a single point of entry for access to private discount drug programs pursuant to Section 130607.

(4) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r–8(g)).

¶ (e) The department or third–party vendor shall pay a participating pharmacy the discount provided to recipients pursuant to subdivision (b) by a date that is not later than two weeks after the claim is received.

¶ (f) The department or third–party vendor shall develop a program to prevent the occurrence of fraud in Cal Rx.

¶ (g) The department or third–party vendor shall develop a mechanism for recipients to report problems or complaints regarding Cal Rx.

¶ 130618. (a) In order to secure the discount required pursuant to subdivisions (b) and (c) of Section 130617, the department or third–party vendor shall attempt to negotiate drug rebate agreements for Cal Rx with drug manufacturers.

¶ (b) Each drug rebate agreement shall do all of the following:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a recipient.

(4) Require the rebate payment for a drug to be equal to the amount determined by multiplying the applicable per unit rebate by the number of units dispensed.

(5) Define a unit, for purposes of the agreement, in compliance with the standards set by the National Council of Prescription Drug Programs.

(6) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

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(7) Require the manufacturer to provide, upon the request of the department, documentation to validate that the per unit rebate provided complies with paragraph (4).

(8) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a recipient's health information.

(c) To obtain the most favorable discounts, the department may limit the number of drugs available within Cal Rx.

(d) The entire amount of the drug rebates negotiated pursuant to this section shall go to reducing the cost to Cal Rx recipients of purchasing drugs. The Legislature shall annually appropriate an amount to cover the state's share of the discount provided by this section.

(e) The department or third–party vendor may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(f) Drug rebate contracts negotiated by the third–party vendor shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx recipients.

(g) The third–party vendor may directly collect rebates from manufacturers in order to facilitate the payment to pharmacies pursuant to subdivision (e) of Section 130617. The department shall develop a system to prevent diversion of funds collected by the third–party vendor.

130619. (a) The department or third–party vendor shall generate a monthly report that, at a minimum, provides all of the following:

(1) Drug utilization information.

(2) Amounts paid to pharmacies.

(3) Amounts of rebates collected from manufacturers.

(4) A summary of the problems or complaints reported regarding Cal Rx.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130620. (a) The department or third–party vendor shall deposit all payments received pursuant to Section 130618 into the California State Pharmacy Assistance Program Fund, which is hereby established in the State Treasury.

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(b) Notwithstanding Section 13340 of the Government Code, moneys in the fund are hereby appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to Section 130617 and for defraying the costs of administering Cal Rx. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

130621. The department may hire any staff needed for the implementation and oversight of Cal Rx.

130622. The department shall seek and obtain confirmation from the federal Centers for Medicare and Medicaid Services that Cal Rx complies with the requirements for a state pharmaceutical assistance program pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r–8) and that discounts provided under the program are exempt from Medicaid best price requirements.

130623. (a) Contracts and change orders entered into pursuant to this division and any project or systems development notice shall be exempt from all of the following:

(1) The competitive bidding requirements of State Administrative Manual Management Memo 03–10.

(2) Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

Title 2 of

(3) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of the Government Code.

(b) Change orders entered into pursuant to this division shall not require a contract amendment.

130624. The department may terminate Cal Rx if the department makes any one of the following determinations:

(a) That there are insufficient discounts to participants to make Cal Rx viable.

(b) That there are an insufficient number of applicants for Cal Rx.

(c) That the department is unable to find a responsible third–party vendor to administer Cal Rx.

130625. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this division

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in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action.

SEC.

SECTION 3: GENERAL PROVISIONS

(a) Conflicting Measures:

(1) This measure is intended to be comprehensive. It is the intent of the People that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(2) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

(b) Severability: The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) Amendment: The provisions of this Act may be amended by a statute that is passed by a vote of two-thirds of the membership of each house of the Legislature and signed by the Governor. All amendments to this Act shall be to further the Act and shall be consistent with its purposes.

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