

Height Commentary

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Dialysis

DVA, FMS, ARA Face Only 25% Odds of CA Dialysis Initiative Appearing on Ballot

THE TAKEAWAY

We view it as inevitable that the California Fair Pricing for Dialysis Act will qualify for the statewide ballot by June 1, but we believe it is only 25% likely the initiative will actually appear on the ballot in November. We believe the more likely outcome is that Governor Jerry Brown will sign legislation to regulate dialysis facility staffing levels and third-party premium payments. Relative to the threat of the ballot initiative, this legislative compromise would be a positive outcome for dialysis providers DaVita (DVA), Fresenius (FMS), and American Renal Associates (ARA).

Despite near certainty that the California *Fair Pricing for Dialysis Act* will qualify for the ballot by June 1, we assign only 25% odds that the California Secretary of State will *certify* the initiative in order for it to appear on the statewide ballot in November. Rather, we believe the California legislature will pass and Governor Jerry Brown will sign legislation that would regulate dialysis facility staffing levels and limit third-party premium assistance for dialysis patients in exchange for a commitment from the initiative's proponents to withdraw it before it is officially certified for the ballot. **We view this as the best possible outcome for the dialysis industry, which otherwise faces the threat of having their commercial reimbursements limited to 115% of costs, or having to fund an expensive campaign to convince voters to vote against the initiative in November. The primary risk to our projection is that the dialysis industry may make the political calculation to fight the initiative at the ballot box rather than agree to a legislative alternative that would introduce staffing and premium assistance regulations, to which we assign 15% odds. The other risk, to which we assign 10% odds, is that legislators, the governor, the initiative's proponents, and industry stakeholders will fail to reach a compromise.**

Timing

We believe that the stakeholders will broker a compromise -- and DVA, FMS, and ARA will no longer face a threat of the initiative appearing on the ballot -- within the first three weeks of June.

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In order for the initiative to appear on the ballot in November, the California Secretary of State must determine that the proponents collected enough signatures to *qualify* for the ballot and then the Secretary of State must *certify* the initiative for the ballot. **The results of the raw sample [signature count](#), which would qualify the initiative for the ballot, should be clear as soon as today and no later than June 1, and the Secretary of State must certify the initiative by June 28.**

We believe that as soon as it is certain the initiative will qualify for the ballot, legislators will begin working with initiative proponents, the Service Employees International Union - United Healthcare Workers West (SEIU-UHW), to approve dialysis legislation in exchange for the proponents' commitment to withdraw the initiative.

The Compromise

Based on our conversations with observers in California, as well as our own observations of California dialysis legislation (see our [May 16 report](#)), we believe that in order for SEIU-UHW to withdraw the initiative, they will insist Governor Brown sign two bills currently pending before the California legislature: SB 349 and SB 1156, which would implement staffing ratios in dialysis facilities and limit third-party premium assistance for dialysis patients, respectively.

While staffing ratios and limited third-party premium assistance regulations would be negative relative to current law, we view a legislative compromise as a positive outcome for the dialysis providers DaVita (**DVA**), Fresenius (**FMS**), and American Renal Associates (**ARA**). While the legislation would impose higher staffing costs on the dialysis industry, providers would be able to pass on costs to commercial payers. Furthermore, at least seven other states similarly require minimum staffing ratios for dialysis facilities, including Georgia, Maryland, Massachusetts, Oregon, New Jersey, South Carolina, Texas, and Utah.

We also believe SB 1156, as [currently written](#), would have limited impact on dialysis providers. Before it was approved by the Senate Health Committee, it was amended to only restrict third-party premium assistance for commercial coverage for patients who otherwise qualify for Medicaid, which **DVA disclosed** in 2016 they no longer support. We expect the Senate Appropriations Committee will pass SB 1156 on Friday, May 25, and the full Senate will vote on it by June 1, which is the deadline for passing the bill in that chamber.

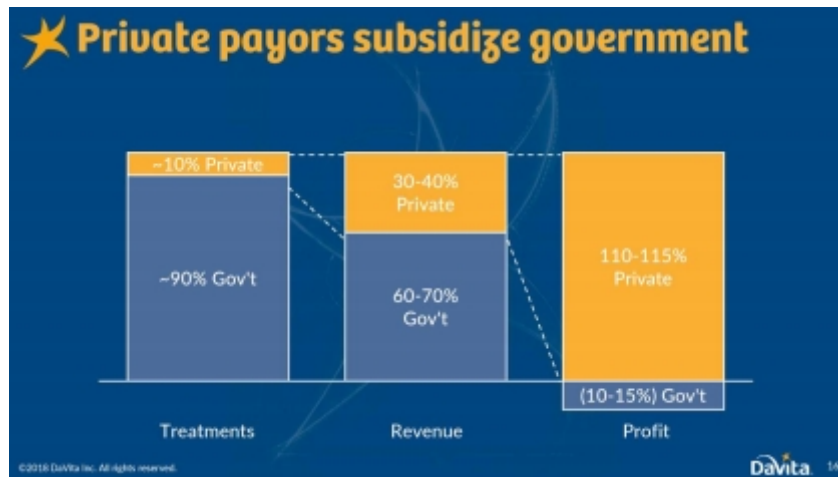
Ballot Initiative Impact on DVA, FMS and ARA

If the *Fair Pricing for Dialysis Act* were to be implemented, the measure would limit the prices outpatient dialysis providers could charge commercial insurers to 115% of costs. **DVA** already stated that if the initiative passes, it would "have a material adverse impact on the entire industry in California, it would likely make a large number of centers in California, financially unsustainable."

DVA further [disclosed](#) the extent to which commercial reimbursement rates drive profitability: while commercially reimbursed treatments account for 10% of all treatments, they account for 30-40% of revenue and 110-115% of profits.

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Catalyst Timeline

- **Any day:** Final counties report verified signatures, indicating *Fair Pricing for Dialysis Act* initiative will qualify for the November ballot.
- **May 25:** CA Senate Appropriations Committee scheduled to consider SB 1156, which would limit third-party premium assistance for dialysis patients.
- **May 31:** Random sample verifications are due from counties to the California Secretary of State.
- **June 1:** California Secretary of State informs proponents if signature verifications meet the 110% threshold to qualify for the November 2018 ballot.
- **June 1:** Last day for each chamber to pass bills introduced in that chamber, including SB 1156, the third-party payment bill.
- **June 15:** Deadline for Legislature to pass budget bill; legislator pay and adjournment for summer recess on July 6 contingent on passage.
- **June 27:** Approximate deadline for proponents to withdraw the ballot initiative.
- **June 28:** Deadline for Secretary of State to certify the initiative for the November ballot.
- **November 6:** Election day

Background: The California Ballot Initiative Process

California has unique ballot initiative laws that allow proponents of an initiative to withdraw the measure from the ballot any time up until the Secretary of State certifies the initiative for the ballot.

In order for the initiative to appear on the ballot in November, the California Secretary of State must determine that the proponents collected enough signatures to *qualify* for the ballot. That process is currently underway, and county officials are required to submit a random sample count of signatures by May 31. If the results of the random sample count indicate that the number of valid signatures is 402,468 or greater (110 percent of the required number of signatures), the Secretary of State will immediately notify the proponents that the signature

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verification process may be terminated and that the initiative would qualify to be certified for the ballot. The Secretary of State would then certify the initiative for the November ballot on June 28.

SEIU [previously used](#) the ballot initiative process as leverage in pushing the legislature to raise the California minimum wage. Based on SEIU's 2016 withdrawal of an initiative that would have raised the minimum wage in exchange for a solution developed by the California legislature, we believe that SEIU will use a commitment to withdraw the initiative as leverage in negotiating an alternative legislative solution.

Background: California Senate Bill 349

[SB 349](#) would require dialysis facilities to meet minimum staffing ratios--a minimum technician ratio of 1:3 and a minimum nurse ratio of 1:8--and allow at least 45 minutes of transition time between patients. The bill would apply penalties for noncompliance and allows the Department of Public Health to grant waivers to clinics in rural counties.

The California Senate and the Assembly Health and Appropriations Committees passed SB 349 in 2017. The bill is live and could be brought up for a vote by the full Assembly at any time.

Background: California Senate Bill 1156

[SB 1156](#) would require entities providing third-party premium assistance payments to:

- (1) certify that a patient is not eligible for Medicaid and disclose whether the patient would be eligible for Medicare;
- (2) inform the patient of all available health coverage options, including, but not limited to, Medicare, Medicaid, individual market plans, and employer plans;
- (3) disclose the patient's name to the health insurer and CA Department of Health 60 days prior to making the initial payment; and
- (4) pay premiums for the full-plan year, even if treatment is stopped.

The Senate Health Committee passed SB 1156 on April 18 by a vote of 8-0-1. We believe the Appropriations Committee will pass the bill on Friday, May 25. The full Senate would then have until June 1 to pass the bill in time for the Assembly to be able to consider it this session.

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COMPANIES MENTIONED IN THIS REPORT

American Renal Associates Holdings Inc (ARA), Fresenius Medical C Shs Sponsored American Deposit Receipt Repr 1/2 Sh (FMS), DaVita HealthCare Partners Inc (DVA)

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