PROPOSITION

34 RESTRICTS SPENDING OF PRESCRIPTION DRUG REVENUES BY CERTAIN HEALTH CARE PROVIDERS. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on page 103 and the Secretary of State's website at *voterguide.sos.ca.gov.*

- Requires health care providers meeting specified criteria to spend 98% of revenues from federal discount prescription drug program on direct patient care.
- Applies only to health care providers that: (1) spent over $100,000,000 in any ten-year period on anything other than direct patient care; and (2) operated multifamily housing reported to have at least 500 high-severity health and safety violations.
- Penalizes noncompliance with spending restrictions by revoking health care licenses and tax-exempt status.
- Permanently authorizes state to negotiate Medi-Cal drug prices on statewide basis.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Increased state costs, likely in the millions of dollars annually, to enforce new rules on certain health care entities. Affected entities would pay fees to cover these costs.

ANALYSIS BY THE LEGISLATIVE ANALYST

34

BACKGROUND

DRUG COVERAGE IN MEDI-CAL

Medi-Cal Pays for Prescription Drugs for Low-Income People. Medi-Cal is a federal-state program that provides health coverage for low-income people. This coverage includes the cost of prescription drugs.

Medi-Cal Has a New Approach to Pay for Drugs. Before 2019, Medi-Cal paid for the cost of prescription drugs in different ways. In 2019, the state adopted a single approach called "Medi-Cal Rx." Medi-Cal Rx likely saves the state money because Medi-Cal pays for drugs at more discounted prices.

New Approach Is Not in State Law. Medi-Cal Rx is not reflected in state law, but it is the approach used to pay for drugs in Medi-Cal.

FEDERAL DRUG DISCOUNT PROGRAM

Federal Program Provides Discounts on Drugs to Certain Health Care Providers. Under a federal program, drug makers provide discounts on their drugs to hospitals, clinics, and other providers. To qualify for these discounts, providers must meet certain rules. Eligible providers are public or private nonprofits that focus on serving low-income people. (These public and private nonprofits generally are exempt from paying taxes on their revenue.)

Providers Tend to Earn Revenue From Federal Discounts. Providers tend to earn net revenue from the federal drug discount program. They do so by charging payors of health care (such as private health plans and government programs) more than the cost to provide the drugs. However, providers generally do not earn net revenue on these drugs in Medi-Cal. This is because state law bans providers from charging Medi-Cal more than the discounted price of the drug.

Providers Decide How to Spend Revenue. According to the federal government, the intent of the federal drug discount program is to allow eligible providers to increase services and serve more low-income patients. Providers can do so by spending their net revenue on services to patients. Federal and state law, however, does not directly restrict how providers spend their revenue from federal drug discounts.

STATE LICENSING

Health Care Entities Must Be Licensed. Health care entities must be licensed to provide services in the state. Several departments license health care entities, such as the Department of Managed Health Care (for most health plans) and the Department of Public Health (for hospitals, clinics, and certain other kinds of facilities).

Licensed Entities Must Follow Certain Rules. Licensed entities must follow certain rules. For example, they cannot engage in conduct that is unprofessional, dishonest, or harmful to public health or safety. An entity that violates these rules can face penalties, including losing its license (which means the entity can no longer operate as a health care entity).

PROPOSAL

Restricts How Certain Entities Spend Revenue From Federal Discounts. Proposition 34 creates new rules about how certain health care entities spend revenue from the federal drug discount program. Specifically, the entities would have to spend at least 98 percent of their net revenue earned in California on health care services provided directly to patients ("direct patient care"). As Figure 1 shows,

Figure 1

Restrictions Only Apply if Four Conditions Are Met

Proposition 34's Restrictions Apply to a Health Care Entity if It:

- Participates in the federal drug discount program.
- Has (or has ever had) a license in California to operate as a health plan, pharmacy, or clinic, or has had certain contracts with Medi-Cal or Medicare.
- Has a ten-year period where it spent more than $100 million on purposes other than direct patient care.
- Owns and operates (or has previously owned and operated) multifamily housing units with at least 500 violations with a severity level of "high."

For the full text of Proposition 34, see page 103.

these rules apply only to entities that meet certain conditions ("affected entities").

Requires Affected Entities to Report Annually to the State. Proposition 34 requires affected entities to report certain information to the state each year (annually). The affected entities would have to report how much revenue they earned in California and nationwide from the federal drug discount program and how they spent this revenue. The state would use this information to help determine compliance with the new rules. The proposition allows the state to charge fees on affected entities to cover its enforcement costs. Under Proposition 34, affected entities that do not submit timely and accurate information would be engaging in conduct that is unprofessional, dishonest, or harmful to public health or safety.

Establishes Penalties for Violating Rules. As Figure 2 shows, Proposition 34 establishes four penalties for violating the new rules. All four penalties would apply if affected entities spend less than 98 percent of their net federal discount revenue on direct patient care. The penalties also would apply if the affected entities engage in conduct that is unprofessional, dishonest, or harmful to public health or safety.

Adds Medi-Cal's Approach to Pay for Drugs to State Law. Proposition 34 adds Medi-Cal Rx to state law. Because Medi-Cal Rx already is in effect, the proposition does not change the current approach Medi-Cal uses to pay for drugs.

FISCAL EFFECTS

Has Limited Statewide Fiscal Effects. Under Proposition 34, likely few entities would meet the conditions described in Figure 1. The exact number of affected entities, however, is not known. Because few entities would be affected, the proposition's statewide fiscal effect (described below) would be limited.

Increases State Enforcement Costs, Paid by New Fees. Proposition 34 would increase state costs to enforce the new restrictions. These costs likely would be in the millions of dollars annually. The state

Figure 2

Proposition 34 Establishes Four Penalties

For Ten Years:

- Entity loses California tax-exempt status.
- Entity loses license.
- Entity cannot receive state and local government contracts or grants.
- Entity's leaders cannot serve leadership roles in a California health plan, pharmacy, or clinic.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

would cover this cost by charging fees on affected entities.

Could Have Other Fiscal Effects. Proposition 34 could have other uncertain fiscal effects, such as:

- ***Savings From Increased Spending on Direct Patient Care.*** Some affected entities could increase spending on direct patient care to comply with Proposition 34. If this increase results in more spending on Medi-Cal patients, there could be savings to the state. This would depend on what health care services are provided.
- ***Costs From Fewer Federal Drug Discounts.*** Affected entities would have to pay fees and report to the state annually. Some entities might change their operations to avoid these requirements. For example, they could stop participating in the federal discount program. To the extent this results in fewer federal discounts to the Medi-Cal program, there would be state costs.
- ***Fiscal Effects From Violating Rules.*** Were an affected entity to violate Proposition 34's restrictions or engage in bad conduct, it would face penalties (such as the loss of its tax-exempt status and its health care licenses for ten years). These penalties could put it out of business. This could affect state tax revenue, state spending on Medi-Cal, or spending on other state and local government programs. The fiscal effect would depend on which affected entities face penalties.

Visit *sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2024-ballot-measure-contribution-totals* for a list of committees primarily formed to support or oppose this measure.

Visit *fppc.ca.gov/transparency/top-contributors.html* to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 34 ★

Rising healthcare costs are squeezing millions of Californians. Prop. 34 will give California patients and taxpayers much needed relief, and lowers state drug costs, while saving California taxpayers billions.

CUT PRESCRIPTION DRUG PRICES

Prop. 34 will drastically cut the cost of prescription drugs for Medi-Cal patients by permanently authorizing the State of California to negotiate lower Medi-Cal prescription drug costs.

PROTECT PATIENTS AND TAXPAYERS

Prop. 34 stands to save taxpayers millions of dollars more every year by requiring the greediest healthcare corporations to spend at least 98% of the taxpayer funds they receive through the drug discount program in California on directly treating patients.

STOP HEALTHCARE CORPORATION FINANCIAL ABUSE IN CALIFORNIA

Prop. 34 stops egregious financial abuse of the taxpayer-funded drug discount program in California.

Over 30 years ago, the federal government began offering discounted prescription drugs and other treatments to uninsured and low-income patients. However, healthcare corporations across the country have used a legal loophole to game the system and divert money from the drug discount program to pet projects that have done nothing to benefit patients: wasting money on renting out football stadiums to put on private concerts, giving their executives multimillion dollar salaries, paying for naming rights on sports stadiums, spending millions on lobbying, and dumping millions more into political campaigns.

Worse yet, these same corporations that get billions in taxpayer dollars have spent hundreds of millions of dollars on housing projects that are often run like slums. An LA Times investigation found that residents at several of these housing projects were forced to live in squalid conditions, exposed to roach and bedbug infestations, putting the health and safety of tenants at risk.

Prop. 34 will prevent this abuse from occurring in California and requires drug discount program dollars generated in California to be used for their intended purpose: helping patients.

HOLD ABUSERS ACCOUNTABLE

Prop. 34 holds violators accountable. Healthcare organizations that break the rules and misuse these taxpayer dollars must either recommit to spending on direct patient care or risk losing their California tax-exempt status and professional licenses.

Prop. 34 is targeted at those bad actors who have continually abused the system to pocket billions of taxpayer dollars for their own use. That's why it is supported by a wide coalition, including organizations that advocate to help patients and leaders in the LGBTQ community. Those supporting Prop. 34 include the California Chronic Care Coalition, the ALS Association, the Defeating Epilepsy Foundation, California Senior Alliance, AiArthritis, Support Fibromyalgia Network, Lupus and Allied Diseases Association, Inc., and the Community Access National Network.

It's time to close the corporate loophole that allows wealthy pharmacy corporations to divert money meant to help patients. Protect Patients Now. Vote Yes on Prop. 34. Learn more at *YesOnProp34.com.*

Assemblymember Evan Low, Former Chair
Legislative LGBT Caucus

Kelly Goss, Managing Director
The ALS Association

Nilza Serrano, Founder
Latino Heritage Los Angeles

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 34 ★

Vote No on 34—The Revenge Initiative. The California Apartment Association, representing the billionaire landlords, is lying through its teeth. Prop. 34 has one and only one purpose: to prevent AIDS Healthcare Foundation (AHF) from supporting rent control.

Do you believe that these billionaire landlords are suddenly so concerned about access to healthcare for poor Californians? And it is a lie that it will lower drug costs since Medi-Cal has already implemented a low-cost drug program.

AHF is the sponsor of Prop. 33—the rent control initiative. Landlords are spending tens of millions to protect their obscene corporate profits while more than 50% of California's 17 million renters are paying more than 30% of their income on rent.

You might notice that they don't even mention AHF by name because they don't want you to know that they want to harm the largest AIDS organization in the world.

They are lying when they call the federal 340B drug discount program government money. 100% of the funds derived from 340B come from discounts that come right out of the pockets of drug companies. Don't be fooled—big pharma has contributed to many of the supporting organizations for Prop. 34. A strong 340B program is good for California, bad for big pharma.

As they themselves admit, non-profits are permitted by federal law to use these drug company discounts in accordance with their non-profit mission—advocating for rent control, women's reproductive rights, and a healthy environment.

Vote No on The Revenge Initiative.

Jerilyn Stapleton, Board Member
National Organization for Women

Jamie Court, President
Consumer Watchdog

Larry Gross, Executive Director
Coalition for Economic Survival

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

★ ARGUMENT AGAINST PROPOSITION 34 ★

Proposition 34 is sponsored by the billionaire landlords who control the California Apartment Association (CAA).

This initiative is a wolf in sheep's clothing. It has only one purpose: to prevent AIDS Healthcare Foundation (AHF) from promoting rent control. It claims to protect patients, but its real intent is to stop AHF from putting tenant protections on the ballot.

On this same ballot is Proposition 33, the rent control initiative which is simply 23 words:

"The state may not limit the right of any city, county, or city and county to maintain, enact or expand residential rent control." AHF is the principal funder of this rent control initiative. Proposition 33 restores the ability of localities to stabilize rents and give some relief to California's 17 million struggling renters.

CAA and the billionaire supporters who have been gouging renters want to stop rent control at all costs. Can anyone believe that these corporate landlords are suddenly interested in healthcare? And guess who's behind the endless ads you will see for Prop. 34—the big drug companies through their bought and paid for front groups. These two rogue industries are united in wanting to destroy AHF, which is the most powerful voice for lower rents and lower drug prices.

AHF is the largest AIDS organization in the world with 2 million lives in care in 47 countries across the globe. Our mission is: Cutting Edge Medicine and Advocacy Regardless of Ability to Pay.

AHF was born out of outrage that AIDS patients were often dying in the hallways of the county hospital. AIDS patients needed a home to die in. Fortunately, HIV treatment has drastically improved so that today housing is the #1 problem facing our patients.

Proposition 34 is a grave danger to democracy. It seeks to weaponize the initiative process by allowing powerful interests to target a single organization to punish and shut them up. If passed, this proposition would threaten the ability of organizations to advocate for reproductive rights, renter needs, and environmental protections. The Los Angeles Times even described it as a "self-serving" ballot initiative that reached a "new low."

If this becomes the law, where will it stop? For this reason, it is opposed by The National Organization for Women, Consumer Watchdog, The Coalition for Economic Survival, UNITE HERE Local 11, Dolores Huerta, and many others.

We trust that you, the voters, will see through this corporate landlord scam and vote NO on Proposition 34.

Visit *www.votenoon34.org* for more information.

Jerilyn Stapleton, Board Member
National Organization for Women

Larry Gross, Executive Director
Coalition for Economic Survival

Condessa M. Curley, **M.D.** /**MPH**, Board Member
AIDS Healthcare Foundation

34

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 34 ★

When we have bad corporate actors that profit off public programs, the services our families rely upon take the hit, including schools, public safety, and emergency responders. The current system is being abused by corporations that are wasting billions of dollars intended for patient care every year and making our communities less safe, endangering the public's health and safety.

Instead of helping patients, those funds are being used to:

Finance slums that are unsafe and violate health codes:

https://www.latimes.com/homeless-housing/story/2023-11-16/aids-healthcare-foundation-low-income-housing-landlords

Sue low-income tenants and throw them out on the street:

https://www.poz.com/article/aids-healthcare-foundation-reportedly-houses-tenants-squalid-conditions

Buy stadium naming rights:

https://www.nytimes.com/2022/09/24/health/bon-secours-mercy-health-profit-poor-neighborhood.html

And pay corporate CEOs millions:

https://lowninstitute.org/projects/2023-shkreli-awards/

Prop. 34 would stop the worst corporate abuses of the federal low-cost prescription drug program and ensure that money meant for patients is not wasted on corporations' pet projects, political crusades, or misused in ways that risk the public's health and safety. Prop. 34 will ensure corporations that are misusing public funds are held accountable. It's time to stop the rip-off. We must make sure that money meant for patients is spent on taking care of those who need help, not risking public safety. Vote Yes on 34.

Brian K. Rice, President
California Professional Firefighters

Stuart Fong, Chair
San Francisco Hep B Free

Rev. Dwight Williams, Chair
California Senior Alliance