

California Legislature

Joint Committee on Rules

ROOM 3016 — STATE CAPITOL
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TELEPHONE: (916) 319-2804

August 19, 2016

Thomas Hiltachk
Bell, McAndrews & Hiltachk
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Legislative Open Records Act Request

Dear Mr. Hiltachk:

We are in receipt of your request for records under the California Public Records Act (Gov. Code, § 6250 et seq.) sent by e-mail to the Legislative Analyst's Office on August 12, 2016. The Legislature is not subject to the California Public Records Act (see Gov. C., § 6252(f)). As the Legislative Analyst's Office is appointed by the Joint Legislative Budget Committee (see Gov. C., § 9143 and Rule 37 of the Joint Rules of the Senate and Assembly), it is considered legislative staff and is also not subject to the California Public Records Act. However, we have construed your request as one made pursuant to the Legislative Open Records Act (Gov. Code, § 9070 et seq.).

Under the Legislative Open Records Act, requests to inspect legislative records must be directed to the appropriate Committee on Rules of each house of the Legislature, the Joint Committee on Rules, or the Joint Legislative Audit Committee, as those committees are the only entities deemed to have custody of legislative records and have sole responsibility for making legislative records available for inspection (see Gov. C., § 9074). Thus, this letter responds to your request on behalf of the Joint Committee on Rules.

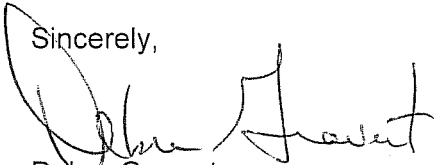
In your request, you reference a statement made in a declaration submitted recently by Deputy Legislative Analyst Mark Newton in opposition to a petition to modify the Legislative Analyst's analysis for Proposition 61. Specifically, you reference Mr. Newton's statement, pursuant to discussions with the U.S. Department of Veterans Affairs ("VA"), that overall drug prescription drug spending by the VA would increase by \$3.8 billion annually if VA drug prices were increased to the limits imposed by federal price caps. You asked for any documents provided

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by the VA stating or providing the \$3.8 billion estimate.

Enclosed is an internal opinion by the VA that is responsive to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra Gravert". The signature is written in a cursive style with a large initial "D" and "G".

Debra Gravert
Chief Administrative Officer
California Legislature
Joint Committee on Rules

Enclosure

cc: Office of Legislative Counsel
Sarah Kleinberg, Legislative Analyst's Office

VHA ISSUE BRIEF

Issue Title: Threat to Department of Veterans Affairs' Pharmaceutical Discounts

Brief Statement of Issue and Status: There is very likely going to be a ballot measure in California in November 2016 which specifies that the State of California shall not pay more for prescription drugs than the lowest price paid for the same drug by the U.S. Department of Veterans Affairs (California Drug Price Relief Act. Attorney General Initiative #15-0009. <http://www.aidshealth.org/#archives/23835>). Excerpt follows:

"(a) ... 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."

Discussion: Drug discounts are very popular with the public and if approved by California voters, this measure has the potential for significant negative financial impact to VA if drug manufacturers stop providing VA with the large discounts it is currently able to negotiate.

The concern over the potential negative financial impact on VA is real. The Pharmacy Benefits Management Service office (PBM) has already had a company balk at providing a discount, specifically citing the California ballot measure as well as a similar Ohio initiative. The California ballot measure is a nearly parallel situation to the federal government's 1990 Omnibus Budget reconciliation Act (OBRA '90) that specified ALL government purchases of pharmaceuticals will be made at the lowest price offered to any SINGLE government purchaser.

In response to OBRA '90, pharmaceutical manufacturers responded predictably. Instead of offering the lowest prices to all federal purchasers, they eliminated all except

the highest prices, avoiding lost revenue and in some cases actually increasing revenue. To counter the pharmaceutical industry's reaction to OBRA '90, the federal government implemented PL 102-585 to mandate a 24% discount from manufacturers. The financial impact of the loss of Temporary Price Reduction discounts alone could reach \$2.3B per year. As national contracts expire and VA is unable to negotiate deep discounts, this could result in losses of an additional \$1.5B per year.

Summary: For financial planning purposes, VA should assume the California ballot measure will be endorsed by voters and that the pharmaceutical industry will react by eliminating all non-statutorily required and non-contractually required VA pharmaceutical discounts. In addition, VA should develop a broad array of counter measures that can be implemented should the ballot measure pass and the pharmaceutical industry react as expected.

References:

Unites States General Accounting Office (GAO/HRD-91-139): MEDICAID: Changes in Drug Prices Paid by VA and DoD Since Enactment of Rebate Provisions. September 1991.

United States General Accounting Office (GAO/T-HEHS-97-171): FEDERAL DRUG PRICES: Effects of Opening the Pharmaceutical Schedule Are Uncertain. July 1997

United States General Accounting Office (GAO/HEHS-00-118): PRESCRIPTION DRUGS: Expanding Access to federal Prices Could Cause Other Price Changes. August 2000.

For further Information Contact:

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