

Agenda Report

TO: CITY COUNCIL
Through Legislative Policy Committee

DATE: September 12, 2005

FROM: Cynthia J. Kurtz
City Manager

SUBJECT: **OPPOSE PROPOSITION 78** – Discounts on Prescription Drugs

SUPPORT PROPOSITION 79 – Prescription Drug Discounts and
State Negotiated Rebates

RECOMMENDATION:

It is recommended that the City Council:

1. Oppose Proposition 78 – Discounts on Prescription Drugs
2. Support Proposition 79 – Prescription Drug Discounts and State Negotiated Rebates.

BACKGROUND:

Propositions 78 and 79 will appear on the November 6, 2005 special election and both address the issue of the rising cost of prescription drugs. They will be discussed together, as they are competing measures. If both Propositions 78 and 79 are approved by the voters in the State of California, only the proposition that receives the most yes votes will take effect.

There is little question that the rising costs of prescription medicines are having negative impacts on the health of the United States. According to a Commonwealth Fund study, 24% of non-elderly and 37% of elderly adults had no prescription drug coverage in 2001.¹ For low income adults, the situation is even more critical, with almost 50% of those earning under 200% of poverty level having no coverage for prescription medications.

¹ Schur, C, Doty, M, Berk, M. "Lack of prescription coverage among the under 65: A symptom of underinsurance." Commonwealth Fund, 2004.

In Pasadena, 20 to 25% of the population has no health insurance or is "underinsured" by having minimal insurance that does not cover the cost of prescription medicines.² Research has demonstrated that 37% of seniors without drug coverage report not filling prescriptions or skipping doses due to costs.³

In order to address this vitally important issue, Propositions 78 and 79 have been developed and will be presented to the voters of California on the November ballot. Both propositions create a new statewide discount drug program for low income individuals, overseen by the California Department of Health Services.

Proposition 78, sponsored by the Pharmaceutical industry, will:

- Establish a discount prescription drug program, overseen by the California Department of Health Services.
- Enable certain low - and moderate - income California residents at or below 300% Federal Poverty Level (FPL) 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 and to negotiate this rebate agreement with participating drug manufacturers.
- Imposes \$15 annual application fee.
- Creates state fund for deposit of drug manufacturer' 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.

Proposition 79, sponsored by health and consumer groups, will:

- Provide for prescription drug discounts to Californians who qualify based on income –related standards (at or below 400% FPL), to be funded through rebates from participating drug manufacturers negotiated by the California Department of Health Services.
- Prohibit new Medi-Cal contracts with manufacturers not providing the Medicaid best price to this program, except for drugs without therapeutic equivalent.
- Require rebates to be deposited in State Treasury fund, used only to reimburse pharmacies for discounts and to offset costs of administration.
- Require that at least 95% of rebates go to fund discounts.
- Establish oversight board.
- Make prescription drug profiteering, as described, unlawful.

² LA County Health Survey, Department of Health Services 2002-2003

³ "Prescription drug coverage and seniors: findings from a 2003 national survey." Kaiser/ Commonwealth Fund/ New England Medical Center 2003 National Survey of Seniors and Prescription Drugs.

A summary by the Legislative Analyst's Office outlines the key differences between the two propositions. (Attachment A)

There are a few minor differences between the two proposals. Proposition 78 has more restrictive eligibility requirements and a slightly higher fee for individuals to participate. It would cover an estimated 5 million Californians. In comparison, Proposition 79 would be open to more individuals and an estimated 8-10 million individuals would be eligible for the discounts.

The primary differences between Proposition 78 and 79 can be found in their methods of persuading pharmaceutical companies to participate in the discount program. Proposition 78 relies on drug companies to voluntarily provide discounts and does not allow the state of California to enforce the discount program. It is based on a similar program currently operating in the state of Ohio. The initial Ohio proposal had an enforcement mechanism, but was mired in legal challenges from the pharmaceutical industry. As a compromise, Ohio developed a voluntary discount program similar to the proposed program in Proposition 78. To date, it has had limited success, with a modest 15% discount on only a select number of drugs and many pharmaceutical companies have expressed minimal interest in participating more fully. Only 25,000 individuals have enrolled, even though 1.2 million are eligible.

Opponents of Proposition 78 claim that without an enforcement mechanism, drug companies have no incentive to participate. A similar program of voluntary drug discounts in the state of California in 2001 was not successful in reducing prescription drug costs.

Proposition 79 includes an enforcement mechanism through a provision allowing the State to impose punitive damages on firms that don't discount their drugs. If a pharmaceutical company refuses to provide significant discounts, the state would be permitted to shift business away from that company and buy more from other drug companies that do offer discounts. This is accomplished by linking the new discount program to the state's Medi Cal program. Proposition 79 is modeled on a similar program implemented by the state of Maine.

In 2000, Maine lawmakers approved a provision that allowed the state to limit drug companies' sales to Maine Medicaid patients if they did not participate in the drug discount program. The pharmaceutical industry challenged the program in court. Recent rulings by a federal appeals court and even the Supreme Court appear to back Maine's enforcement plan, although this provision has not yet been used. Maine's program has resulted in approximately 15% reductions in prices for select drugs and they have been able to enroll 100,000 out of 225,000 eligible residents. It is estimated that with the size of California and its bulk purchasing power, an enforceable drug discount program could negotiate a 30-40% reduction in prescription drug costs. There is also a provision that makes drug profiteering unlawful. This position appears to have more significance and substance due to the recent decision by State Attorney General Lockyer to file suit against the pharmaceutical industry for alleged systematic price inflation.

Opponents of Proposition 79 claim that the measure will result in years of legal challenges and may ultimately fail to get approval from the federal government. They also argue that Proposition 79 requires a new government program to be developed which would cost millions of dollars to the state and that the anti-profiteering provision could result in thousands of frivolous lawsuits.

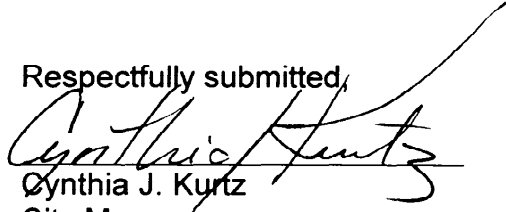
In analyzing the two propositions, it appears that Proposition 79 would result in the greatest benefit to Californians. While it is certain that the pharmaceutical industry will challenge the measure in court should it pass, recent judicial decisions in other parts of the country point to a likelihood that Proposition 79 would stand. With the tremendous purchasing power of the State of California and a drug discount program that could punish drug companies for not participating, millions of residents are likely to see significant reductions in the costs of their medications. Although it is difficult to project how many individuals in Pasadena are currently on medications and would enroll in a prescription drug program, it is clear that several thousands of residents could potentially benefit from Proposition 79. A voluntary program for pharmaceutical companies is unlikely to generate the same level of participation, resulting in fewer discounts and reduced benefit to the public.

For these reasons, it is recommended that the City Council formally oppose Proposition 78 and support Proposition 79.


FISCAL IMPACT:

The Legislative Analyst estimates that both proposals would result in one-time and ongoing state costs, potentially in the low tens of millions of dollars annually, for administration and outreach for a new drug discount program. Proposition 79 would be slightly more costly due to the establishment of an oversight board and its link to the MediCal program. A significant share of the costs for both propositions would be borne by the state General Fund. The analysis also states that there could be significant cost savings for the state and county health programs due to the availability of drug discounts.

Respectfully submitted,


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City Manager

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ATTACHMENT A

Figure 1 Key Differences Between Propositions 78 and 79		
	Proposition 78	Proposition 79
General eligibility requirements	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries). No such provision.
Application and renewal fee	<ul style="list-style-type: none"> \$15 per year. 	<ul style="list-style-type: none"> \$10 per year.
Method of obtaining rebates from drug makers	<ul style="list-style-type: none"> Negotiated with drug makers. No such provision. 	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Establishes drug discount program to assist certain business and labor entities.
Prescription Drug Advisory Board	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Creates new nine-member panel to review the access to and pricing of drugs.
Lawsuits over drug profiteering law	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.