



February 16, 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative (A.G. File No. 15-0123) that relates to the rights of specified individuals to make their own health care decisions.

Background

State Laws Regarding Rights to Make Health Care Decisions. In general, an individual's right to make health care decisions is broadly assumed and reflected in many parts of the state legal system, including the state constitution, statutory law, and case law. For example, the California Constitution provides people with many rights and protections. Specifically, Section 1 of Article I of the Constitution states, "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." The right to privacy has been interpreted in case law to include the right to make health care decisions, such as whether or not a woman can choose to have an abortion. Other state laws define rights to make health care decisions more specifically. For example, state law allows minors to consent to certain health care services without parental involvement. State law also specifies when third parties can initiate health care on behalf of another adult.

State Laws Protecting Public Health. Various state laws impose requirements on and allow for government action to restrict the rights of individuals, as specified, to protect the overall health and safety of the public. For example, recently enacted legislation requires children to meet various legal requirements for immunization to attend school or child care facilities.

State and Local Health Care and Other Programs. State and local governments administer several health and other programs that provide a variety of public benefits, such as general health care services to low-income individuals. The state also funds education for children regardless of income.

Proposal

This measure provides that health care decisions about an illness or medical condition are the "private decision" of an adult, emancipated minor, or parent or legal guardian of a minor. The

measure further states that an individual shall not be “deprived” of a public right, benefit, privilege, or immunity, or refused service, accommodation, compensation, or employment, based on his/her health care choices, with certain exceptions, such as when that individual is infected with a communicable disease.

Fiscal Effects

The fiscal impact of the measure is difficult to determine, as it would depend on subsequent interpretation by the courts. This is because many of the words used in this initiative are undefined and therefore legally ambiguous and potentially open to broad interpretation. For example, a “private decision” is not a legal concept and is undefined in the measure. Similarly, the concept of being “deprived” of a right, benefit, or service is not defined, and is potentially open to a very broad interpretation. Additionally, certain sections of the measure appear to be in conflict with each other in ways that would require further interpretation by the courts. Therefore, the full scope of the changes resulting from this initiative is highly uncertain and would depend on how the initiative is interpreted and applied by the courts. Such interpretation and implementation could be quite narrow in scope under an interpretation that the measure is largely declaratory of current law that establishes an individual’s right to make health care decisions, resulting in a minor fiscal impact to state and local governments. However, to the extent that the courts take a broader interpretation of this measure, the potential state and local costs could be significant, but indeterminate in amount. For example, under a broad interpretation, this initiative could permit children to attend school without having met immunization requirements as required under current law. In such a case, this could result in outbreaks of preventable diseases resulting in costs of an indeterminate amount to state and local governments to contain and treat the diseases. Under an even potentially broader interpretation, this measure could limit the state's use of various health care utilization controls and obligate the state to pay for whatever health care choice a patient might make. This could result in significant state and local government costs of an indeterminate amount.

Summary of Fiscal Effect. This measure could result in the following fiscal effect:

- Highly uncertain fiscal effects on state and local governments, as these depend on how broadly the measure is interpreted by the courts. Potential fiscal effects could therefore range from minor to significant, but indeterminate, costs on state and local governments.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance