



November 18, 2021

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional and statutory initiative regarding the rights of individuals to make “fully free and informed” health decisions (A.G. File No. 21-0025, Amendment #2).

## **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 (the 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. 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 and allow for government action to restrict the rights of individuals in certain circumstances to protect the overall health and safety of the public. For example, state law requires children to meet various legal requirements for immunization against certain preventable diseases to attend school or child care facilities.

***State and Local Health Care and Other Programs.*** State and local governments provide a variety of public benefits through the administration of health and other programs. For example, over 13 million low-income Californians receive health care coverage through Medi-Cal, the state's Medicaid program. In addition, many public water systems in California add fluoride to

drinking water, a practice often referred to as water fluoridation, to improve the dental health of the communities they serve.

## **Proposal**

This measure makes various changes to the Constitution regarding individuals' health decisions. First, the measure adds "medical freedom" as an inalienable constitutional right of all people in the state. Second, the measure provides that a person may not be disqualified from entering or pursuing a business, education, profession, vocation, or employment on the basis of a medical choice that they make. Third, the measure grants every person the constitutional right to make fully free and informed health decisions. In regard to this right, the measure places in the Constitution several dozen examples of what the operation of this right would mean in practice. These wide-ranging provisions serve to restrict the actions of other individuals, businesses, and/or government entities in some way. For example, the rights granted to people under this measure would prevent other individuals and entities from requiring a person to make a particular health decision or treating a person differently based on their health decisions, including whether to have any medical procedure done or to wear a device that restricts the person's breathing or senses (potentially including face masks or gloves). As another example, the measure prohibits the charging of higher health insurance premiums based on a person's exercise of their rights to make, or not make, a health decision.

In addition to the constitutional changes, the measure makes two major sets of changes to state statute. First, the measure amends state law to explicitly prohibit any public water supply or any water supply that provides water to peoples' homes from adding fluoride to the water supply. Second, the measure amends state law to essentially prohibit schools and child care facilities from requiring that children attending these facilities have certain immunizations.

## **Fiscal Effects**

***Highly Uncertain Fiscal Effects, but Likely Potential Costs to State and Local Governments.*** The measure makes significant changes to individual rights and what state and local governments can and cannot do with respect to those rights. The fiscal impact of the measure is highly uncertain and difficult to determine, in part because it would depend on subsequent interpretation by the courts. Many of the words used in this initiative—such as "medical procedure"—are undefined and potentially open to very broad interpretation. In addition, the fiscal effects would depend heavily on how certain provisions would be implemented and how various economic sectors and individuals might respond in the long term.

While the extent of the measure's fiscal effects is highly uncertain, the measure is likely, on net, to result in costs to state and local governments. These costs could include higher government health-related costs over the longer run, such as through the measure's restrictions on public health interventions and subsequent higher medical costs provided through programs like Medi-Cal. Given the various drivers of uncertainty discussed above, we think that these costs could range from relatively minor to very significant. As examples of costs, there is the potential for:

- ***Increased Costs for Government Dental Care Programs.*** If ending the practice of water fluoridation leads to a reduction in fluoride intake, the measure could reduce dental health and increase costs for dental care. While these costs could be lessened to the extent people intake fluoride from other sources, ending water fluoridation likely would have a relatively larger adverse impact on dental health and costs for socioeconomically disadvantaged populations—including people enrolled in Medi-Cal. As such, this could result in increased costs for providing dental care to Medi-Cal enrollees.
- ***Increased Costs to Contain and Treat Diseases.*** Various provisions of the measure could reduce the ability of state and local governments to prevent the transmission of infectious diseases. For example, the measure could reduce vaccination rates by expanding the reasons children and university students can choose not to receive immunizations that are required under current law. If fewer children and university students choose to receive immunizations, this could result in outbreaks of preventable diseases, such as measles, which could lead to costs of an indeterminate amount to state and local governments to treat and contain the diseases.

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

- Highly uncertain fiscal effects on state and local governments, ranging from relatively minor to very significant potential costs. The magnitude of the potential costs depends heavily on the way provisions of the measure would be interpreted by the courts, how certain provisions would be implemented, and how various economic sectors and individuals might respond in the long term.

Sincerely,

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for Gabriel Petek  
Legislative Analyst

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for Keely Martin Bosler  
Director of Finance