



ISSUE BRIEF:

Initiated Measure 26 establishes a cap on the price a state agency may pay for a prescription drug.

Approved by the Board of Directors: 06/27/2018

The Sioux Falls Area Chamber of Commerce encourages a “NO” vote on Initiated Measure 26 (IM-26) on the 2018 primary election ballot and for the Chamber to actively campaign on the measure’s behalf.

Background

In South Dakota, statutory changes can be initiated by the citizenry by obtaining valid signatures equaling at least 5 percent of the vote total from the prior gubernatorial election. That means 13,871 signatures are required for measures proposed in 2018. Proponents of Initiated Measure 26 (IM-26) gathered approximately 22,091 signatures—15,868 of which were legal—and was validated by the Secretary of State’s Office on April 11, 2018¹. IM-26 was the sixth ballot question to be placed on the November 6, 2018 General Election Ballot.

The Attorney General’s 2018 ballot explanation states the following²:

This measure [IM-26] limits the amount that a State agency may pay for a prescription drug. Under the measure, a State agency may not directly or indirectly pay more for a prescription drug than the U.S. Department of Veterans Affairs pays for that same drug.

The measure requires the State Bureau of Administration to enact rules establishing prescription drug prices payable by State agencies.

The intention of IM-26’s five sections is simple— by establishing a net cost benchmark that state drug programs must not exceed (in this case, the lowest price paid by the United States Department of Veterans Affairs), the authors of this initiative hope to decrease prescription drug prices for South Dakotans. It should be noted that Section 5 of this measure deems the committee responsible for circulating petitions to have a direct stake in defending IM-26 from constitutional challenges. Additionally, it gives this committee legal standing to defend IM-26’s validity.

This initiative is similar to California Proposition 61 and Ohio Issue 2. California Proposition 61, which was on the California ballot in 2016, was rejected by voters 53 to 47 percent³ and Ohio Issue 2, which was on the Ohio ballot in 2017, was also rejected in a 79 to 21 percent vote⁴.

¹ [South Dakota Secretary of State’s 2018 Statewide Ballot Questions](#) (2018).

² [South Dakota Attorney General 2018 Ballot Explanation of Initiated Measure 26](#) (2018).

³ [California Secretary of State Statement of Vote](#) (2016).

⁴ [Ohio Secretary of State Official 2017 Election Results](#) (2017).

Proponent Rationale

For proponents (South Dakotans for Lower Drug Prices), it comes down to the increasing prescription drug prices. According to the Bureau of Labor Statistics, the consumer price index (CPI) for prescription drugs has increased 40%⁵ over the past 10-years. Additionally—in 2017 alone—the top five largest drug companies made more than \$50 billion in profits⁶.

The United States Department of Veterans Affairs (VA) pays an estimated 24% less⁷ for prescriptions than most government agencies. By requiring State agencies to pay the same amount as the VA, proponents believe that citizens of South Dakota, as well as the State, will save money on prescription drugs and will drive prices down. As a tangential benefit of lower prices, taxpayers will save money as the State's prescription drug expenses will decrease.

Opponent Rationale

Opponents (South Dakotans Against the Deceptive Rx Ballot Issue) of IM-26 assert this ballot issue—proposed and financed by out-of-state activists— is deceptive to the citizens of South Dakota. First, it is unlikely that IM-26 could even be implemented. Complete information regarding what drugs the VA purchases and their subsequent price is not generally available. Even if this information was public, the VA's lowest price paid is not a reasonable net cost target for the state drug programs and it is unlikely that drug manufacturers would be willing to voluntarily negotiate to achieve this newly implemented benchmark. In other words, there is no guarantee any patient or consumer will pay less.

However, even if fully implemented, opponents argue the impact on private sector businesses and other individuals could be disastrous. Pharmacy programs of entities that are not the intended target of IM-26 would likely be impacted as a result of potential cost-shifting across the supply chain as manufactures, wholesalers, and pharmacies attempt to respond to the State seeking deeper price concessions. Furthermore, individuals covered by these State agreements could lose access to certain medications as insurance agencies adjust their coverage to comply with this new law.

Opponents also assert that Section 5 is unprecedented in South Dakota. This section gives an unnamed committee more legal rights and authority than the average South Dakota voter by awarding them legal standing to defend a law—a right generally reserved for the Attorney General.

While IM-26 is well intentioned, it is flawed legislation that will have immense unintended consequences for the citizens of South Dakota if unlikely implementation is realized.

Note: Detailing "Proponents" and "Opponents" rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect any position of the Sioux Falls Area Chamber of Commerce.

⁵ Figure based on data from the BLS: <https://data.bls.gov/pdq/SurveyOutputServlet>

⁶ Information provided in the following article: <http://www.takeitback.org/drug-pricing>

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Chamber Position⁸

The Sioux Falls Area Chamber of Commerce encourages a “NO” vote on Initiated Measure 26 on the 2018 general election ballot.

Rationale

Initiated Measure 26, though well intentioned, creates a litany of unintended consequences that could negatively affect the citizens of Sioux Falls as well as our business community. Prescription drug prices continue to climb, but the solution for our entire State is not by forcing lower prices for government agencies through a ballot measure.

This deeply flawed initiative will not only be hard to implement, but it will likely pass any savings the State and its employees realize onto the citizens of South Dakota working for a private or non-State entity. Though the intention of the ballot measure is to decrease prescription prices, the best-case scenario is that individuals covered by the State of South Dakota (250,000 individuals) enjoy lower costs while all other South Dakotans (620,000 individuals) are burdened with higher costs.

Finally, we are concerned about IM-26’s potential impact on small retail pharmacies. Pharmacies would likely lose money on each prescription filled that is acquired at a price above what the VA’s pays. This could potentially cause local pharmacies—some which service citizens from over 100 miles away—to go out of business and/or stock fewer medications impacting access to care for all South Dakotans.

⁸ Issues Management Council adopted: June 18, 2018. The Chamber Board of Directors adopted: June 27, 2018. Both the Issues Management Council and the Chamber Board voted unanimously to oppose.