

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-01-19

WHEREAS the State's spending on prescription drugs has increased at an unsustainable rate, including hikes of approximately 20% per year since 2012, constituting a substantial fiscal drain; and

WHEREAS a relatively small subset of high-cost drugs account for a disproportionate amount of spending, with the 25 most expensive drugs accounting for approximately half of the State prescription drug expenditures; and

WHEREAS the rising prices of prescription drugs impact not only the State and individuals enrolled in State programs—but all Californians—including small businesses and families, who are forced to make unconscionable sacrifices to access life-saving and life-preserving treatments; and

WHEREAS a major cause of skyrocketing prescription drug prices is bargaining asymmetry, by which the pharmaceutical industry, often wielding monopoly power, is left unchecked, in the absence of a strong counterparty at the bargaining table; and

WHEREAS the State can marshal public and private parties to counterbalance corporate bargaining power, not only to address rising prescription drug prices, but more broadly to promote access to affordable health care for all; and

WHEREAS establishing a single-purchaser for the highest-cost prescription drugs will yield valuable insights into the design of a broader single-payer system, and move the State one step closer to a comprehensive solution for affordable and accessible health care for all; and

WHEREAS there are opportunities to expand the negotiation and purchase of prescription drugs within existing State programs; and

WHEREAS pursuant to Government Code sections 14977 to 14982, the Department of General Services administers the Statewide Pharmaceutical Program, which enables state and local governmental entities to access bulk purchasing contracts for pharmaceuticals; and

WHEREAS the Department of General Services coordinates the California Pharmaceutical Collaborative, which convenes the State's largest public purchasers of prescription drugs, including the California Public Employees' Retirement System (CalPERS), the Department of Corrections and Rehabilitation, the Department of Veterans Affairs, and the Health and Human Services Agency; and

WHEREAS the Department of Health Care Services, which administers the largest Medicaid program in the nation, is the largest purchaser of pharmaceutical services in the State, and currently negotiates supplemental rebates for millions of low-income, disabled, and vulnerable Californians enrolled in Medi-Cal.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately.

IT IS HEREBY ORDERED THAT:

1. The Department of Health Care Services shall take all necessary steps to transition all pharmacy services for Medi-Cal managed care to a fee-for-service benefit by January 2021 in order to create significant negotiating leverage on behalf of over 13 million Californians and generate substantial annual savings.
2. The Department of Health Care Services, in consultation with the Health and Human Services Agency and California Pharmaceutical Collaborative, shall review all State purchasing initiatives and consider additional options to maximize the State's bargaining power, including the Medi-Cal program. The review shall account for and supplement the Department's transition of pharmacy services to a fee-for-service benefit. This review may include recommended changes in state law or current processes for procuring and reimbursing for pharmacy services. The Department shall complete this review by July 12, 2019.
3. The Department of General Services, in consultation with the California Pharmaceutical Collaborative, shall develop a list of prescription drugs that could appropriately be prioritized for future bulk purchasing initiatives or reexamined for potential renegotiation with the manufacturer.
 - a. Prioritization shall be based on criteria that include, among other things, the price of the drug and the extent to which the drug is subject to competition, such as a sole-source drug without a generic or alternative option. In developing the list, the Department shall consider, among others, the 25 highest-cost prescription drugs, which collectively account for approximately half of the State's prescription drug expenditures. To the extent the Department does not recommend prioritization of any of the 25 highest-cost drugs, the Department shall provide a brief rationale.
 - b. The Department shall provide a written report, including the list of prescription drugs recommended for prioritization for future bulk purchasing initiatives and the rationale for excluding any high-cost drugs, to the Governor's Office by March 15, 2019.
4. Based on the prioritized list, the Department of General Services, in consultation with the California Pharmaceutical Collaborative, shall develop and implement bulk purchasing arrangements for high-priority drugs. The Department shall also encourage local governments to participate by, among other things, conducting proactive outreach. The Department shall provide a written status report of this effort to the Governor's Office by April 12, 2019.
5. The Department of General Services, in consultation with the California Pharmaceutical Collaborative, shall develop a

framework for enabling private purchasers to benefit from State bulk pharmaceutical purchasing. This framework should incorporate the opportunity for private purchasers—including small businesses, health plans, and the self-insured—to opt in to a State purchasing program. If appropriate, the Department and Collaborative should recommend legislative changes to make prescription drugs more affordable for all. The Department shall provide a written report to the Governor's Office by May 17, 2019.

6. To the fullest extent permitted under law, all agencies under my direct executive authority shall cooperate with providing data and other information to the Department of General Services to assist the Department in developing a list of prescription drugs that could appropriately be prioritized for future bulk purchasing initiatives. Agencies not under my direct executive authority are requested to do the same.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or a procedural, enforceable at law or in equity, against the State of California, its departments, agencies, or other entities, its officers or employees, or any other person.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of January 2019.


GAVIN NEWSOM
Governor of California

ATTEST:


ALEX PADILLA
Secretary of State