

Now & Next

Healthcare Alert

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California's Proposition 44: Potential big impacts for community health centers

By Jeremy A. Avila, Harsh P. Parikh

If approved, the measure would impose new spending, reporting, penalty, and governance rules on covered federally qualified health centers and look-alikes.



What's the impact?

- If approved by voters in November, Prop. 44 would impose mandatory spending, reporting, penalty, and liability requirements on covered federally qualified health centers (FQHCs) and look-alikes.
- Covered clinics would need to meet a 90% mission spend ratio (MSR) or risk administrative penalties tied to total revenue.
- Clinics, boards, lenders, and partners should assess how Prop. 44 could affect operations, governance, reserves, and contracts.

Federally qualified health centers (FQHCs) are a key part of California's primary care safety net. Against a backdrop of ongoing concerns over healthcare affordability and access, California voters will consider Proposition 44 (Prop. 44) on the November ballot. If approved, Prop. 44 would

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establish new spending, reporting, enforcement, and governance requirements for covered FQHCs and FQHC look-alikes.

The authors of Prop. 44, also called the "[Clinic Funding Accountability and Transparency Act](#)," claim that some clinics allocate too much revenue to executive pay, administration, and surpluses rather than patient care. In response, the measure would establish a 90% mission spend ratio (MSR) for covered entities, meaning FQHCs would need to use at least 90% of their revenue for patient care. The law would also create enforcement mechanisms for noncompliance, including administrative penalties, potential private lawsuits by patients, and possible criminal liability for clinic leaders.

This article summarizes the parties supporting and opposing Prop. 44, what the measure would do, and the questions health centers, their boards, and their lenders and partners should be asking now to prepare themselves for what may come should Prop. 44 be approved.

Behind the scenes: Who supports and who opposes Prop. 44?

Prop. 44 is backed primarily by SEIU-United Healthcare Workers West, a statewide labor union representing more than 120,000 healthcare workers in some of California's largest private-sector hospitals and clinics. Proponents argue that Prop. 44 would increase accountability for how covered clinics use their revenue and would direct penalty funds toward workforce recruitment, training, and retention.

Several healthcare professional associations and over 150 organizations oppose the measure, arguing that Prop. 44 will make it unnecessarily difficult for clinics to operate in California, artificially restrict how clinics spend and invest their funding, and make healthcare delivery more burdensome.

Who is covered

Prop. 44 applies to California clinic corporations that are FQHCs under the federal Medicaid statute and FQHC look-alikes — organizations designated by the federal Health Resources and Services Administration (HRSA) as meeting health center program requirements without receiving a Section 330 grant. Because Prop. 44's coverage is based on federal status rather than size, the measure would apply to both large multi-site systems and small rural clinics. Tribal and urban Indian organizations, however, would be excluded from Prop. 44's reach.

The Mission Spend Ratio

Prop. 44's central mechanism is its proposed MSR, which is calculated by dividing a clinic's total spending on its exempt purpose divided by its total revenue. Both figures start from the clinic's

IRS Form 990: “total program service expenses” as the numerator and “total revenue” as the denominator.

But the Form 990 is only the starting point. Prop. 44 would allow the California Attorney General to verify clinics’ reported figures and “binding guidance” on how to calculate the MSR that could impact what counts as “program service expenses” or “total revenue.” As a result, the figures used to calculate a clinic’s MSR could differ from the amount reported on its Form 990.

This framework raises several practical considerations. First, if the attorney general issues guidance affecting how figures are defined or calculated, clinics may not be able to determine their MSR from audited financials alone. Second, because the MSR uses revenue as the denominator, rather than expenses, certain financial practices—such as maintaining operating reserves or spending a capital grant over several years—could affect whether a clinic meets the 90% threshold. Third, because Prop. 44 would allow the attorney general to issue guidance through bulletins or notices without formal rulemaking under the Administrative Procedure Act, standards for calculating the MSR could change without public notice and comment.

The penalty and the escrow account

CALCULATING THE PENALTY

Failure to meet the 90% threshold would have considerable consequences. Under Prop. 44, a clinic with an MSR below 90% would owe an administrative penalty equal to the difference between its mission spending and 90% of total revenue.

The measure would require the California Department of Public Health (CDPH) to assess the penalty within 30 days of receiving the attorney general’s calculation. For example, a clinic reporting \$50 million in revenue and \$40 million in mission spending would have an MSR of 80%, triggering a \$5 million penalty—the difference between its mission spending and 90% of total revenue.

One important consideration for clinics is that the penalty methodology is not capped and does not depend on a finding of fault or patient harm. As a result, clinics will face potentially significant penalties even if they deliver quality care to their patients.

HOLDING PENALTY FUNDS IN ESCROW

Prop. 44 would also establish two potential avenues for relief for clinics. First, the measure would allow clinics to recover any penalties they paid so long as (1) the clinic reaches its 90% MSR goal and (2) the clinic secures an agreement with CDPH dictating how the refunded monies will be spent on mission-directed expenses. Although the refund mechanism suggests that clinics may retain an interest in previously paid penalties, Prop. 44 would also allow CDPH to use penalty

funds to cover costs associated with administering the MSR program. As a result, the funds a clinic seeks to recover could be diminished by the time the necessary conditions are met to satisfy conditions of repayment.

Under Prop. 44, a clinic could also seek a one-year waiver from the MSR penalty system, but they'd be required to demonstrate unexpected or exceptional circumstances or doubt about the clinic's ability to continue operation. The measure, however, does not include any confidentiality protections for these waiver filings, so a waiver request—including information like financial records, hardship statements, or disclosures about the clinic's ability to continue as a going concern—would be available through the California Public Records Act, potentially exposing the clinic to a different kind of risk.

As a result, Prop. 44's penalty and waiver provisions could subject clinics to a loss of property without judicial review or determination of forfeiture and require them to disclose private information that would otherwise be kept confidential.

Reporting, fees, audits, civil liability, and criminal exposure

In addition to administrative penalties, Prop. 44 could also create a risk of exposure to civil and criminal liability. Under the measure, clinics would be required to file annual data with the attorney general's Registry of Charities and Fundraisers and pay an additional annual fee. Late filers would face fines of \$5,000 for a first violation, followed by an additional \$10,000 for each month a report is late. The attorney general would also have authority to audit clinics, their contractors, and related parties.

Prop. 44 would also change nonprofit governance law by allowing any patient of a clinic that fails to report, or that falls below 90% without a waiver, to sue that clinic to remedy a "breach of a charitable trust." In those suits, Prop. 44 would provide that good faith is not a defense and that the business judgment rule does not apply. This is significant because the business judgment rule presumes that corporate directors make informed decisions in good faith and in the best interest of the organization, even if the consequences of a certain action turn out badly. If passed, Prop. 44 would deny covered clinics' directors the benefit of these protections. The measure would also allow private parties to file lawsuits against clinics under the State's Unfair Competition Law.

Prop. 44 would also expose directors, officers, and agents who knowingly misreport figures, or who route revenue or spending through related parties to inflate the ratio, to possible criminal prosecution, conviction, and even imprisonment.

Altogether, Prop. 44 would expand potential civil and criminal exposure for clinics and their leaders by broadening who may file suit and increasing the risk of misdemeanor or felony prosecution.

Why this matters

Most FQHC revenue comes from the Medi-Cal and Medicare prospective payment system (PPS) rates and federal Health Center Program funds, each governed by federal law. Because the proposed MSR penalty is calculated against total revenue, Prop. 44 could effectively capture federally guaranteed payment and federally restricted program income for state purposes if approved.

This potential use of federally appropriated funds raises federal preemption questions. The measure's approach also resembles percentage-based charity regulations the US Supreme Court has rejected under the First Amendment. Furthermore, because the MSR penalty is uncapped and not tied to fault, it may also raise concerns under the federal and state Excessive Fines Clauses. These issues could provide grounds for legal challenges if Prop. 44 is approved. However, the [measure's severability clause](#) could allow portions of Prop. 44 to remain in effect even if other provisions are challenged or invalidated.

Nixon Peabody's Healthcare team will be closely watching developments around Prop. 44 and its potential impact on FQHCs, boards, lenders, and partners. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Jeremy A. Avila

415.984.8283

jaavila@nixonpeabody.com

Harsh P. Parikh

213.629.6108

hparikh@nixonpeabody.com