



1-1-2018

# Proposition 4: The Children's Hospital Bond Act of 2018

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### Recommended Citation

Knobel, John; Leoni, Peter; and Steimer, Sarah (2018) "Proposition 4: The Children's Hospital Bond Act of 2018," *California Initiative Review (CIR)*: Vol. 2018 , Article 5.

Available at: <https://scholarlycommons.pacific.edu/california-initiative-review/vol2018/iss1/5>

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**Proposition 4:**  
**CHILDREN'S HOSPITAL BOND ACT**

**Bond Act**

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## I. EXECUTIVE SUMMARY

Proposition 4 authorizes the state to sell \$1.5 billion in general obligation bonds to support children’s hospitals. The money is split between three hospital categories: (1) qualifying nonprofit children’s hospitals, (2) University of California children’s hospitals, and (3) other hospitals that provide services to children through the California Children’s Services (“CCS”) program. Under the proposal, 72 percent of the funds, about \$1.1 billion, will go to eight nonprofit children’s hospitals, 18 percent of funds, about \$270 million, go to five University of California children’s hospitals, and the remaining 10 percent of funds, about \$150 million, go to approximately 150 qualifying public or private nonprofit hospitals that provide services to children whom are CCS eligible.

For each category, hospitals apply for funds through the California Health Facilities Financing Authority [CHFFA], an existing state board. Proposition 4 will cost the state \$84 million annually over the next 35 years with a total of \$1.4 billion in interest paid during that period. If the proposition passes, the overall cost of the proposition to taxpayers will be about \$2.9 billion.<sup>1</sup>

## II. THE LAW

### A. Bond Type

State general obligation bonds allow the state of California to borrow money from investors in order to fund public works projects.<sup>2</sup> These bonds are backed by the full faith and credit of California, which commits the state to repay the bonds with all legally available funds.<sup>3</sup> Due to the commitment on behalf of the state, a majority of voters are required to approve the bonds.<sup>4</sup> As of August 2018, the state has about \$33 billion in outstanding general obligation bond debt.<sup>5</sup>

Due to the long repayment period of bonds, it is important to note that any estimate of interest repayment is subject to change. The total amount that California pays for general obligation bonds may change depending on California’s credit rating due to the fact that a bond’s interest rate is partially based on the state credit rating.<sup>6</sup> Currently, California has a “high grade” rating, which means bonds may be cheaper and may seem like a good way to fund projects right now. However, there is always a chance economic conditions could change, like when the state’s credit rating fell to “lower medium grade” during the 2008 Recession.<sup>7</sup> Under this rating,

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<sup>1</sup> LEGISLATIVE ANALYSIS OFFICE, *Proposition 4*, <https://lao.ca.gov/BallotAnalysis/Proposition?number=4&year=2018> (last visited Oct. 8, 2018).

<sup>2</sup> CALIFORNIA STATE TREASURER, *Bonds 101*, at 1 (2016) available at <https://www.treasurer.ca.gov/publications/bonds101.pdf>.

<sup>3</sup> Cal. Constitution, art. 16, §1.5.

<sup>4</sup> Cal. Constitution, art. 16, §1.

<sup>5</sup> OFFICE OF THE TREASURER, *Authorized and Outstanding General Obligation Bonds, as of 8/1/2018* (2018) available at [https://bondlinkcdn.com/29/Authorized\\_and\\_Outstanding\\_8-1-18\\_FiSPgw8k.pdf](https://bondlinkcdn.com/29/Authorized_and_Outstanding_8-1-18_FiSPgw8k.pdf)

<sup>6</sup> Pew Charitable Trusts, *Rainy Day Funds and State Credit Ratings*, at 8 (2017) available at [https://www.pewtrusts.org/~media/assets/2017/05/statesfiscalhealth\\_creditratingsreport.pdf](https://www.pewtrusts.org/~media/assets/2017/05/statesfiscalhealth_creditratingsreport.pdf).

<sup>7</sup> Ryan Knutson, *Big Banks Don’t Want California’s IOUs*, Wall St. J., July 7, 2009, <https://www.wsj.com/articles/SB124692354575702881> (last visited Oct. 8, 2018).

California would have to pay about \$201.6 million more per \$1 billion borrowed than a state with the highest credit rating.<sup>8</sup>

### **B. PROPOSITION 61(2004)**

In 2004, California voters approved Proposition 61, which authorized \$750 million in bonds for children's hospitals.<sup>9</sup> Similar to Proposition 4, the Proposition 61 funds are used to improve the health of California's critically ill children through capital improvement projects for children's hospitals, such as construction or buying new medical equipment.<sup>10</sup> Proposition 61 identified 13 children's hospitals as eligible for funding. There were eight private nonprofit hospitals eligible for \$74 million each, and five University of California hospitals eligible for \$30 million each.<sup>11</sup> These are the same hospitals that are named in Proposition 4.<sup>12</sup>

The CHFFA is responsible for administering the program and determining if a hospital project gets funding. Each of the 13 hospitals had until June 30, 2014, to apply for the funds reserved for their hospital. After that, any of the eligible hospitals could apply for the remaining funds.<sup>13</sup> However, CHFFA extended the application deadline to June 30, 2018, and reserved Loma Linda Children's Hospital's remaining \$67.9 million funds until this year.<sup>14</sup> All of the Proposition 61 funds have been dispersed with each University of California children's hospital received \$29,827,500 of the Proposition 61 bonds and each nonprofit children's hospital received approximately \$73,000,000 of the Proposition 61 bonds.<sup>15</sup>

### **C. PROPOSITION 3 (2008)**

In 2008, California voters approved Proposition 3. Proposition 3 was generally the same as Proposition 61. Bonds were allocated to the same 13 hospitals (Children's Hospital of California changed its name to Valley Children's Hospital) for the same purpose of construction, purchasing medical equipment and other projects to promote the health and welfare of critically-ill children.<sup>16</sup> CHFFA was also still responsible for administering the program. Proposition 3 increased the total bond amount to \$980 million, divided between the two groups of hospitals in the same way as Proposition 61.<sup>17</sup> All hospitals have until the end of 2018 to use the remainder of their funds, but the California Children's Hospitals Association [CCHA] reported that the

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<sup>8</sup> CALIFORNIA STATE TREASURER, *supra* note 2.

<sup>9</sup> CALIFORNIA STATE TREASURER, *Children's Hospital Program of 2004: 2017 Annual Report* (2017) available at <https://www.treasurer.ca.gov/chffa/hospital/annual/2004-2017.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Cal. Proposition 4 (2018).

<sup>13</sup> Brian Briggs & Tessa Mayer, *Proposition 3: The Children's Hospital Bond Act of 2008*, CAL. INIT. REV. (Fall 2008) available at [https://www.mcgeorge.edu/documents/Publications/Prop\\_3\\_2008.pdf](https://www.mcgeorge.edu/documents/Publications/Prop_3_2008.pdf).

<sup>14</sup> CALIFORNIA STATE AUDITOR, *Children's Hospital Program, Rep.2015-042*, at 7 (2015) available at <https://auditor.ca.gov/pdfs/reports/2015-042.pdf>.

<sup>15</sup> CALIFORNIA STATE TREASURER, *supra* note 9.

<sup>16</sup> University of California, Hastings College of Law, *9-12-2007: Children's Hospital Bond Act. Grant Program. Statute.*, at 10-11, [https://repository.uchastings.edu/ca\\_ballot\\_inits/1458/](https://repository.uchastings.edu/ca_ballot_inits/1458/) (last visited Oct. 10, 2018).

<sup>17</sup> *Id.*

funds have all been earmarked.<sup>18</sup> See Figure 1-A for the break-down of how much each qualifying hospital received from Proposition 3 bonds.<sup>19</sup>

**Figure 1-A Proposition 3: Children’s Hospital Bond Act 2008 Disbursement Chart**

<b>University of California Children’s Hospitals</b>	<b>Authorized</b>	<b>Disbursed</b>	<b>Remaining</b>
University of California, Los Angeles	\$39,200,000	\$24,856,250	\$14,200,000
University of California, Irvine	\$39,200,000	\$9,858,185	\$29,824,802
University of California, Davis	\$39,200,000	\$18,697,599	\$20,394,267
University of California, San Diego	\$39,200,000	\$38,974,600	\$0
University of California, San Francisco	\$39,200,000	\$38,974,600	\$0
<b>Qualifying Nonprofit Children’s Hospitals</b>			
Rady Children’s Hospital, San Diego	\$98,000,000	97,436,500	\$0
Children’s Hospital Los Angeles	\$98,000,000	\$97,425,947	\$0
Children’s Hospital and Research Center, Oakland	\$98,000,000	\$97,436,500	\$0
Children’s Hospital of Orange County	\$98,000,000	\$97,430,506	\$0
Loma Linda Children’s Hospital	\$98,000,000	\$97,436,500	\$0
Lucile Salter Packard Children’s Hospital at Stanford University	\$98,000,000	\$97,436,500	\$0
Miller’s Children’s Hospital, Long Beach	\$98,000,000	\$34,738,317	\$55,396,670
Valley Children’s Health Care (Formerly Children’s Hospital Central California)	\$98,000,000	\$70,008,395	\$27,586,729

**D. RELEVANT CHILDREN’S HOSPITAL FUNDING**

Under current law, all children in California are eligible for health insurance, meaning children’s hospitals typically do not treat uninsured patients.<sup>20</sup> Medi-Cal is California’s public

<sup>18</sup> CALIFORNIA STATE TREASURER, *Children’s Hospital Program of 2008: 2017 Annual Report* (2017) available at <https://www.treasurer.ca.gov/chffa/hospital/annual/2008-2017.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> Children Now, *New Budget Will Extend Medi-Cal Coverage to 170,000 Undocumented Kids* (June 18, 2015) available at <https://www.childrennow.org/about-us/press-releases/new-budget-will-extend-medi-cal-coverage-170000-undocumented-kids/>.

insurance program for people who do not have insurance through an employer (private insurance) and who meet specific qualifications. Medi-Cal is funded by state money and grants from the federal government's Medicaid program. Medi-Cal only pays hospitals for services provided to a specific patient or a set rate per patient. However, the money hospitals receive from Medi-Cal only cover the cost of patient care, not additional projects that are part of the hospital's budget.<sup>21</sup>

A hospital's full budget would include projects that indirectly impact patient care, such as construction or buying new medical equipment. As these are not direct services to patients, such as medications, medical tests, or doctor's visits, Medi-Cal does not cover these projects, which in turn creates a budget gap. This budget gap is also due to lower reimbursement rates under Medi-Cal,<sup>22</sup> and the Medi-Cal structure that only allows for hospitals to be paid for specific services they provide directly to patients.<sup>23</sup> Since Medi-Cal and other insurance companies cannot pay for any services other than what is directly provided to an individual patient, bond measures, such as Proposition 4, are used as a way for hospitals to fill budget gaps.

## E. CURRENT FUNDING/REVENUE

Children's hospitals have a unique mix of funds they use to operate.<sup>24</sup> Funding sources include joint federal-state insurance plans like Medi-Cal, private insurance, federal grants, charitable donations, and bonds issued by the hospital.<sup>25</sup>

### 1. State and Federal Funding Through Medicaid and Medi-Cal

Federal Medicaid is the primary source of funds for the state's Medi-Cal program. Spending on this program totaled \$81.9 billion in 2016, with 64.1% of those funds coming from the federal government and 35.9% coming from the state.<sup>26</sup> In 2014, the most recent data available, this broke down to about \$10.966 billion spent on children or about \$2,368 per California child enrolled in Medi-Cal.<sup>27</sup> Even though a significant amount of Medi-Cal money is

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<sup>21</sup> Telephone Interview with Ann-Louise Kuhns, President and CEO of CCHA, Sacramento, Cal. (Sept. 4, 2018) (notes on file with the *California Initiative Review*).

<sup>22</sup> Janet Coffman & Margert Fix, *Physician Participation in Medi-Cal: Is Supply Meeting Demand*, California Health Care Foundation (June 28, 2017) <https://www.chcf.org/publication/physician-participation-in-medi-cal-is-supply-meeting-demand/> (last visited Oct. 8, 2018).

<sup>23</sup> Center for Medicare and Medicaid Services, *California's Fee-For-Service Medi-Cal Program: Health Care Access Monitoring Plan, September 2016* at 19, available at <https://www.medicaid.gov/medicaid/access-to-care/downloads/review-plans/ca-amrp-16.pdf>.

<sup>24</sup> California Children's Hospital Association, *Hospital Financing*, <https://www.ccha.org/hospital-financing> (last visited Oct. 8, 2018).

<sup>25</sup> Interview with Ann-Louise Kuhns, *supra* note 21.

<sup>26</sup> Kaiser Family Foundation, *Total Medicaid Spending: Fiscal Year 2016*, <https://www.kff.org/medicaid/state-indicator/total-medicaid-spending/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22california%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Oct. 8, 2018).

<sup>27</sup> Kaiser Family Foundation, *Medicaid Spending by Enrollment Group: Fiscal Year 2014*, <https://www.kff.org/medicaid/state-indicator/medicaid-spending-by-enrollment->

spent on California children, the money only reimburses children’s hospitals for the medical services and treatments given to the child and does not go towards the capital improvement projects Proposition 4 would cover.

## 2. *Federal Funding through U.S. Department of Health and Human Services and Social Security Administration*

Hospitals receive additional money for specific projects or patients through the U.S. Department of Health and Human Services (“HHS”) and the Social Security Administration (“SSA”). There are typically restrictions on these funds, similar to Medi-Cal funds, where the money received would not be able to be used for the types of projects Proposition 4 allows.

### a. *Research Grant Funding*

The National Institutes of Health (“NIH”), which is part of HHS, is the largest source of public funding for medical research in the world.<sup>28</sup> Annually, they award more than \$32 billion to various organizations who do medical research on illnesses and disease, as well as how to improve patients’ quality of life. Ten Proposition 4 hospitals have been awarded NIH grants in 2018, listed in Figure 2-A below.<sup>29</sup>

The research money awarded to University of California Hospitals, Loma Linda Children’s Hospital, and Stanford Children’s Hospital was not all for research into issues specific to children or children’s diseases. Some of the funding reflects money granted to the parent universities for projects unrelated to the mission of children’s health. These awards that are unrelated to children’s health research are noted with an asterisk in Figure 2-A below. The money that the other nonprofit private children’s hospitals received generally went to research related to children or children’s diseases.<sup>30</sup> It is important to note that although the University of California, Loma Linda, and Stanford children’s hospitals many have not received the funding directly, the additional funding to the universities may have freed up other money that the universities could have directed to projects at the children’s hospitals.

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[group/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22california%22:%7B%7D%7D%7D&sortModel=%7B%22colld%22:%22Location%22:%22sort%22:%22asc%22%7D](#) (last visited Oct. 8, 2018).

<sup>28</sup> National Institutes of Health, *About Grants*, [https://grants.nih.gov/grants/about\\_grants.htm](https://grants.nih.gov/grants/about_grants.htm) (last visited Oct. 8, 2018).

<sup>29</sup> National Institutes of Health, *NIH Awards by Location & Organization*, <https://report.nih.gov/award/index.cfm?ot=&fy=2018&state=CA&ic=&fm=&orgid=&distr=&rfa=&om=n&pid=&view=statedetail> (last visited Oct. 8, 2018).

<sup>30</sup> *Id.*

**Figure 2-A: NIH Grant Funding for Eligible Proposition 4 Hospitals**

Hospital's receiving NIH Grants	Total Awards Amount
University of California, Los Angeles*	\$354,552,307
University of California, Irvine*	\$131,656,972
University of California, Davis*	\$216,917,807
University of California, San Diego*	\$431,744,566
University of California, San Francisco*	\$582,309,381
Rady Children's Hospital, San Diego	\$257,895
Children's Hospital Los Angeles	\$22,295,828
Children's Hospital and Research Center, Oakland	\$8,791,336
Children's Hospital of Orange County	\$0
Loma Linda Children's Hospital*	\$9,946,628
Lucile Packard Children's Hospital* at Stanford University	\$455,246,816
Miller's Children's Hospital, Long Beach	\$0
Valley Children's Health Care	\$0

*b. Children's Hospital Graduate Medical Education Program*

The Children's Hospital Graduate Medical Education ("CHGME") Program provides direct financial support for children's hospitals to train medical residents and fellows, and therefore provides the hospital with more medical staff.<sup>31</sup> It is administered by the Health Services and Resources Administration, another agency within HHS. The CHGME program is instrumental to children's healthcare because the money goes to train nearly half of general pediatricians and more than half of pediatric specialists. In 2017, seven children's hospitals eligible under Proposition 4 (Valley Children's Hospital, Children's Hospital of Orange County, Rady Children's Hospital-San Diego, The Children's Hospital Los Angeles, Lucile Salter Packard Children's Hospital at Stanford, and Children's Hospital & Research Center, Oakland) received a

<sup>31</sup> Elayne J. Heisler, *Children's Hospitals Graduate Medical Education (CHGME)*, at 13-17 (Aug. 28, 2018) available at <https://fas.org/sgp/crs/misc/R45067.pdf>; Health Resources & Service Administration, *Children's Hospitals Graduate Medical Education (CHGME) Payment Program Awardees*, <https://bhwh.hrsa.gov/grants/medicine/chgme/map> (last visited Oct. 8, 2018).

total of \$38.9 million through this program.<sup>32</sup> Similar to funding already discussed, the CHGME funding does not go to support capital projects that Proposition 4 would fund if passed.

*c. Title V of Social Security Act*

The last source from which children’s hospitals can receive federal funding is under Title V of the Social Security Act (“Title V”).<sup>33</sup> Title V establishes The Maternal and Child Health Services Block Grant, a partnership between federal and state governments that focuses on the needs of low-income or disabled children and mothers.<sup>34</sup> In 2018, the federal allocation to California was \$39,040,391.<sup>35</sup> This is a similar population to the population Proposition 4 aims to serve, but while Title V funds are used for a broad range of programs like child nutritional care, health and safety standards, and improving child care facilities, Proposition 4 funds are focused on capital improvement projects.

*3. Bonds Specific to Certain Children’s Hospitals*

In addition to state and federal funding, children’s hospitals have the option to seek funding through hospital-specific bonds. These nonprofit bonds are typically issued on behalf of the hospitals by the California Statewide Communities Development Authority (“CSCDA”) or California Health Facilities Financing Authority (“CHFFA”) because only government entities have the authority to issue these bonds.<sup>36</sup> CSCDA’s mission is to provide “local governments with an effective tool for the timely financing of community-based public benefit projects,”<sup>37</sup> while CHFFA aims to “be the State’s vehicle for providing financial assistance to public and non-profit health care providers in our State through loans funded by the issuance of tax-exempt bonds.”<sup>38</sup> Bonds issued in this manner are attractive to hospitals because they provide an additional tax-exempt option to fund projects they deem necessary. The five University of California Children’s Hospitals (UC Davis, UC Irvine, UC San Francisco, UC San Diego, and Children’s Hospital and Research Center, Oakland) that are eligible for Proposition 4 bonds also received funding through The Regents of the University of California Medical Center Pooled Revenue Bonds.<sup>39</sup> California’s general fund is not responsible for paying these bonds back;

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<sup>32</sup> Heisler, *supra* note 31 at 13-17; Health Resources & Service Administration, *supra* note 31.

<sup>33</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Material and Child Health Services Title V Block Grant, California, FY 2018 Application/2016 Annual Report* (2017) available at [https://mchb.tvisdata.hrsa.gov/uploadedfiles/StateSubmittedFiles/2018/CA/CA\\_TitleV\\_PrintVersion.pdf](https://mchb.tvisdata.hrsa.gov/uploadedfiles/StateSubmittedFiles/2018/CA/CA_TitleV_PrintVersion.pdf).

<sup>34</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Understanding Title V of the Social Security Act*, available at <http://www.amchp.org/AboutTitleV/Documents/UnderstandingTitleV.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> Paul Rosenstiel, *An Overlooked Financing Tool: How Nonprofits Can Issue Tax-Exempt Bonds*, at 6 (July 2016) available at <https://calnonprofits.org/images/CalNonprofitsBonds.June2016.pdf>

<sup>37</sup> California Statewide Communities Development Authority, *Home*, <http://cscda.org/> (last visited Oct. 8, 2018).

<sup>38</sup> CALIFORNIA STATE TREASURER, *California Health Facilities Financing Authority*, <https://www.treasurer.ca.gov/chffa/introduction.asp> (last visited Oct. 8, 2018).

<sup>39</sup> CALIFORNIA STATE TREASURER, *The Regents of the University of California Medical Center Pooled Revenue Bonds*, at 1 (on file with the California Initiative Review).

however, any revenue from the hospital system is. See Figure 2-B for additional bond totals received by Proposition 4 hospitals.

**Figure 2-B: Additional Bond Totals Received by Proposition 4 Hospitals**

Hospital receiving bond	Total Debt Financing
Pooled Revenue Bonds	\$873 billion <sup>40</sup>
Rady Children’s Hospital, San Diego	\$366 million <sup>41</sup>
Children’s Hospital Los Angeles	\$52.2 million <sup>42</sup>
Children’s Hospital of Orange County	\$0
Loma Linda Children’s Hospital	\$40 million <sup>43</sup>
Lucile Salter Packard Children’s Hospital at Stanford University	\$200 million <sup>44</sup>
Miller’s Children’s Hospital, Long Beach	\$0
Valley Children’s Health Care	\$0

### III. PROPOSED LAW

#### A. Effects of Proposition 4

If approved, Proposition 4 will add the *Children’s Hospital Bond Act of 2018* to Division 1 of the Health and Safety Code.<sup>45</sup> Parts 6 and 6.1 of the code were added by Proposition 61 in 2004 and Proposition 3 in 2008.<sup>46</sup> Proposition 4 seeks further funding for children’s hospitals

<sup>40</sup> *Id.*

<sup>41</sup> Eugene Spielman, *Rating Action: Moody’s affirms Rady Children’s Hospital’s (CA) Aa3; outlook stable* (May 24, 2018) [https://www.moodys.com/research/Moodys-affirms-Rady-Childrens-Hospitals-CA-Aa3-outlook-stable--PR\\_904606090](https://www.moodys.com/research/Moodys-affirms-Rady-Childrens-Hospitals-CA-Aa3-outlook-stable--PR_904606090) (last visited Oct. 8, 2018) (on file with the *California Initiative Review*).

<sup>42</sup> Daniel Steingart, *Rating Action: Moody’s Assigns Baa2 to Children’s Hospital Los Angeles, CA’s Ser. 2017B; Outlook Stable* (May 3, 2017) [https://www.moodys.com/research/Moodys-Assigns-Baa2-to-Childrens-Hospital-Los-Angeles-CA-Ser--PR\\_903994138](https://www.moodys.com/research/Moodys-Assigns-Baa2-to-Childrens-Hospital-Los-Angeles-CA-Ser--PR_903994138) (last visited Oct. 8, 2018) (on file with the *California Initiative Review*).

<sup>43</sup> Moody’s Research & Rating, *Loma Lings (City of) CA, Hospital Revenue Bonds (Loma Linda University Medical Center Project), Series 2007B1, \$40MM* (Sept. 29, 2011) <https://www.moodys.com/credit-ratings/Loma-Linda-City-of-CA-Hospital-Revenue-Bonds-Loma-Linda-credit-rating-720686546> (last visited Oct. 8, 2018) (on file with the *California Initiative Review*).

<sup>44</sup> Eugene Spielman, *Rating Action: Moody’s downgrades Lucile Packard Children’s Hospital, CA to A1 & assigns A1 to Series 2017A; Outlook Stable* (Jul. 31, 2017) [https://www.moodys.com/research/Moodys-downgrades-Lucile-Packard-Childrens-Hospital-CA-to-A1-assigns--PR\\_904152208](https://www.moodys.com/research/Moodys-downgrades-Lucile-Packard-Childrens-Hospital-CA-to-A1-assigns--PR_904152208) (last visited Oct. 8, 2018) (on file with the *California Initiative Review*).

<sup>45</sup> Cal. Proposition 4 (2018).

<sup>46</sup> CAL. HEALTH & SAFETY CODE §§ 1179.10–1179.72 (2008)

throughout the state by requesting \$1.5 billion in State bonds to be administered by the CHFFA to finance “projects”<sup>47</sup> for children’s hospitals.<sup>48</sup> These bonds can be granted to qualifying children’s hospitals until June 30, 2033.<sup>49</sup> The previous Children’s Hospital Bond Acts of 2004 and 2008 had shorter time periods for grants to be disbursed and they expired June 30, 2018.<sup>50</sup>

Proposition 4 continues to use CHFFA to disburse grants, which was created under Section 15431 of the Government Code.<sup>51</sup> CHFFA will develop a grant application for the eligible hospitals to apply for the bonds and will decide whether to sell bonds for projects based on the criteria listed below.<sup>52</sup> If CHFFA decides to fund a project, the funds needed for each project will be taken out of the State General Fund and then bonds are sold to replace that appropriation in the General Fund.<sup>53</sup> The cost for giving the bonds to qualifying projects will be paid out of bond proceeds and split evenly among the hospitals.<sup>54</sup>

CHFFA cannot sell more bonds than are approved by the proposition and CHFFA is allowed to sell or issue bonds to qualifying hospitals for multiple small projects, or one large project.<sup>55</sup> CHFFA will process grants in a timely manner not to exceed 60 days.<sup>56</sup> CHFFA will then award grants to eligible hospitals using the following factors for approval:<sup>57</sup>

- (1) the grant contributes to expansion or improvement of healthcare access by children eligible for governmental health insurance programs and indigent, underserved, and uninsured children;
- (2) the grant contributes to better outcomes for child healthcare;
- (3) the hospital offers uncompensated or undercompensated healthcare to indigent or public pediatric patients;
- (4) the hospital provides services to vulnerable children;
- (5) the hospital promotes pediatric teaching and research programs; and
- (6) demonstration of project readiness and project feasibility.

The \$1.5 billion in funds is divided between three categories of hospitals, the first two categories taken from Proposition 61 and Proposition 3: University of California hospitals and non-profit children’s hospitals, with Proposition 4 adding hospitals that are eligible for the California Children’s Services Program.<sup>58</sup> Proposition 4 reduces the amount of bond money from 20% to 18% for University of California hospitals: Davis, Los Angeles, Irvine, San Francisco,

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<sup>47</sup> “‘Project’ means constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children’s hospital in whole or in part.” Cal. Proposition 4, § 1179.82(g) (2018).

<sup>48</sup> Cal. Proposition 4 (2018).

<sup>49</sup> *Id.* at §§ 1179.86(d), 1179.87(c), 1179.87(d).

<sup>50</sup> CAL. HEALTH & SAFETY CODE §§ 1179.24(d), 1179.57(d).

<sup>51</sup> CAL. GOV. CODE § 15431 (2008); Cal. Proposition 4, § 1179.87 (2018).

<sup>52</sup> Cal. Proposition 4, § 1179.87 (2018).

<sup>53</sup> *Id.* at § 1179.94.

<sup>54</sup> *Id.* at § 1179.97.

<sup>55</sup> *Id.* at § 1179.92.

<sup>56</sup> *Id.* at § 1179.87(b)(2).

<sup>57</sup> *Id.* at § 1179.87.

<sup>58</sup> *Id.* at § 1179.86.

and San Diego.<sup>59</sup> No hospital in this section can request, nor be granted, more than one fifth of the 18% allotted to the University of California Hospitals until after June 30, 2033, when other University of California hospitals may apply for funds that were not used by the designated University of California hospitals, even if they received their one fifth.<sup>60</sup>

The non-profit children's hospital that fit the criteria put forth in Proposition 61 are eligible for 72% of the bonds. These hospitals are: Children's Hospital and Research Center, Oakland, Children's Hospital of Los Angeles, Children's Hospital of Orange County, Earl and Loraine Miller Children's Hospital (Long Beach), Loma Linda University Children's Hospital, Lucile Packard Children's Hospital at Stanford, Rady Children's Hospital, San Diego, Valley Children's Hospital (Madera).<sup>61</sup> No hospital in this section can request, nor be granted, more than \$135 million of the 72% allotted to the non-profit hospitals. The 72% allocation and 18% allocation are generally based on number of patients treated.<sup>62</sup> Similar to the University of California hospitals, after June 30, 2033, any other listed non-profit hospitals may apply for funds that were not used by the other listed non-profit hospitals, even if they received their \$135 million.<sup>63</sup>

The remaining 10% of bonds are reserved for grants to other hospitals eligible for the California Children's Services Program; however, if these funds are not used by June 30, 2033, UC and non-profit children's hospitals may request use of the funds on additional projects.<sup>64</sup>

#### **IV. DRAFTING ISSUES**

##### **A. Ambiguous Terms**

In 2008, the McGeorge California Initiative Review looked at the Children's Hospital Bond Act in Proposition 3. The authors pointed out there could be an issue with the use of the term "reasonable."<sup>65</sup> While it is an ambiguous phrase, there has not been any legal issue that has stemmed from the term that CHFFA knows of.<sup>66</sup> This could be due to the fact that the money is already earmarked for specific projects and the recipients do not have an incentive to fight amongst each other for funding.

Again, in the current Children's Hospital Bond Act, the term "reasonable" is used for describing how long a hospital has for project completion timelines.<sup>67</sup> Per the previous analysis, each project completion timeline is reviewed on a case-by-case basis to determine "reasonableness."

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<sup>59</sup> *Id.* at §§ 1179.82(b)(1), 1179.86(a).

<sup>60</sup> *Id.* at § 1179.87(c).

<sup>61</sup> CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA PRIMARY ELECTION, TUESDAY, NOVEMBER 6, 2018, at 30, available at <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf>.

<sup>62</sup> Interview with Ann-Louise Kuhns, *supra* note 21.

<sup>63</sup> Cal. Proposition 4, § 1179.87(d) (2018).

<sup>64</sup> *Id.* at § 1179.86(c).

<sup>65</sup> Briggs, *supra* note 13.

<sup>66</sup> Interview with Ann-Louise Kuhns, *supra* note 21.

<sup>67</sup> Cal. Proposition 4 (2018).

## B. Severability Clause

Proposition 4 has a severability clause that allows for invalid parts to be removed from the proposition and for any valid portions to remain.<sup>68</sup> Proposition 4 uses language almost identical to prior Children's Hospital Bond Acts that were authorized in 2004 and 2008. The sections added to the California Health and Safety Code by the propositions have not been questioned for the language used in the statutes. Proposition 4 will likely not have any invalid parts that are required to be removed because none of the same language has been challenged as unconstitutional or otherwise invalid in the past.

## V. CONSTITUTIONAL ISSUES

It is unlikely that Proposition 4 violates either the federal Constitution or the California Constitution. There are two potential constitutional issues that Proposition 4 raises: one under the federal Constitution and one under the California Constitution. Even though the proposition is likely constitutional under both the federal and state Constitutions, these issues will help voters to be more informed about the proposition. Proposition 4 raises a federal Constitution issue because one of the hospitals, Loma Linda Children's Hospital, is a religiously-based hospital.<sup>69</sup> The California Constitution issue is whether the proposition meets the requirements for bond measures.

### A. Federal Constitution

The First Amendment protects the people from the government intruding on their religious beliefs and practices.<sup>70</sup> The government is prohibited from giving money or supporting religion through the Establishment Clause of the First Amendment.<sup>71</sup> In the past, concerns have been raised about government giving money to religiously-affiliated institutions, such as hospitals, for providing non-religious services, such as medical care. The concern is that the government may be supporting a religion, violating the Constitution, even though the services the money pays for are not tied to the religion.

The United States Supreme Court addressed this concern many times. In *Lemon v. Kurtzman*,<sup>72</sup> the Supreme Court created a standard that courts can use to see if money that the government is providing to religious institutions for non-religious services violates the Constitution.<sup>73</sup> In 1988, the Supreme Court applied this test to government money used for health care services in *Bowen v. Kendrick*.<sup>74</sup> The Supreme Court decided that it was not unconstitutional

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<sup>68</sup> *Id.* at § 1179.102.

<sup>69</sup> Cal. Proposition 4 (2018); Loma Linda Children's Hospital, *Home*, <https://childrens-hospital.lomalindahealth.org/> (last visited Oct. 8, 2018).

<sup>70</sup> U.S. Const., amend. 1.

<sup>71</sup> *Id.*

<sup>72</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

<sup>73</sup> *Id.* at 612-13.

<sup>74</sup> *Bowen v. Kendrick*, 487 U.S. 589 (1988).

for the government to give money to religiously-affiliated organizations if the money was also given to non-religiously affiliated organizations and the money is used for specific non-religious services, defined by the government.<sup>75</sup>

Proposition 4 is similar to *Bowen v Kendrick* because there are multiple hospitals that qualify for the bond money rather than just one hospital or only religiously-affiliated hospitals.<sup>76</sup> Also, Proposition 4 has specific non-religious requirements for the hospital to use the money for “construction, expansion, remodeling, renovations, furnishing, equipping, financing, or refinancing.”<sup>77</sup> It is unlikely that Proposition 4 will violate the federal Constitution if it is enacted by the voters.

## **B. State Constitution**

The California Constitution requires that bond measures, such as Proposition 4, follow specific requirements.<sup>78</sup> The state Constitution requires that bond measures: are submitted to the voters;<sup>79</sup> clearly state the total amount of the bond; have a separate committee approving the projects used by the bonds; and enact certain financial steps to ensure that the money is appropriately distributed and accounted for.<sup>80</sup> Proposition 4 has followed each of the requirements by the California Constitution and the laws regarding bond measures, including stating the amount, naming the separate committee to approve projects, and addressing the financial steps required.<sup>81</sup> There is no concern that Proposition 4 violates the state Constitution.

## **VI. PUBLIC POLICY CONSIDERATIONS**

### **A. Proponents’ Arguments**

Proponents lead with the argument that there is difficulty finding funding for large infrastructure investments like improvements to children’s hospitals.<sup>82</sup> The 30-year bonds that Proposition 4 creates provide stability of funding as opposed to legislative budgets that might give varying amounts of funding to children’s hospitals each year.<sup>83</sup> While an increase in Medi-Cal funding could be possible, any increase in Medi-Cal’s reimbursement rates could not legally be limited to children’s hospitals and instead would have to be applied broadly across the whole of Medi-Cal reimbursement rates.<sup>84</sup> This could result in a higher state cost than by using bonds.<sup>85</sup> As children’s hospitals are the institutions that have high rates of Medi-Cal coverage for indigent

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<sup>75</sup> *Id.* at 610.

<sup>76</sup> NOVEMBER 2018 VOTER GUIDE at 30.

<sup>77</sup> Cal. Proposition 4 (2018); NOVEMBER 2018 VOTER GUIDE at 30.

<sup>78</sup> Cal. Constitution, art. 16, § 2.

<sup>79</sup> *Id.*

<sup>80</sup> CAL. GOV. CODE § 16724 (2008).

<sup>81</sup> Cal. Proposition 4 (2018).

<sup>82</sup> NOVEMBER 2018 VOTER GUIDE at 32.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

patients and families without insurance, these bonds allow the State to target these hospitals and decrease the overall cost of providing healthcare to children in need.<sup>86</sup>

Proponents further argue that the bonds approved by voters on previous ballots have allowed the hospitals to greatly expand healthcare access to children no matter their background.<sup>87</sup> Proponents also claim that children’s hospitals have much better success rates now, stating that 85% of children with leukemia now leave these hospitals cured.<sup>88</sup> It is unclear if this statement is directly related to prior bond financing or general advances in treatments world-wide.

Proponents rebut the argument that this bond act will draw from property taxes.<sup>89</sup> The proponents have quotations from fiscal conservatives defending Proposition 4 and stating that none of the funds come from property taxes.<sup>90</sup>

## **B. Opponent’s Arguments**

There is one official argument against Proposition 4.<sup>91</sup> The opponent, Gary Wesley, opposes general obligation bond measures as a whole, and addresses that a general obligation bond measure is not the most effective way to improve health care.<sup>92</sup> There is also a public policy concern that the hospitals that are eligible for most of the bond funding are also supporting the Proposition 4 campaign.

### *1. General Obligation Bond Measure Opposition*

General obligation bonds are for projects by specific organizations that are approved in advance by the voters.<sup>93</sup> The organizations will apply to use the funds for specific projects and a board will determine if the project should receive the bond money and how much.<sup>94</sup> The project money comes from an account that the Legislature puts a certain amount of money in each year.<sup>95</sup> This general fund is where the money for the voter-approved general obligations bonds projects is withdrawn.

The opposition opposes general obligation bonds measures, such as Proposition 4, because it “asks the voters’ permission for the State of California to borrow more money by

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> NOVEMBER 2018 VOTER GUIDE at 32-33.

<sup>92</sup> *Id.* at 32.

<sup>93</sup> Cal. Const. art. 16, §2; CAL. GOV. CODE § 16724.

<sup>94</sup> CAL. GOV. CODE §16724.

<sup>95</sup> CAL. GOV. CODE § 16724.5 (2008).

selling bonds.”<sup>96</sup> The opposition suggests five questions for voters to consider when they vote for general obligations bonds, such as Proposition 4. These questions are<sup>97</sup>:

- 1) How far in debt is the government already?
- 2) What is the expected total cost of the measure to the public?
- 3) Are the proposed uses for the money specified?
- 4) Are the proposed uses justified—given other things that may be needed or desired?
- 5) Should voters continue to finance projects through higher property taxes when California’s property tax system is so unfair.

The first four questions are valid questions relating directly to how much money the government owes before the proposition is approved and the potential costs, uses, and whether the projects are worth adding to the government debt.<sup>98</sup> The last question is less relevant and takes away from the opponent’s argument. He focuses on a question as to whether general obligation bonds should be allowed at all, then moves the discussion to property taxes, which is not what the voters are deciding regarding Proposition 4.<sup>99</sup> Even though the opponent strays from Proposition 4 with his opposition to property taxes, he raises valid concerns about what voters should be thinking about when voting for general obligation bonds in general, such as Proposition 4.

## 2. Campaign Finance Concerns

There are no laws that prevent organizations who benefit from general obligation bond measures from supporting the proposition’s campaign. However, it is important for voters to know who gives money a measure in order to determine what interest groups are supporting a given measure. The California Secretary of State publishes information of the major donors to official proposition committees on their website.<sup>100</sup> The official proposition committees are the groups that work to put the proposition on the ballot and either support or oppose the proposition. The money that is raised by the committee is used for advertising or other campaign items to convince the voters to either vote for or against a proposition.

The “Yes 4 Children’s Hospitals, Yes on Proposition 4” is the only official committee for Proposition 4.<sup>101</sup> The Committee is sponsored by the California Children’s Hospital Association, the author of Proposition 4.<sup>102</sup> Between January 2018 and June 2018, the Committee has raised over six million dollars, and has spent almost three million dollars.<sup>103</sup> The total amount is not

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<sup>96</sup> NOVEMBER 2018 VOTER GUIDE at 33.

<sup>97</sup> *Id.* at 33.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> CAL. SEC’Y OF STATE, *Campaign Finance Activity: Propositions & Ballot Measures*, <http://cal-access.sos.ca.gov/Campaign/Measures/> (last visited Oct. 8, 2018).

<sup>101</sup> CAL. SEC’Y OF STATE, *Campaign Finance: Yes 4 Children’s Hospitals, Yes on Proposition 4, Sponsored by California Children’s Hospital Association*, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1401304&session=2017&view=general>, (last visited Oct. 8, 2018).

<sup>102</sup> Cal Proposition 4 (2018); CAL. SEC’Y OF STATE, *supra* note 101.

<sup>103</sup> CAL. SEC’Y OF STATE, *supra* note 101.

necessarily concerning because proposition campaigns can be expensive. However, the Committee's major donors include all eight of the children's hospitals that are eligible to receive the majority of the Proposition 4 bonds.<sup>104</sup> All of the money the Committee raised is from these eight hospitals, with seven of the hospitals contributing \$681,500 each and one hospital contributing that amount twice, for a total contribution of over one million dollars.<sup>105</sup> While this is a significant amount of money for each hospital to contribute, it is 1% or less of the amount of money the hospital would be eligible for under Proposition 4.<sup>106</sup>

As stated before, it is not illegal for the organizations who benefit from a general obligation bond to support the proposition committee by donating money to the campaign. It is important for voters to know who is contributing to any election campaign and know how the campaign is financed. The hospitals who benefit from Proposition 4 are the main committee financiers, but they are also contributing a small fraction of the amount they would be eligible for if Proposition 4 is passed by the voters. All of the committee donor information and donation amounts have been published to ensure complete transparency of the committee's financial donors.

## VI. CONCLUSION

Proposition 4 extends the current *Children's Hospital Bond* measures that were passed by the voters in 2004 (Proposition 61) and 2008 (Proposition 3). Proposition 4 grants \$1.5 billion dollars in bond money for projects relating to hospital improvements, such as construction, expanding, or purchasing new medical equipment. These are projects that are part of the hospital's general budget and the hospitals have relied on the general obligation bonds to complete these projects since Proposition 61. One change from the two previous propositions is that the University of California children's hospitals are only eligible for 18% of the funds, rather than 20% of the funds.

The proponents argue that the bond measures are the best way for hospitals to be able to improve the care they give to their patients because the hospitals can build new facilities, modernize older ones, add more beds, and purchase new equipment to treat more children. The opponents, however, argue that bonds are not the best way to fund projects because of the financial burden this type of bond places on the state. There is also a concern that the bond beneficiaries are the ones funding the support campaign.

A "yes" vote for Proposition 4 will allow the state to provide \$1.5 billion in bonds for the children's hospitals to use over the course of 30 years. A "no" vote for Proposition 4 will not allow the state to provide \$1.5 billion in bonds for children's hospitals, but it would have no effect on other state funding available to children's hospitals or the bonds that were reserved under Proposition 61 or Proposition 3.

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<sup>104</sup> NOVEMBER 2018 VOTER GUIDE at 30; CAL. SEC'Y OF STATE, *supra* note 101.

<sup>105</sup> CAL. SEC'Y OF STATE, *supra* note 101.

<sup>106</sup> See NOVEMBER 2018 VOTER GUIDE at 30 (Figure 1 states how much bond money each hospital would be eligible for if Proposition 4 passes.)