

**ASSEMBLY BILL**

**No. 2418**

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**Introduced by Assembly Members Bonilla and Skinner**

February 21, 2014

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An act to add Section 1367.247 to the Health and Safety Code, and to add Section 10123.192 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2418, as introduced, Bonilla. Health care coverage: prescription drug refills.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law imposes various requirements on contracts and policies that cover prescription drug benefits. Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and prohibits the refilling of a prescription without the authorization of the prescriber, except as specified.

This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2015, that provides prescription drug benefits and imposes a mandatory mail order restriction for all or some covered prescription drugs to establish a process allowing enrollees and insureds to opt out of the restriction, as specified. This bill would prohibit a health care service plan contract or a health insurance policy issued, amended, or renewed on or after January 1, 2015, that provides prescription drug benefits

from denying coverage for the refill of an otherwise covered drug when the refill is ordered for the purpose of placing all of the enrollee’s or insured’s medications on the same schedule for refill. The bill would also prohibit the contract or policy from denying coverage for the refill of covered topical ophthalmic products at 70% of the predicted days of use. Because a willful violation of the bill’s requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1367.247 is added to the Health and
- 2 Safety Code, to read:
- 3 1367.247. (a) (1) A health care service plan contract issued,
- 4 amended, or renewed on or after January 1, 2015, that provides
- 5 prescription drug benefits and that imposes a mandatory mail order
- 6 restriction for some or all covered prescription drugs shall establish
- 7 a process for enrollees to opt out of that restriction. The opt out
- 8 process shall comply with all of the following requirements:
- 9 (A) Not impose conditions or restrictions on an enrollee opting
- 10 out of the mandatory mail order restriction. For purposes of this
- 11 subparagraph, “conditions or restrictions” include, but are not
- 12 limited to, requiring prescriber approval or submission of
- 13 documentation by the enrollee or prescriber.
- 14 (B) Allow an enrollee to opt out of the mandatory mail order
- 15 restriction, and revoke his or her prior opt out of the restriction, at
- 16 any time.
- 17 (C) The choice by an enrollee to opt out shall be valid for as
- 18 long as the enrollee remains enrolled in the plan contract or elects
- 19 to revoke the opt out.
- 20 (D) A health care service plan shall provide an enrollee who
- 21 obtains a covered prescription drug that is subject to the mandatory
- 22 mail order restriction with a separate written notice of the

1 restriction no less than 30 days prior to the restriction taking effect  
2 for each drug subject to the restriction. This written notice shall  
3 be in addition to any information contained in the plan’s evidence  
4 of coverage or evidence of benefits. The notice shall inform the  
5 enrollee of the right to opt out of the mandatory mail order  
6 restriction and instructions on how to do so, including designating  
7 a mailing address, electronic mail address, and, if the plan chooses  
8 to receive opt out elections by telephone or facsimile, a toll-free  
9 telephone or facsimile number, to which the enrollee may deliver  
10 his or her opt out election.

11 (2) This subdivision shall not apply to drugs that are not  
12 available at an in-network community pharmacy due to a  
13 manufacturer’s instructions or restrictions, or due to any risk  
14 evaluation and management strategy approved by the federal Food  
15 and Drug Administration.

16 (b) A health care service plan contract issued, amended, or  
17 renewed on or after January 1, 2015, that provides prescription  
18 drug benefits shall not deny coverage for the refill of an otherwise  
19 covered drug when the refill is ordered for the purpose of placing  
20 all of the enrollee’s medications on the same schedule for refill.

21 (c) A health care service plan contract issued, amended, or  
22 renewed on or after January 1, 2015, that provides prescription  
23 drug benefits shall not deny coverage for the refill of covered  
24 topical ophthalmic products at 70 percent of the predicted days of  
25 use.

26 (d) Nothing in this section shall be construed to establish a new  
27 mandated benefit or to prevent the application of deductible or  
28 copayment provisions in a plan contract.

29 SEC. 2. Section 10123.192 is added to the Insurance Code, to  
30 read:

31 10123.192. (a) (1) A health insurance policy issued, amended,  
32 or renewed on or after January 1, 2015, that provides prescription  
33 drug benefits and that imposes a mandatory mail order restriction  
34 for some or all covered prescription drugs shall establish a process  
35 for insureds to opt out of that restriction. The opt out process shall  
36 comply with all of the following requirements:

37 (A) Not impose conditions or restrictions on an insured opting  
38 out of the mandatory mail order restriction. For purposes of this  
39 subparagraph, “conditions or restrictions” include, but are not

1 limited to, requiring prescriber approval or submission of  
2 documentation by the insured or prescriber.

3 (B) Allow an insured to opt out of the mandatory mail order  
4 restriction, and revoke his or her prior opt out of the restriction, at  
5 any time.

6 (C) The choice by an insured to opt out shall be valid for as  
7 long as the insured remains covered under the policy or elects to  
8 revoke the opt out.

9 (D) A health insurer shall provide an insured who obtains a  
10 covered prescription drug that is subject to the mandatory mail  
11 order restriction with a separate written notice of the restriction  
12 no less than 30 days prior to the restriction taking effect for each  
13 drug subject to the restriction. This written notice shall be in  
14 addition to any information contained in the insurer's evidence of  
15 coverage or evidence of benefits. The notice shall inform the  
16 insured of the right to opt out of the mandatory mail order  
17 restriction and instructions on how to do so, including designating  
18 a mailing address, electronic mail address, and, if the insurer  
19 chooses to receive opt out elections by telephone or facsimile, a  
20 toll-free telephone or facsimile number, to which the insured may  
21 deliver his or her opt out election.

22 (2) This subdivision shall not apply to drugs that are not  
23 available at an in-network community pharmacy due to a  
24 manufacturer's instructions or restrictions, or due to any risk  
25 evaluation and management strategy approved by the federal Food  
26 and Drug Administration.

27 (b) A health insurance policy issued, amended, or renewed on  
28 or after January 1, 2015, that provides prescription drug benefits  
29 shall not deny coverage for the refill of an otherwise covered drug  
30 when the refill is ordered for the purpose of placing all of the  
31 insured's medications on the same schedule for refill.

32 (c) A health insurance policy issued, amended, or renewed on  
33 or after January 1, 2015, that provides prescription drug benefits  
34 shall not deny coverage for the early refill of covered topical  
35 ophthalmic products at 70 percent of the predicted days of use.

36 (d) Nothing in this section shall be construed to establish a new  
37 mandated benefit or to prevent the application of deductible or  
38 copayment provisions in a policy.

39 SEC. 3. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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