

ASSEMBLY BILL

No. 933

Introduced by Assembly Member Daly
(Coauthors: Assembly Members Carrillo, Gipson, Medina,
O'Donnell, and Rodriguez)
(Coauthor: Senator Wiener)

February 17, 2021

An act to add Section 1367.52 to the Health and Safety Code, and to add Section 10123.66 to the Insurance Code, relating to prescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

AB 933, as introduced, Daly. Prescription drug cost sharing.

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 provides for the regulation of health insurers by the Department of Insurance. Existing law limits the maximum amount an enrollee or insured may be required to pay at the point of sale for a covered prescription drug to the lesser of the applicable cost-sharing amount or the retail price.

This bill would require an enrollee's or insured's defined cost sharing for each prescription drug to be calculated at the point of sale based on a price that is reduced by an amount equal to 90% of all rebates received, or to be received, in connection with the dispensing or administration of the drug. The bill would prohibit a health care service plan, health insurer, or a plan's or insurer's agents from publishing or otherwise revealing information regarding the actual amount of rebates the health care service plan or health insurer receives on a product-specific,

manufacturer-specific, or pharmacy-specific basis. Because a willful violation of these provisions 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 1367.52 is added to the Health and Safety
2 Code, to read:
3 1367.52. (a) An enrollee’s defined cost sharing for each
4 prescription drug shall be calculated at the point of sale based on
5 a price that is reduced by an amount equal to at least 90 percent
6 of all rebates received, or to be received, in connection with the
7 dispensing or administration of the drug.
8 (b) This section does not prohibit a health care service plan from
9 decreasing an enrollee’s defined cost sharing by an amount greater
10 than that required pursuant to subdivision (a).
11 (c) To comply with this section, a health care service plan or
12 its agents shall not publish or otherwise reveal information
13 regarding the actual amount of rebates the health care service plan
14 receives on a product-specific, manufacturer-specific, or
15 pharmacy-specific basis. That information is protected as a trade
16 secret, is not a public record as defined in the California Public
17 Records Act (Chapter 3.5 (commencing with Section 6250) of
18 Division 7 of Title 1 of the Government Code), and shall not be
19 disclosed directly or indirectly. A health care service plan shall
20 impose the confidentiality protections of this section on a vendor
21 or downstream third party that performs health care or
22 administrative services on behalf of the health care service plan
23 and that may receive or have access to rebate information.
24 (d) The director may, after appropriate notice and opportunity
25 for hearing in accordance with Section 1397, by order, assess
26 administrative penalties to the full extent permissible under this

1 chapter if the director determines that a health care service plan
2 has violated this section.

3 (e) This section shall not be interpreted or implemented in a
4 manner inconsistent with federal law. The provisions of this section
5 are severable. If a provision of this section or its application is held
6 invalid or incapable of being enforced against a health care service
7 plan due to a conflict with federal requirements, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.

10 (f) For purposes of this section:

11 (1) “Defined cost sharing” means a deductible payment or
12 coinsurance amount imposed on an enrollee for a covered
13 prescription drug under the enrollee’s health care service plan
14 contract.

15 (2) “Health care service plan” shall have the meaning set forth
16 in Section 1345 and includes a specialized health care service plan.

17 (3) “Price protection rebate” means a negotiated price concession
18 that accrues directly or indirectly to a health care service plan, or
19 other party on behalf of the health care service plan, in the event
20 of an increase in the wholesale acquisition cost of a drug above a
21 specified threshold.

22 (4) “Rebate” means both of the following:

23 (A) Negotiated price concessions, including base price
24 concessions, whether or not described as a “rebate,” and reasonable
25 estimates of price protection rebates and performance-based price
26 concessions from a manufacturer, dispensing pharmacy, or other
27 party in connection with the dispensing or administration of a
28 prescription drug that may accrue directly or indirectly to the health
29 care service plan during the coverage year.

30 (B) Reasonable estimates of negotiated price concessions, fees,
31 and other administrative costs that are passed through, or are
32 reasonably anticipated to be passed through, to the health care
33 service plan and serve to reduce the health care service plan’s
34 liabilities for a prescription drug.

35 SEC. 2. Section 10123.66 is added to the Insurance Code, to
36 read:

37 10123.66. (a) An insured’s defined cost sharing for each
38 prescription drug shall be calculated at the point of sale based on
39 a price that is reduced by an amount equal to at least 90 percent

1 of all rebates received, or to be received, in connection with the
2 dispensing or administration of the drug.

3 (b) This section does not prohibit a health insurer from
4 decreasing an insured's defined cost sharing by an amount greater
5 than that required pursuant to subdivision (a).

6 (c) To comply with this section, a health insurer or its agents
7 shall not publish or otherwise reveal information regarding the
8 actual amount of rebates the health insurer receives on a
9 product-specific, manufacturer-specific, or pharmacy-specific
10 basis. That information is protected as a trade secret, is not a public
11 record as defined in the California Public Records Act (Chapter
12 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
13 the Government Code), and shall not be disclosed directly or
14 indirectly. A health insurer shall impose the confidentiality
15 protections of this section on a vendor or downstream third party
16 that performs health care or administrative services on behalf of
17 the health insurer and that may receive or have access to rebate
18 information.

19 (d) The commissioner may, after appropriate notice and
20 opportunity for hearing in accordance with Section 704, by order,
21 suspend an insurer's certificate of authority if the commissioner
22 determines that a health insurer has violated this section. Section
23 704.7 shall apply to a proceeding conducted pursuant to this
24 section.

25 (e) This section shall not be interpreted or implemented in a
26 manner inconsistent with federal law. The provisions of this section
27 are severable. If a provision of this section or its application is held
28 invalid or incapable of being enforced against a health insurer due
29 to a conflict with federal requirements, that invalidity shall not
30 affect other provisions or applications that can be given effect
31 without the invalid provision or application.

32 (f) For purposes of this section:

33 (1) "Defined cost sharing" means a deductible payment or
34 coinsurance amount imposed on an insured for a covered
35 prescription drug under the insured's health insurance policy.

36 (2) "Health insurer" includes any health insurer holding a
37 certificate of authority pursuant to Article 3 (commencing with
38 Section 699) of Chapter 1 of Part 2 of Division 1.

39 (3) "Price protection rebate" means a negotiated price concession
40 that accrues directly or indirectly to a health insurer, or other party

1 on behalf of the health insurer, in the event of an increase in the
2 wholesale acquisition cost of a drug above a specified threshold.

3 (4) “Rebate” means both of the following:

4 (A) Negotiated price concessions, including base price
5 concessions, whether or not described as a “rebate,” and reasonable
6 estimates of price protection rebates and performance-based price
7 concessions from a manufacturer, dispensing pharmacy, or other
8 party in connection with the dispensing or administration of a
9 prescription drug that may accrue directly or indirectly to the health
10 insurer during the coverage year.

11 (B) Reasonable estimates of negotiated price concessions, fees,
12 and other administrative costs that are passed through, or are
13 reasonably anticipated to be passed through, to the health insurer
14 and serve to reduce the health insurer’s liabilities for a prescription
15 drug.

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.