An act to amend Section 1342.74 of the Health and Safety Code, and to amend Section 10123.1933 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL’S DIGEST


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 generally prohibits a health care service plan or health insurer from subjecting antiretroviral drugs that are medically necessary for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis, to prior authorization or step therapy. Under existing law, a health care service plan or health insurer is not required to cover all the therapeutically equivalent versions of those drugs without prior authorization or step therapy if at least one is covered without prior authorization or step therapy.

This bill would prohibit a health care service plan or health insurer from subjecting antiretroviral drugs, devices, or products that are either approved by the United States Food and Drug Administration (FDA) or recommended by the federal Centers for Disease Control and Prevention (CDC) for the prevention of AIDS/HIV to prior authorization.
or step therapy, but would authorize prior authorization or step therapy if at least one therapeutically equivalent version is covered without prior authorization or step therapy and the insurer provides coverage for a noncovered therapeutic equivalent antiretroviral drug, device, or product without cost sharing pursuant to an exception request. The bill would prohibit a nongrandfathered or grandfathered health care service plan contract or health insurance policy from imposing any cost-sharing or utilization review requirements for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV. The bill would require a grandfathered health care service plan contract or health insurance policy to provide coverage for those drugs, devices, or products, and would require a plan or insurer to provide coverage under the outpatient prescription drug benefit for those drugs, devices, or products, including by supplying participating providers directly with a drug, device, or product, as specified. Because a willful violation of these provisions by a health care service plan would be a crime, this 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.

Existing law provides for the regulation of disability insurers by the Department of Insurance. Existing law establishes the Independent Medical Review System in the department to review grievances involving a disputed health care service. Under existing law, a statement of decision regarding denying, modifying, or delaying health care services, based in whole or in part on a finding that a proposed health care service is not a covered benefit under the contract, is required to clearly specify the provision in the contract that excludes that coverage.

This bill would make technical, nonsubstantive changes to those provisions and would clarify that the above described statement of decision is required to clearly specify the provision in the contract that excludes a specific coverage.

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

SECTION 1. Section 1342.74 of the Health and Safety Code is amended to read:

1342.74. (a) (1) Notwithstanding Section 1342.71, a health care service plan shall not subject antiretroviral drugs that are medically necessary drugs, devices, or products that are either approved by the United States Food and Drug Administration (FDA) or recommended by the federal Centers for Disease Control and Prevention (CDC) for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis, to prior authorization or step therapy, except as provided in paragraph (2).

(2) If the United States Food and Drug Administration FDA has approved one or more therapeutic equivalents of a drug, device, or product for the prevention of AIDS/HIV, this section does not require a health care service plan to cover all of the therapeutically equivalent versions without prior authorization or step therapy, if at least one therapeutically equivalent version is covered without prior authorization or step therapy and the plan provides coverage for a noncovered therapeutic equivalent antiretroviral drug, device, or product without cost sharing pursuant to an exception request.

(b) Notwithstanding any other law, a health care service plan shall not prohibit, or permit a delegated pharmacy benefit manager to prohibit, a pharmacy provider from dispensing preexposure prophylaxis or postexposure prophylaxis.

(c) A health care service plan shall not cover preexposure prophylaxis that has been furnished by a pharmacist, as authorized in Section 4052.02 of the Business and Professions Code, in excess of a 60-day supply to a single patient once every two years, unless the pharmacist has been directed otherwise by a prescriber.

(d) This section does not require a health care service plan to cover preexposure prophylaxis or postexposure prophylaxis by a pharmacist at an out-of-network pharmacy, unless the health care service plan has an out-of-network pharmacy benefit.

(e) (1) A nongrandfathered health care service plan contract shall not impose any cost-sharing or utilization review requirements for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for
the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis.

(2) A health care service plan contract that is a grandfathered health plan shall provide coverage, and shall not impose any cost-sharing or utilization review requirements, for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV; including preexposure prophylaxis or postexposure prophylaxis of HIV.

(f) A health care service plan shall provide coverage under the outpatient prescription drug benefit for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV, including by supplying participating providers directly with a drug, device, or product that is required by this section and is not self-administered.

(g) (1) This section does not apply to a specialized health care service plan contract that does not cover an essential health benefit, as defined by Section 1367.005, or a Medicare supplement policy.

(2) This section applies to a Medi-Cal managed care plan that contracts with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) This section applies regardless of whether or not an antiretroviral drug, device, or product is self-administered.

(h) The department and director may exercise the authority provided by this code and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) to implement and enforce this section. If the department assesses a civil penalty for a violation, any hearing that is requested by the plan shall be conducted by the Office of Administrative Hearings. This subdivision does not impair or restrict the department’s authority pursuant to another provision of this code or the Administrative Procedure Act.

SEC. 2. Section 10123.1933 of the Insurance Code is amended to read:
10123.1933. (a) (1) Notwithstanding Section 10123.201, a health insurer shall not subject antiretroviral—drugs that are medically necessary—drugs, devices, or products that are either approved by the United States Food and Drug Administration (FDA) or recommended by the federal Centers for Disease Control and Prevention (CDC) for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis, to prior authorization or step therapy, except as provided in paragraph (2).

(2) If the United States Food and Drug Administration FDA has approved one or more therapeutic equivalents of a drug, device, or product for the prevention of AIDS/HIV, this section does not require a health insurer to cover all of the therapeutically equivalent versions without prior authorization or step therapy, if at least one therapeutically equivalent version is covered without prior authorization or step therapy and the insurer provides coverage for a noncovered therapeutic equivalent antiretroviral drug, device, or product without cost sharing pursuant to an exception request.

(b) Notwithstanding any other law, a health insurer shall not prohibit, or permit a contracted pharmacy benefit manager to prohibit, a pharmacist from dispensing preexposure prophylaxis or postexposure prophylaxis.

(c) Notwithstanding subdivision (b), a health insurer shall not cover preexposure prophylaxis that has been furnished by a pharmacist, as authorized in Section 4052.02 of the Business and Professions Code, in excess of a 60-day supply to a single patient once every two years, unless the pharmacist has been directed otherwise by a prescriber.

(d) (1) A nongrandfathered health insurance policy shall not impose any cost-sharing or utilization review requirements for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis.

(2) A health insurance policy that is a grandfathered health plan shall provide coverage, and shall not impose any cost-sharing or utilization review requirements, for antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis of HIV.
(e) A health insurer shall provide coverage under the outpatient
prescription drug benefit for antiretroviral drugs, devices, or
products that are either approved by the FDA or recommended
by the CDC for the prevention of AIDS/HIV, including by supplying
participating providers directly with a drug, device, or product
that is required by this section and is not self-administered.

(f) This section does not apply to a specialized health insurance
policy that does not cover an essential health benefit, as defined
by Section 10112.27, or a Medicare supplement policy. This section
applies regardless of whether or not an antiretroviral drug, device,
or product is self-administered.

(g) The department and commissioner may exercise the authority
provided by this code and the Administrative Procedure Act
(Chapter 3.5 (commencing with Section 11340), Chapter 4.5
(commencing with Section 11400), and Chapter 5 (commencing
with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code) to implement and enforce this section. If the
commissioner assesses a civil penalty for a violation, any hearing
that is requested by the insurer shall be conducted by an
administrative law judge of the administrative hearing bureau of
the department under the formal procedure of Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title
2 of the Government Code. This subdivision does not impair or
restrict the commissioner’s authority pursuant to another provision
of this code or the Administrative Procedure Act.

SEC. 3. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.
All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 13, 2023. (JR11)