An act to amend Section 2699 of the Labor Code, relating to employment; add Section 1342.715 to the Health and Safety Code, and to add Section 10123.1935 to 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 also provides for the regulation of health insurers by the Insurance Commissioner. Existing law requires a health care service plan contract or a health insurance policy that provides coverage for outpatient prescription drugs to cover medically necessary prescription drugs, including nonformulary drugs determined to be medically necessary, and authorizes a health care service plan or health insurer to utilize formulary, prior authorization, step therapy, or other reasonable medical management practices in the provision of outpatient prescription drug coverage.

This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2021, to include coverage for any biological product or biosimilar, as defined, if the health care service plan contract or health insurance policy provides for medical or prescription drug benefits and coverage
for any biological product or biosimilar. The bill would prohibit a health care service plan or health insurer that is subject to this provision from determining which manufacturer’s biological product or biosimilar is to be a physician-administered biological product when a medically necessary biological product or biosimilar is prescribed.

By imposing new requirements on a health care service plan, the willful violation of which is 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, the Labor Code Private Attorneys General Act of 2004, permits an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action pursuant to specified procedures for a violation of a provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency.

This bill would make nonsubstantive changes to these provisions.


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

SECTION 1. Section 1342.715 is added to the Health and Safety Code, immediately following Section 1342.71, to read:

1342.715. (a) A health care service plan contract, including a specialized health care service plan contract, issued, amended, or renewed on or after January 1, 2021, shall provide coverage for any biological product or biosimilar if that health care service plan contract provides for both of the following:

1. Medical or prescription drug benefits.
2. Coverage for any biological product or biosimilar.

(b) A health care service plan subject to this section shall not determine which manufacturer’s biological product or biosimilar is to be a physician-administered biological product when a medically necessary biological product or biosimilar is prescribed.

This prohibition applies to any biological product or biosimilar
covered under either an enrollee’s outpatient prescription drug
benefit or their medical benefit.
(c) For purposes of this section, the following definitions apply:
(1) “Biological product” has the same meaning as that term is
defined under Section 262(i)(1) of Title 42 of the United States
Code.
(2) “Biosimilar” has the same meaning as that term is defined
under Section 262(i)(2) of Title 42 of the United States Code.
(3) “Physician-administered biological product” means a
biological product or biosimilar that is administered by a health
care provider in a provider’s office, hospital, clinic, or other health
care facility setting.

SEC. 2. Section 10123.1935 is added to the Insurance Code,
immediately following Section 10123.1933, to read:
10123.1935. (a) A health insurance policy, including a
specialized health insurance policy, issued, amended, or renewed
on or after January 1, 2021, shall provide coverage for any
biological product or biosimilar if that health insurance policy
provides for both of the following:
(1) Medical or prescription drug benefits.
(2) Coverage for any biological product or biosimilar.
(b) A health insurer subject to this section shall not determine
which manufacturer’s biological product or biosimilar is to be a
physician-administered biological product when a medically
necessary biological product or biosimilar is prescribed. This
prohibition applies to any biological product or biosimilar covered
under either an insured’s outpatient prescription drug benefit or
their medical benefit.
(c) For purposes of this section, the following definitions apply:
(1) “Biological product” has the same meaning as that term is
defined under Section 262(i)(1) of Title 42 of the United States
Code.
(2) “Biosimilar” has the same meaning as that term is defined
under Section 262(i)(2) of Title 42 of the United States Code.
(3) “Physician-administered biological product” means a
biological product or biosimilar that is administered by a health
care provider in a provider’s office, hospital, clinic, or other health
care facility setting.

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.

SECTION 1. Section 2699 of the Labor Code is amended to
read:

2699. (a) Notwithstanding any other law, a provision of this
code that provides for a civil penalty to be assessed and collected
by the Labor and Workforce Development Agency or any of its
departments, divisions, commissions, boards, agencies, or
employees, for a violation of this code, may, as an alternative, be
recovered through a civil action brought by an aggrieved employee
on behalf of themselves and other current or former employees
pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, “person” has the same meaning
as defined in Section 18.

(c) For purposes of this part, “aggrieved employee” means any
person who was employed by the alleged violator and against
whom one or more of the alleged violations was committed.

(d) For purposes of this part, “cure” means that the employer
abates each violation alleged by any aggrieved employee, the
employer is in compliance with the underlying statutes as specified
in the notice required by this part, and any aggrieved employee is
made whole. A violation of paragraph (6) or (8) of subdivision (a)
of Section 226 shall only be considered cured upon a showing that
the employer has provided a fully compliant, itemized wage
statement to each aggrieved employee for each pay period for the
three-year period prior to the date of the written notice sent
pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e) (1) For purposes of this part, whenever the Labor and
Workforce Development Agency, or any of its departments,
divisions, commissions, boards, agencies, or employees, has
discretion to assess a civil penalty, a court is authorized to exercise
the same discretion, subject to the same limitations and conditions,
to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery
of a civil penalty available under subdivision (a) or (f), a court
may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of themselves and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee’s right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in
Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of themselves or others or initiates a proceeding pursuant to Section 98.3:

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l) (1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.
(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers’ compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement this part.