

AMENDED IN SENATE MARCH 25, 2020

SENATE BILL

No. 1452

Introduced by Senator Morrell

February 21, 2020

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

SB 1452, as amended, Morrell. ~~The Labor Code Private Attorneys General Act of 2004.~~ *Biological products.*

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.~~

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

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

- 1 SECTION 1. Section 1342.715 is added to the Health and
- 2 Safety Code, immediately following Section 1342.71, to read:
- 3 1342.715. (a) A health care service plan contract, including
- 4 a specialized health care service plan contract, issued, amended,
- 5 or renewed on or after January 1, 2021, shall provide coverage
- 6 for any biological product or biosimilar if that health care service
- 7 plan contract provides for both of the following:
- 8 (1) Medical or prescription drug benefits.
- 9 (2) Coverage for any biological product or biosimilar.
- 10 (b) A health care service plan subject to this section shall not
- 11 determine which manufacturer’s biological product or biosimilar
- 12 is to be a physician-administered biological product when a
- 13 medically necessary biological product or biosimilar is prescribed.
- 14 This prohibition applies to any biological product or biosimilar

1 covered under either an enrollee’s outpatient prescription drug
2 benefit or their medical benefit.

3 (c) For purposes of this section, the following definitions apply:

4 (1) “Biological product” has the same meaning as that term is
5 defined under Section 262(i)(1) of Title 42 of the United States
6 Code.

7 (2) “Biosimilar” has the same meaning as that term is defined
8 under Section 262(i)(2) of Title 42 of the United States Code.

9 (3) “Physician-administered biological product” means a
10 biological product or biosimilar that is administered by a health
11 care provider in a provider’s office, hospital, clinic, or other health
12 care facility setting.

13 SEC. 2. Section 10123.1935 is added to the Insurance Code,
14 immediately following Section 10123.1933, to read:

15 10123.1935. (a) A health insurance policy, including a
16 specialized health insurance policy, issued, amended, or renewed
17 on or after January 1, 2021, shall provide coverage for any
18 biological product or biosimilar if that health insurance policy
19 provides for both of the following:

20 (1) Medical or prescription drug benefits.

21 (2) Coverage for any biological product or biosimilar.

22 (b) A health insurer subject to this section shall not determine
23 which manufacturer’s biological product or biosimilar is to be a
24 physician-administered biological product when a medically
25 necessary biological product or biosimilar is prescribed. This
26 prohibition applies to any biological product or biosimilar covered
27 under either an insured’s outpatient prescription drug benefit or
28 their medical benefit.

29 (c) For purposes of this section, the following definitions apply:

30 (1) “Biological product” has the same meaning as that term is
31 defined under Section 262(i)(1) of Title 42 of the United States
32 Code.

33 (2) “Biosimilar” has the same meaning as that term is defined
34 under Section 262(i)(2) of Title 42 of the United States Code.

35 (3) “Physician-administered biological product” means a
36 biological product or biosimilar that is administered by a health
37 care provider in a provider’s office, hospital, clinic, or other health
38 care facility setting.

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.*

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

10 ~~2699. (a) Notwithstanding any other law, a provision of this~~
11 ~~code that provides for a civil penalty to be assessed and collected~~
12 ~~by the Labor and Workforce Development Agency or any of its~~
13 ~~departments, divisions, commissions, boards, agencies, or~~
14 ~~employees, for a violation of this code, may, as an alternative, be~~
15 ~~recovered through a civil action brought by an aggrieved employee~~
16 ~~on behalf of themselves and other current or former employees~~
17 ~~pursuant to the procedures specified in Section 2699.3.~~

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

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

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

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

39 ~~(2) In any action by an aggrieved employee seeking recovery~~
40 ~~of a civil penalty available under subdivision (a) or (f), a court~~

1 may award a lesser amount than the maximum civil penalty amount
2 specified by this part if, based on the facts and circumstances of
3 the particular case, to do otherwise would result in an award that
4 is unjust, arbitrary and oppressive, or confiscatory.

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

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

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

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

20 (g) (1) Except as provided in paragraph (2), an aggrieved
21 employee may recover the civil penalty described in subdivision
22 (f) in a civil action pursuant to the procedures specified in Section
23 2699.3 filed on behalf of themselves and other current or former
24 employees against whom one or more of the alleged violations
25 was committed. Any employee who prevails in any action shall
26 be entitled to an award of reasonable attorney's fees and costs,
27 including any filing fee paid pursuant to subparagraph (B) of
28 paragraph (1) of subdivision (a) or subparagraph (B) of paragraph
29 (1) of subdivision (c) of Section 2699.3. Nothing in this part shall
30 operate to limit an employee's right to pursue or recover other
31 remedies available under state or federal law, either separately or
32 concurrently with an action taken under this part.

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

37 (h) No action may be brought under this section by an aggrieved
38 employee if the agency or any of its departments, divisions,
39 commissions, boards, agencies, or employees, on the same facts
40 and theories, cites a person within the timeframes set forth in

1 Section 2699.3 for a violation of the same section or sections of
2 the Labor Code under which the aggrieved employee is attempting
3 to recover a civil penalty on behalf of themselves or others or
4 initiates a proceeding pursuant to Section 98.3.

5 (i) Except as provided in subdivision (j), civil penalties
6 recovered by aggrieved employees shall be distributed as follows:
7 75 percent to the Labor and Workforce Development Agency for
8 enforcement of labor laws, including the administration of this
9 part, and for education of employers and employees about their
10 rights and responsibilities under this code, to be continuously
11 appropriated to supplement and not supplant the funding to the
12 agency for those purposes; and 25 percent to the aggrieved
13 employees.

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

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

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

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

36 (3) A copy of the superior court's judgment in any civil action
37 filed pursuant to this part and any other order in that action that
38 either provides for or denies an award of civil penalties under this
39 code shall be submitted to the agency within 10 days after entry
40 of the judgment or order.

1 ~~(4) Items required to be submitted to the Labor and Workforce~~
2 ~~Development Agency under this subdivision or to the Division of~~
3 ~~Occupational Safety and Health pursuant to paragraph (4) of~~
4 ~~subdivision (b) of Section 2699.3, shall be transmitted online~~
5 ~~through the same system established for the filing of notices and~~
6 ~~requests under subdivisions (a) and (c) of Section 2699.3.~~

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

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