

## AMENDMENTS TO ASSEMBLY BILL NO. 933

## Amendment 1

On page 2, between lines 7 and 8, insert:

(1) The health care service plan shall pass through to each enrollee at the point of sale a good faith estimate of the enrollee's decrease in cost sharing required pursuant to this subdivision.

(2) In addition to the pass through at the point of sale described in paragraph (1), the health care service plan shall provide the enrollee with an end-of-calendar-year reconciliation for any cost-sharing reductions owed to the enrollee pursuant to this subdivision that were not passed on to the enrollee through the estimated amount at the point of sale.

(b) Each health care service plan shall, either directly or indirectly through its agents, calculate the enrollee's defined cost sharing and provide the dispensing pharmacy with the enrollee's defined cost sharing for each prescription drug as required pursuant to subdivision (a). Nothing in this subdivision authorizes a health care service plan or its agents to publish or otherwise reveal information prohibited from disclosure pursuant to subdivision (e).

(c) Neither a pharmacy nor a pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code shall have any liability, penalty, or be subject to any disciplinary action if such information has not been provided by the health care service plan providing the benefit to the pharmacy's customer. A health care service plan nor its contracted agents shall not impose any form of monetary penalty or withhold any payments for a pharmacy that engaged in good faith efforts to comply with this statute.

## Amendment 2

On page 2, in line 8, strike out "(b)" and insert:

(d)

## Amendment 3

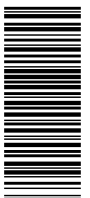
On page 2, strike out line 11, in line 12, strike out "its agents" and insert:

(e) A health care service plan shall disclose information sufficient to show compliance with this section to the director upon request. A health care service plan and the director, and their respective agents,

## Amendment 4

On page 2, in line 24, strike out "(d)" and insert:

(f) (1)



**Amendment 5**

On page 2, in line 25, strike out “Section 1397, by order, assess”, strike out line 26, on page 3, strike out lines 1 and 2 and insert:

the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars (\$5,000) for each violation of this section, or, if a violation was determined to be willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of this section.

(2) A violation of this section does not constitute a crime under Section 1390.

**Amendment 6**

On page 3, in line 3, strike out “(e)” and insert:

(g)

**Amendment 7**

On page 3, in line 10, strike out “(f)” and insert:

(h)

**Amendment 8**

On page 3, in line 24, strike out “reasonable” and insert:

reasonable, good faith

**Amendment 9**

On page 3, in line 29, strike out “plan during the coverage year.” and insert:

plan, or other party on behalf of the health care service plan, including, but not limited to, health care service plan-owned pharmacy benefit managers, during a calendar year.

**Amendment 10**

On page 3, in line 30, strike out “Reasonable” and insert:

Reasonable, good faith

## Amendment 11

On page 4, between lines 2 and 3, insert:

(1) The health insurer shall pass through to each insured at the point of sale a good faith estimate of the insured's decrease in cost sharing required pursuant to this subdivision.

(2) In addition to the pass through at the point of sale described in paragraph (1), the health insurer shall provide the insured with an end-of-calendar-year reconciliation for any cost-sharing reductions owed to the insured pursuant to this subdivision that were not passed on to the insured through the estimated amount at the point of sale.

(b) Each health insurer shall, either directly or indirectly through its agents, calculate the insured's defined cost sharing and provide the dispensing pharmacy with the insured's defined cost sharing for each prescription drug as required pursuant to subdivision (a). Nothing in this subdivision authorizes a health insurer or its agents to publish or otherwise reveal information prohibited from disclosure pursuant to subdivision (e).

(c) Neither a pharmacy nor a pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code shall have any liability, penalty, or be subject to any disciplinary action if such information has not been provided by the health insurer providing the benefit to the pharmacy's customer. A health insurer nor its contracted agents shall not impose any form of monetary penalty or withhold any payments for a pharmacy that engaged in good faith efforts to comply with this statute.

## Amendment 12

On page 4, in line 3, strike out "(b)" and insert:

(d)

## Amendment 13

On page 4, strike out line 6 and insert:

(e) A health insurer shall disclose information sufficient to show compliance with this section to the commissioner upon request. A health insurer and the commissioner, and their respective agents,

## Amendment 14

On page 4, in line 19, strike out "(d)" and insert:

(f)

## Amendment 15

On page 4, in line 20, strike out “Section 704, by order,”, strike out lines 21 to 24, inclusive, and insert:

the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars (\$5,000) for each violation of this section, or, if a violation was determined to be willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of this section.

## Amendment 16

On page 4, in line 25, strike out “(e)” and insert:

(g)

## Amendment 17

On page 4, in line 32, strike out “(f)” and insert:

(h)

## Amendment 18

On page 5, in line 5, strike out “reasonable” and insert:

reasonable, good faith

## Amendment 19

On page 5, strike out line 10 and insert:

insurer, or other party on behalf of the health insurer, including, but not limited to, health insurer-owned pharmacy benefit managers, during a calendar year.

## Amendment 20

On page 5, in line 11, strike out “Reasonable” and insert:

Reasonable, good faith

## Amendment 21

On page 5, strike out lines 16 to 24, inclusive, and insert:

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Section 1367.52 to the Health and Safety Code and Section 2 of this act, which adds Section 10123.66 to the Insurance Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The act is necessary to protect patients and the limitation is necessary in order to ensure fair competition amongst health care service plans and health insurers.

## LEGISLATIVE COUNSEL'S DIGEST

AB 933, as amended, 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, Care under authority of the Director of 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. Insurance under the authority of the Insurance Commissioner. 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 require a health care service plan or health insurer to, among other things, pass through to each enrollee or insured at the point of sale a good faith estimate of their decrease in cost sharing. The bill would require a health care service plan or health insurer to calculate an enrollee's or insured's defined cost sharing and provide that information to the dispensing pharmacy, as specified. The bill would require a health care service plan or health insurer to disclose information sufficient to show compliance with these provisions to the director or commissioner. 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 bill would make a violation of its provisions not a crime under the act. The bill would authorize the director or commissioner to assess a civil penalty for each violation of these provisions, as specified.

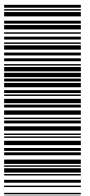
The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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



PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 933

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

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



RN2119786

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~~, *Care under authority of the Director of 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~~, *Insurance under the authority of the Insurance Commissioner*. 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 require a health care service plan or health*

AB 933

— 2 —

*insurer to, among other things, pass through to each enrollee or insured at the point of sale a good faith estimate of their decrease in cost sharing. The bill would require a health care service plan or health insurer to calculate an enrollee’s or insured’s defined cost sharing and provide that information to the dispensing pharmacy, as specified. The bill would require a health care service plan or health insurer to disclose information sufficient to show compliance with these provisions to the director or commissioner. 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 bill would make a violation of its provisions not a crime under the act. The bill would authorize the director or commissioner to assess a civil penalty for each violation of these provisions, as specified.*

~~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 constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

*This bill would make legislative findings to that effect.*

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

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

Page 2 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



Page 2 6 of all rebates received, or to be received, in connection with the  
 7 dispensing or administration of the drug.  
 + (1) *The health care service plan shall pass through to each*  
 + *enrollee at the point of sale a good faith estimate of the enrollee's*  
 + *decrease in cost sharing required pursuant to this subdivision.*  
 + (2) *In addition to the pass through at the point of sale described*  
 + *in paragraph (1), the health care service plan shall provide the*  
 + *enrollee with an end-of-calendar-year reconciliation for any*  
 + *cost-sharing reductions owed to the enrollee pursuant to this*  
 + *subdivision that were not passed on to the enrollee through the*  
 + *estimated amount at the point of sale.*  
 + (b) *Each health care service plan shall, either directly or*  
 + *indirectly through its agents, calculate the enrollee's defined cost*  
 + *sharing and provide the dispensing pharmacy with the enrollee's*  
 + *defined cost sharing for each prescription drug as required*  
 + *pursuant to subdivision (a). Nothing in this subdivision authorizes*  
 + *a health care service plan or its agents to publish or otherwise*  
 + *reveal information prohibited from disclosure pursuant to*  
 + *subdivision (e).*  
 + (c) *Neither a pharmacy nor a pharmacist licensed pursuant to*  
 + *Chapter 9 (commencing with Section 4000) of Division 2 of the*  
 + *Business and Professions Code shall have any liability, penalty,*  
 + *or be subject to any disciplinary action if such information has*  
 + *not been provided by the health care service plan providing the*  
 + *benefit to the pharmacy's customer. A health care service plan*  
 + *nor its contracted agents shall not impose any form of monetary*  
 + *penalty or withhold any payments for a pharmacy that engaged*  
 + *in good faith efforts to comply with this statute.*  
 8 (b)  
 + (d) *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 ~~(e) To comply with this section, a health care service plan or~~  
 12 ~~its agents~~  
 + (e) *A health care service plan shall disclose information*  
 + *sufficient to show compliance with this section to the director upon*  
 + *request. A health care service plan and the director, and their*  
 + *respective 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*

**Amendment 1**

**Amendment 2**

**Amendment 3**

Page 2 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.

Amendment 4

Amendment 5

Page 3 1 ~~this chapter if the director determines that a health care service~~  
 2 ~~plan has violated this section. the Administrative Procedure Act~~  
 + (1) The director may, after appropriate notice and  
 25 opportunity for hearing in accordance with ~~Section 1397, by order,~~  
 26 ~~assess administrative penalties to the full extent permissible under~~  
 + (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
 + 3 of Title 2 of the Government Code), by order, assess a civil  
 + penalty not to exceed five thousand dollars (\$5,000) for each  
 + violation of this section, or, if a violation was determined to be  
 + willful, a civil penalty not to exceed ten thousand dollars (\$10,000)  
 + for each violation of this section.

Amendment 6

Amendment 7

+ (2) A violation of this section does not constitute a crime under  
 + Section 1390.

3 (e)  
 + (g) 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)  
 + (h) 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.

Page 3 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 *reasonable, good faith* estimates of price protection rebates and  
26 performance-based price concessions from a manufacturer,  
27 dispensing pharmacy, or other party in connection with the  
28 dispensing or administration of a prescription drug that may accrue  
29 directly or indirectly to the health care service ~~plan during the~~  
+ ~~coverage year.~~ *plan, or other party on behalf of the health care*  
+ *service plan, including, but not limited to, health care service*  
+ *plan-owned pharmacy benefit managers, during a calendar year.*

30 (B) ~~Reasonable~~ *Reasonable, good faith* estimates of negotiated  
31 price concessions, fees, and other administrative costs that are  
32 passed through, or are reasonably anticipated to be passed through,  
33 to the health care service plan and serve to reduce the health care  
34 service plan’s 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  
Page 4 1 of all rebates received, or to be received, in connection with the  
2 dispensing or administration of the drug.

+ (1) *The health insurer shall pass through to each insured at the*  
+ *point of sale a good faith estimate of the insured’s decrease in cost*  
+ *sharing required pursuant to this subdivision.*

+ (2) *In addition to the pass through at the point of sale described*  
+ *in paragraph (1), the health insurer shall provide the insured with*  
+ *an end-of-calendar-year reconciliation for any cost-sharing*  
+ *reductions owed to the insured pursuant to this subdivision that*  
+ *were not passed on to the insured through the estimated amount*  
+ *at the point of sale.*

+ (b) *Each health insurer shall, either directly or indirectly*  
+ *through its agents, calculate the insured’s defined cost sharing*  
+ *and provide the dispensing pharmacy with the insured’s defined*

Amendment 8

Amendment 9

Amendment 10

Amendment 11

+ *cost sharing for each prescription drug as required pursuant to*  
+ *subdivision (a). Nothing in this subdivision authorizes a health*  
+ *insurer or its agents to publish or otherwise reveal information*  
+ *prohibited from disclosure pursuant to subdivision (e).*

+ *(c) Neither a pharmacy nor a pharmacist licensed pursuant to*  
+ *Chapter 9 (commencing with Section 4000) of Division 2 of the*  
+ *Business and Professions Code shall have any liability, penalty,*  
+ *or be subject to any disciplinary action if such information has*  
+ *not been provided by the health insurer providing the benefit to*  
+ *the pharmacy’s customer. A health insurer nor its contracted*  
+ *agents shall not impose any form of monetary penalty or withhold*  
+ *any payments for a pharmacy that engaged in good faith efforts*  
+ *to comply with this statute.*

3 ~~(b)~~

+ *(d) 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 ~~(e) To comply with this section, a health insurer or its agents~~

+ *(e) A health insurer shall disclose information sufficient to show*  
+ *compliance with this section to the commissioner upon request. A*  
+ *health insurer and the commissioner, and their respective 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)~~

+ *(f) 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. the Administrative Procedure Act (Chapter 5 (commencing*

Amendment 12

Amendment 13

Amendment 14

Amendment 15

Page 4

+ with Section 11500) of Part 1 of Division 3 of Title 2 of the  
+ Government Code), by order, assess a civil penalty not to exceed  
+ five thousand dollars (\$5,000) for each violation of this section,  
+ or, if a violation was determined to be willful, a civil penalty not  
+ to exceed ten thousand dollars (\$10,000) for each violation of this  
+ section.

Page 4

Amendment 16

25 (e)  
+ (g) 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.

Amendment 17

32 (f)  
+ (h) 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.

Page 5

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.

Amendment 18

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 *reasonable, good faith* estimates of price protection rebates and  
7 performance-based price concessions from a manufacturer,  
8 dispensing pharmacy, or other party in connection with the  
9 dispensing or administration of a prescription drug that may accrue  
10 directly or indirectly to the health insurer ~~during the coverage year.~~

Amendment 19

+ insurer, or other party on behalf of the health insurer, including,  
+ but not limited to, health insurer-owned pharmacy benefit  
+ managers, during a calendar year.

Amendment 20

11 (B) ~~Reasonable~~ *Reasonable, good faith* estimates of negotiated  
12 price concessions, fees, and other administrative costs that are  
13 passed through, or are reasonably anticipated to be passed through,

Page 5 14 to the health insurer and serve to reduce the health insurer’s  
15 liabilities for a prescription 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.~~

+ *SEC. 3. The Legislature finds and declares that Section 1 of*  
+ *this act, which adds Section 1367.52 to the Health and Safety Code*  
+ *and Section 2 of this act, which adds Section 10123.66 to the*  
+ *Insurance Code, impose a limitation on the public’s right of access*  
+ *to the meetings of public bodies or the writings of public officials*  
+ *and agencies within the meaning of Section 3 of Article I of the*  
+ *California Constitution. Pursuant to that constitutional provision,*  
+ *the Legislature makes the following findings to demonstrate the*  
+ *interest protected by this limitation and the need for protecting*  
+ *that interest:*

+ *The act is necessary to protect patients and the limitation is*  
+ *necessary in order to ensure fair competition amongst health care*  
+ *service plans and health insurers.*

Amendment 21

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