

ASSEMBLY BILL

No. 369

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Beall and Feuer)
(Coauthor: Senator Pavley)

February 14, 2011

An act to add Section 1367.243 to the Health and Safety Code, and to add Section 10123.192 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 369, as introduced, Huffman. Health care coverage: prescription drugs.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the 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. Commonly referred to as utilization review, existing law governs the procedures that apply to every health care service plan and health insurer that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based on medical necessity, requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees or insureds, as specified.

Existing law also imposes various requirements and restrictions on health care service plans and health insurers, including, among other things, requiring a health care service plan that provides prescription drug benefits to maintain an expeditious process by which prescribing providers, as described, may obtain authorization for a medically

necessary nonformulary prescription drug, according to certain procedures. Existing law also requires every health care service plan that provides prescription drug benefits that maintains one or more drug formularies to provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary.

This bill would impose specified requirements on health care service plans or health insurers that restrict medications for the treatment of pain pursuant to step therapy or fail first protocol. The bill would authorize the duration of any step therapy or fail first protocol to be determined by the prescribing physician and would prohibit a health care service plan or health insurer from requiring that a patient try and fail on more than two pain medications before allowing the patient access to other pain medication prescribed by the physician, as specified.

Because a willful violation of the bill’s provisions relative to health care service plans 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 1367.243 is added to the Health and
- 2 Safety Code, to read:
- 3 1367.243. (a) Notwithstanding any other provision of law, a
- 4 health care service plan that restricts medications for the treatment
- 5 of pain pursuant to step therapy or fail first protocol shall be subject
- 6 to the requirements of this section.
- 7 (b) The duration of any step therapy or fail first protocol shall
- 8 be determined by the prescribing physician.
- 9 (c) The health care service plan shall not require a patient to try
- 10 and fail on more than two pain medications before allowing the
- 11 patient access to the pain medication, or generically equivalent
- 12 drug, prescribed by the physician.
- 13 (d) Once a patient has tried and failed on two pain medications,
- 14 prior authorization is no longer required and the physician may

1 write the prescription for the appropriate pain medication. A note
2 in the patient’s chart that a patient has tried and failed on the health
3 care service plan’s step therapy or fail first protocol shall suffice
4 as prior authorization from the plan.

5 (e) When the physician notes on the prescription that the health
6 care service plan’s step therapy or fail first protocols have been
7 met, a pharmacist may process the prescription without additional
8 communication with the plan.

9 (f) For the purposes of this section, “generically equivalent
10 drug” means drug products with the same active chemical
11 ingredients of the same strength, quantity, and dosage form, and
12 of the same generic drug name, as determined by the United States
13 Adopted Names and accepted by the federal Food and Drug
14 Administration, as those drug products having the same chemical
15 ingredient.

16 (g) This section does not prohibit a health care service plan from
17 charging a subscriber or enrollee a copayment or a deductible for
18 prescription drug benefits or from setting forth, by contract,
19 limitations on maximum coverage of prescription drug benefits,
20 provided that the copayments, deductibles, or limitations are
21 reported to, and held unobjectionable by, the director and
22 communicated to the subscriber or enrollee pursuant to the
23 disclosure provisions of Section 1363.

24 (h) Nothing in this section shall be construed to require coverage
25 of prescription drugs not in a plan’s drug formulary or to prohibit
26 generically equivalent drugs or generic drug substitutions as
27 authorized by Section 4073 of the Business and Professions Code.

28 SEC. 2. Section 10123.192 is added to the Insurance Code, to
29 read:

30 10123.192. (a) Notwithstanding any other provision of law,
31 a health insurer that restricts medications for the treatment of pain
32 pursuant to step therapy or fail first protocol shall be subject to the
33 requirements of this section.

34 (b) The duration of any step therapy or fail first protocol shall
35 be determined by the prescribing physician.

36 (c) The health insurer shall not require a patient to try and fail
37 on more than two pain medications before allowing the patient
38 access to the pain medication, or generically equivalent drug,
39 prescribed by the physician.

1 (d) Once a patient has tried and failed on two pain medications,
2 prior authorization is no longer required and the physician may
3 write the prescription for the appropriate pain medication. A note
4 in the patient’s chart that a patient has tried and failed on the health
5 insurer’s step therapy or fail first protocol shall suffice as prior
6 authorization from the insurer.

7 (e) When the physician notes on the prescription that the health
8 insurer’s step therapy or fail first protocols have been met, a
9 pharmacist may process the prescription without additional
10 communication with the insurer.

11 (f) For the purposes of this section, “generically equivalent
12 drug” means drug products with the same active chemical
13 ingredients of the same strength, quantity, and dosage form, and
14 of the same generic drug name, as determined by the United States
15 Adopted Names and accepted by the federal Food and Drug
16 Administration, as those drug products having the same chemical
17 ingredient.

18 (g) This section does not prohibit a health insurer from charging
19 an insured or policyholder a copayment or a deductible for
20 prescription drug benefits or from setting forth, by contract,
21 limitations on maximum coverage of prescription drug benefits,
22 provided that the copayments, deductibles, or limitations are
23 reported to, and held unobjectionable by, the commissioner and
24 communicated to the insured or policyholder pursuant to the
25 disclosure provisions of Section 10603.

26 (h) Nothing in this section shall be construed to require coverage
27 of prescription drugs not in an insurer’s drug formulary or to
28 prohibit generically equivalent drugs or generic drug substitutions
29 as authorized by Section 4073 of the Business and Professions
30 Code.

31 SEC. 3. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O