

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 76

Introduced by Assembly Members Frommer and Chan
(Coauthors: Assembly Members Baca, Bass, Berg, Cohn, Coto, De
La Torre, Evans, Goldberg, Gordon, Hancock, Klehs, Koretz,
Leno, Levine, Lieber, Nava, Pavley, Ridley-Thomas, Ruskin,
Saldana, and Torrico)

(Coauthor: Senator Alquist)

January 3, 2005

An act to amend Section 12803 of, to add Part 5.4 (commencing with Section 14570) to, and to repeal Chapter 12 (commencing with Section 14977) of Part 5.5 of, Division 3 of Title 1 of, the Government Code, relating to pharmaceuticals.

LEGISLATIVE COUNSEL'S DIGEST

AB 76, as amended, Frommer. Office of Pharmaceutical Purchasing.

Existing law authorizes the Department of General Services to enter into contracts on a bid or negotiated basis with manufacturers and suppliers of single-source or multisource drugs, and authorizes the department to obtain from them discounts, rebates, or refunds as permissible under federal law. Existing law requires 4 state agencies to participate in the program and authorizes other state, local, and public agency governmental entities to elect to participate in the program. Existing law grants the Department of General Services

authority with respect to contracting with a pharmaceutical benefits manager or other entity and exploring additional strategies for managing drug costs.

This bill would repeal these provisions. The bill would instead establish within the California Health and Human Services Agency the Office of Pharmaceutical Purchasing with authority and duties to purchase prescription drugs for state agencies similar to that granted to the Department of General Services under the above-described provisions. The bill would also, however, require the office to be the purchasing agent for the California State University and any other state agency as directed by the Governor, would add to those entities that may elect to participate in the purchasing program, and would authorize the office to conduct specified activities in order to negotiate the lowest prices possible for prescription drugs. ~~The bill would require the office, on or before February 1, 2007, and annually thereafter, to submit a report containing specified information to certain committees of the Legislature regarding the program.~~

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

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

1 SECTION 1. Section 12803 of the Government Code is
2 amended to read:
3 12803. (a) The California Health and Human Services
4 Agency consists of the following departments: Health Services;
5 Mental Health; Developmental Services; Social Services;
6 Alcohol and Drug Abuse; Aging; Rehabilitation; and Community
7 Services and Development.
8 (b) The agency also includes the Office of Statewide Health
9 Planning and Development and the State Council on
10 Developmental Disabilities.
11 (c) The Department of Child Support Services is hereby
12 created within the agency commencing January 1, 2000, and
13 shall be the single organizational unit designated as the state's
14 Title IV-D agency with the responsibility for administering the
15 state plan and providing services relating to the establishment of
16 paternity or the establishment, modification, or enforcement of
17 child support obligations as required by Section 654 of Title 42
18 of the United States Code. State plan functions shall be

1 performed by other agencies as required by law, by delegation of
2 the department, or by cooperative agreements.

3 (d) The Office of Pharmaceutical Purchasing is hereby
4 established within the agency and shall purchase prescription
5 drugs for state agencies pursuant to Part 5.4 (commencing with
6 Section 14570).

7 SEC. 2. Part 5.4 (commencing with Section 14570) is added
8 to Division 3 of Title 1 of the Government Code, to read:

9

10 PART 5.4. OFFICE OF PHARMACEUTICAL PURCHASING

11

12 14570. As used in this part, “office” means the Office of
13 Pharmaceutical Purchasing within the California Health and
14 Human Services Agency.

15 14571. (a) Notwithstanding any other provision of law, the
16 office may enter into exclusive or nonexclusive contracts on a
17 bid or negotiated basis with manufacturers and suppliers of single
18 source or multisource drugs. The office may obtain from those
19 manufacturers and suppliers, discounts, rebates, or refunds based
20 on quantities purchased insofar, as permissible under federal law.
21 Contracts entered into pursuant to this part may include price
22 discounts, rebates, refunds, or other strategies aimed at managing
23 escalating prescription drug prices.

24 (b) Contracts under this part shall be exempt from Chapter 2
25 (commencing with Section 10290) of Part 2 of Division 2 of the
26 Public Contract Code.

27 ~~(c) The State Department of Health Services may require prior~~
28 ~~authorization in the Medi-Cal program pursuant to Section 1927~~
29 ~~of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) for~~
30 ~~any drug of a manufacturer that does not agree to provide rebates~~
31 ~~to the office for prescription drugs purchased under this part to~~
32 ~~the extent the department determines it is appropriate to do so in~~
33 ~~order to encourage manufacturer participation, and to the extent~~
34 ~~permitted by federal law and subject to any necessary federal~~
35 ~~approvals or waivers. In making the determination to require~~
36 ~~prior authorization in the Medi-Cal program under this~~
37 ~~subdivision, the department shall ensure that there are as many~~
38 ~~single-source drugs within each drug therapeutic category or~~
39 ~~subcategory as the department determines necessary to meet the~~
40 ~~health needs of the Medi-Cal population. In no event shall a~~

1 ~~Medi-Cal beneficiary be denied continued use of a drug that is~~
2 ~~part of a prescribed therapy unless that drug is no longer~~
3 ~~prescribed for that beneficiary. It is the intent of the Legislature~~
4 ~~to limit any rebates that are obtained as a result of the~~
5 ~~establishment of a prior authorization requirement in Medi-Cal to~~
6 ~~drugs prescribed to financially needy individuals who, through~~
7 ~~the use of these prescribed drugs, would improve their health~~
8 ~~status and become less likely to enroll in the Medi-Cal program.~~

9 14572. (a) The office shall be the purchasing agent for
10 prescription drugs for all of the following state entities:

- 11 (1) Department of Corrections.
- 12 (2) State Department of Mental Health.
- 13 (3) Department of the Youth Authority.
- 14 (4) State Department of Developmental Services.
- 15 (5) California State University.
- 16 (6) Any other state agency as directed by the Governor.

17 (b) Any state, district, county, city, municipal, school district,
18 joint powers agreement or trust that administers or pays public
19 employee benefits, or public agency governmental entity, other
20 than a state entity specified in subdivision (a), may elect to
21 participate in the coordinated purchasing program.

22 ~~14573. (a) The office shall work with the University of~~
23 ~~California to identify opportunities for consolidating the drug~~
24 ~~purchases made by both agencies in order to lower the state's~~
25 ~~costs for purchasing prescription drugs. It is the intent of the~~
26 ~~Legislature that the University of California cooperate with the~~
27 ~~office in these efforts. *It is the intent of the Legislature that the*~~
28 ~~*office, the University of California, and the Public Employees'*~~
29 ~~*Retirement System regularly meet and share information*~~
30 ~~*regarding each agency's procurement of prescription drugs in an*~~
31 ~~*effort to identify and implement opportunities for cost savings in*~~
32 ~~*connection with this procurement. It is the intent of the*~~
33 ~~*Legislature that the University of California and the Public*~~
34 ~~*Employees' Retirement System cooperate with the office in order*~~
35 ~~*to reduce each agency's costs for prescription drugs.*~~

36 ~~(b) The office shall develop an annual workplan that provides~~
37 ~~a comprehensive approach to reducing the state's procurement~~
38 ~~costs for prescription drugs. The workplan shall detail the~~
39 ~~office's annual activities and the estimated savings that these~~
40 ~~activities are expected to achieve. The office shall use the~~

1 ~~workplan when reporting to the Legislature on estimated and~~
2 ~~achieved savings resulting from the office's activities.~~

3 ~~(e) The office shall participate in at least one independent~~
4 ~~group that develops information on the relative effectiveness of~~
5 ~~prescription drugs.~~

6 ~~(d) (1) It is the intent of the Legislature that the state provide~~
7 ~~parolee medications in the most cost-effective manner. In~~
8 ~~deciding how to purchase parolee medications, the office shall~~
9 ~~consider, but not be limited to, all of the following:~~

10 ~~(A) Contracting with a pharmacy benefits manager.~~

11 ~~(B) Purchasing medications under pharmacy contracts used for~~
12 ~~prison inmates.~~

13 ~~(C) To the extent feasible, requiring prior authorization in the~~
14 ~~Medi-Cal program pursuant to Section 1927 of the federal Social~~
15 ~~Security Act (42 U.S.C. Sec. 1396r-8) to obtain drug discounts~~
16 ~~for the parolee population.~~

17 ~~(2) The office shall compare the cost of these options and~~
18 ~~choose the lowest cost option.~~

19 *(b) The office shall do all of the following:*

20 *(1) Share information on a regular basis with the University of*
21 *California and the Public Employees' Retirement System*
22 *regarding each agency's procurement of prescription drugs,*
23 *including, but not limited to, prices paid for the same or similar*
24 *drugs and information regarding drug effectiveness.*

25 *(2) Identify opportunities for the office, the University of*
26 *California, and the Public Employees' Retirement System to*
27 *consolidate drug procurement or engage in other joint activities*
28 *that will result in cost savings in the procurement of prescription*
29 *drugs.*

30 *(3) Participate in at least one independent association that*
31 *develops information on the relative effectiveness of prescription*
32 *drugs.*

33 *(4) No later than January 1, 2007, and annually thereafter,*
34 *develop a work plan that includes, but is not limited to, a*
35 *description of the office's annual activities to reduce the state's*
36 *costs for prescription drugs and an estimate of cost savings.*

37 *(5) No later than January 10, 2007, and annually thereafter,*
38 *report to the chairperson of the Joint Legislative Budget*
39 *Committee and the chairs of the fiscal committees of the*
40 *Legislature on any joint activities of the office, the University of*

1 *California, and the Public Employees' Retirement System in the*
2 *last 12 months in connection with procurement of prescription*
3 *drugs and any resulting cost savings. This report shall include*
4 *the work plan prescribed in paragraph (4).*

5 *(c) Nothing in this section shall be construed to require*
6 *sharing of information that is prohibited by any other provision*
7 *of law or contractual agreement, or the disclosure of information*
8 *that may adversely effect potential drug procurement by any state*
9 *agency.*

10 14574. (a) In order to negotiate the lowest prices possible for
11 prescription drugs for purposes of this part, the office may do all
12 of the following:

13 (1) Establish a formulary or formularies for state programs in
14 consultation with the affected agencies.

15 (2) Pursue all opportunities for the state to achieve savings
16 through the federal 340B program, as established under Section
17 340B of the Public Health Service Act (42 U.S.C. Sec. 256b),
18 including the development of cooperative agreements with
19 entities covered under the 340B program that increase access to
20 340B program prices for individuals receiving prescription drugs
21 through programs in departments described in Section 14572.

22 (3) Develop an outreach program to ensure that hospitals,
23 clinics, and other eligible entities participate in the program
24 authorized under Section 340B of the Public Health Service Act
25 (42 U.S.C. Sec. 256b).

26 (b) The office, in consultation with the agencies listed in
27 subdivision (a) of Section 14572, may investigate and implement
28 other options and strategies to achieve the greatest savings on
29 prescription drugs with prescription drug manufacturers and
30 wholesalers.

31 14575. The office may appoint and contract with a
32 pharmaceutical benefits manager or other entity for purposes of
33 the prescription drugs purchased under this part. The
34 pharmaceutical benefits manager or other entity may do all of the
35 following:

36 (a) Negotiate price discounts, rebates, or other options that
37 achieve the greatest savings on prescription drugs with
38 prescription drug manufacturers and wholesalers.

39 (b) Purchase prescription drugs for participating state, district,
40 county, or municipal governmental entities.

1 (c) Act as a consultant to the office.

2 14576. The office may explore additional strategies for
3 managing the increasing costs of prescription drugs, including,
4 but not limited to, all of the following:

5 (a) Coordinating programs offered by pharmaceutical
6 manufacturers that provide prescription drugs for free or at
7 reduced prices.

8 (b) Studying the feasibility and appropriateness of including in
9 the bulk purchasing programs entities in the private sector,
10 including employers, providers, and individual consumers.

11 (c) Implementing other strategies, as permitted under state and
12 federal law, aimed at managing escalating prescription drug
13 prices.

14 ~~(d) It is the intent of the Legislature that the office, State
15 Department of Health Services, University of California, and
16 Public Employees' Retirement System share information on a
17 regular basis on drug purchasing activities.~~

18 14577. On or before February 1, 2007, and annually
19 thereafter, the office shall submit a report to the appropriate
20 policy and fiscal committees of the Legislature on activities that
21 have been or will be undertaken pursuant to this part. The report
22 shall include, but not be limited to, all of the following:

23 (a) The number and a description of contracts entered into
24 with manufacturers and suppliers of drugs pursuant to Section
25 14571, including any discounts, rebates, or refunds obtained.

26 (b) The number and a description of entities that elect to
27 participate in the coordinated purchasing program pursuant to
28 subdivision (b) of Section 14572.

29 (c) Other options and strategies that have been or will be
30 implemented pursuant to Sections 14573 and 14575.

31 (d) Estimated costs and savings attributable to activities that
32 have been or will be undertaken pursuant to this part.

33 ~~(e) The identification of the collaborative activities that the
34 office, State Department of Health Services, University of
35 California, and Public Employees' Retirement System conducted
36 in the past 12 months to reduce the cost of drug purchasing by
37 the state and the savings attributable to those activities.~~

38 ~~(f) The identification of opportunities to consolidate drug
39 purchases with the University of California.~~

1 SEC. 3. Chapter 12 (commencing with Section 14977) of Part
2 5.5 of Division 3 of Title 1 of the Government Code is repealed.

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