

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE JULY 3, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN SENATE MAY 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 369

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Ammiano, Beall, Carter, Chesbro,
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 amended, 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 participating plan provider or prescribing ~~contracted~~ provider, as respectively defined, and would, *except under certain conditions*, prohibit a health care service plan or health insurer from requiring that a patient try and fail on more than 2 pain medications before allowing the patient access to other pain medication prescribed by the prescribing participating plan provider or prescribing ~~contracted~~ provider, 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

1 of pain pursuant to step therapy or fail first protocol shall be subject
2 to the requirements of this section.

3 (b) The duration of any step therapy or fail first protocol shall
4 be determined by the prescribing participating plan provider.

5 (c) The health care service plan shall not require a patient to try
6 and fail on more than two pain medications before allowing the
7 patient access to the pain medication, or generically equivalent
8 drug, prescribed by the prescribing participating plan provider,
9 *unless the FDA-approved label indication, or clinical research*
10 *trials focusing on clinical outcomes, supports that more than two*
11 *prior therapies should be used before using the requested pain*
12 *medications.*

13 (d) For purposes of this section, a “prescribing participating
14 plan provider” shall include a provider who is authorized to write
15 a prescription, pursuant to subdivision (a) of Section 4040 of the
16 Business and Professions Code, to treat a medical condition of an
17 enrollee.

18 (e) For the purposes of this section, “generically equivalent
19 drug” means drug products with the same active chemical
20 ingredients of the same strength, quantity, and dosage form, and
21 of the same generic drug name, as determined by the United States
22 Adopted Names and accepted by the federal Food and Drug
23 Administration, as those drug products having the same chemical
24 ingredient.

25 (f) This section does not prohibit a health care service plan from
26 charging a subscriber or enrollee a copayment or a deductible for
27 prescription drug benefits or from setting forth, by contract,
28 limitations on maximum coverage of prescription drug benefits,
29 provided that the copayments, deductibles, or limitations are
30 reported to, and held unobjectionable by, the director and
31 communicated to the subscriber or enrollee pursuant to the
32 disclosure provisions of Section 1363.

33 (g) Nothing in this section shall be construed to require coverage
34 of prescription drugs not in a plan’s drug formulary or to prohibit
35 generically equivalent drugs or generic drug substitutions as
36 authorized by Section 4073 of the Business and Professions Code.

37 SEC. 2. Section 10123.192 is added to the Insurance Code, to
38 read:

39 10123.192. (a) Notwithstanding any other provision of law,
40 a health insurer that restricts medications for the treatment of pain

1 pursuant to step therapy or fail first protocol shall be subject to the
2 requirements of this section.

3 (b) The duration of any step therapy or fail first protocol shall
4 be determined by the prescribing-~~contracted~~ provider.

5 (c) The health insurer shall not require a patient to try and fail
6 on more than two pain medications before allowing the patient
7 access to the pain medication, or generically equivalent drug,
8 prescribed by the prescribing-~~contracted~~ provider, *unless the*
9 *FDA-approved label indication, or clinical research trials focusing*
10 *on clinical outcomes, supports that more than two prior therapies*
11 *should be used before using the requested pain medications.*

12 (d) For purposes of this section, a “prescribing-~~contracted~~
13 provider” shall include a provider who is authorized to write a
14 prescription, pursuant to subdivision (a) of Section 4040 of the
15 Business and Professions Code, to treat a medical condition of an
16 insured.

17 (e) For the purposes of this section, “generically equivalent
18 drug” means drug products with the same active chemical
19 ingredients of the same strength, quantity, and dosage form, and
20 of the same generic drug name, as determined by the United States
21 Adopted Names and accepted by the federal Food and Drug
22 Administration, as those drug products having the same chemical
23 ingredient.

24 (f) This section does not prohibit a health insurer from charging
25 an insured or policyholder a copayment or a deductible for
26 prescription drug benefits or from setting forth, by contract,
27 limitations on maximum coverage of prescription drug benefits,
28 provided that the copayments, deductibles, or limitations are
29 reported to, and held unobjectionable by, the commissioner and
30 communicated to the insured or policyholder pursuant to the
31 disclosure provisions of Section 10603.

32 (g) Nothing in this section shall be construed to require coverage
33 of prescription drugs not in an insurer’s drug formulary or to
34 prohibit generically equivalent drugs or generic drug substitutions
35 as authorized by Section 4073 of the Business and Professions
36 Code.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O