

AMENDED IN ASSEMBLY MAY 7, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 299

**Introduced by Assembly Member Holden
(Coauthor: Assembly Member Bloom)**

February 12, 2013

~~An act to amend Section 4112 of the Business and Professions Code, relating to pharmacy. An act to add Section 1367.245 to the Health and Safety Code and to add Section 10123.193 to the Insurance Code, relating to health care coverage.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 299, as amended, Holden. *Pharmacy. Prescription drug benefits.*

~~The Pharmacy Law governs the business and practice of pharmacy in this state. That law provides that any pharmacy located outside this state that ships, mails, or delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state is considered a nonresident pharmacy. The law prohibits a person from acting as a nonresident pharmacy unless he or she has obtained a license, and imposes various disclosure and recordkeeping requirements on nonresident pharmacies. Any person who knowingly violates these provisions is guilty of a misdemeanor.~~

~~This bill would prohibit a nonresident pharmacy or a pharmacy located in this state that delivers prescriptions via mail from entering into, or being a party to, an agreement with a health care service plan or disability insurer that requires a plan enrollee or insured to utilize mail order services or that requires a plan enrollee or insured to opt out of a~~

mail order process. By creating new crimes, the bill would impose a state-mandated local program.

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 that act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law 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 require a health care service plan or health insurer that provides prescription drug benefits to authorize an enrollee or insured to receive those benefits, which may include a 90-day supply of covered drugs, at any of its in-network pharmacies that are retail pharmacies, and would prohibit the plan or insurer from requiring any additional authorizations by the plan or insurer or the prescriber that are not required for the enrollee or insured to receive those benefits at a mail order pharmacy. The bill would specify that these requirements would not apply to drugs that are not available in retail pharmacies because of limited distribution by the manufacturer. Because a willful violation of these requirements by a health care service plan 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 4112 of the Business and Professions~~
- 2 ~~Code is amended to read:~~
- 3 4112. ~~(a) Any pharmacy located outside this state that ships,~~
- 4 ~~mails, or delivers, in any manner, controlled substances, dangerous~~
- 5 ~~drugs, or dangerous devices into this state shall be considered a~~
- 6 ~~nonresident pharmacy.~~

1 ~~(b) A person may not act as a nonresident pharmacy unless he~~
2 ~~or she has obtained a license from the board. The board may~~
3 ~~register a nonresident pharmacy that is organized as a limited~~
4 ~~liability company in the state in which it is licensed.~~

5 ~~(c) A nonresident pharmacy shall disclose to the board the~~
6 ~~location, names, and titles of (1) its agent for service of process in~~
7 ~~this state, (2) all principal corporate officers, if any, (3) all general~~
8 ~~partners, if any, and (4) all pharmacists who are dispensing~~
9 ~~controlled substances, dangerous drugs, or dangerous devices to~~
10 ~~residents of this state. A report containing this information shall~~
11 ~~be made on an annual basis and within 30 days after any change~~
12 ~~of office, corporate officer, partner, or pharmacist.~~

13 ~~(d) Each nonresident pharmacy shall comply with all lawful~~
14 ~~directions and requests for information from the regulatory or~~
15 ~~licensing agency of the state in which it is licensed as well as with~~
16 ~~all requests for information made by the board pursuant to this~~
17 ~~section. The nonresident pharmacy shall maintain, at all times, a~~
18 ~~valid unexpired license, permit, or registration to conduct the~~
19 ~~pharmacy in compliance with the laws of the state in which it is a~~
20 ~~resident. As a prerequisite to registering with the board, the~~
21 ~~nonresident pharmacy shall submit a copy of the most recent~~
22 ~~inspection report resulting from an inspection conducted by the~~
23 ~~regulatory or licensing agency of the state in which it is located.~~

24 ~~(e) All nonresident pharmacies shall maintain records of~~
25 ~~controlled substances, dangerous drugs, or dangerous devices~~
26 ~~dispensed to patients in this state so that the records are readily~~
27 ~~retrievable from the records of other drugs dispensed.~~

28 ~~(f) Any pharmacy subject to this section shall, during its regular~~
29 ~~hours of operation, but not less than six days per week, and for a~~
30 ~~minimum of 40 hours per week, provide a toll-free telephone~~
31 ~~service to facilitate communication between patients in this state~~
32 ~~and a pharmacist at the pharmacy who has access to the patient's~~
33 ~~records. This toll-free telephone number shall be disclosed on a~~
34 ~~label affixed to each container of drugs dispensed to patients in~~
35 ~~this state.~~

36 ~~(g) A nonresident pharmacy shall not permit a pharmacist whose~~
37 ~~license has been revoked by the board to manufacture, compound,~~
38 ~~furnish, sell, dispense, or initiate the prescription of a dangerous~~
39 ~~drug or dangerous device, or to provide any pharmacy-related~~
40 ~~service, to a person residing in California.~~

1 ~~(h) A nonresident pharmacy or a pharmacy located in this state~~
2 ~~that delivers prescriptions via mail is prohibited from entering into,~~
3 ~~or being a party to, an agreement with a health care service plan~~
4 ~~or disability insurer that requires a plan enrollee or insured to utilize~~
5 ~~mail order services or that requires a plan enrollee or insured to~~
6 ~~opt out of a mail order process.~~

7 ~~(i) The board shall adopt regulations that apply the same~~
8 ~~requirements or standards for oral consultation to a nonresident~~
9 ~~pharmacy that operates pursuant to this section and ships, mails,~~
10 ~~or delivers any controlled substances, dangerous drugs, or~~
11 ~~dangerous devices to residents of this state, as are applied to an~~
12 ~~in-state pharmacy that operates pursuant to Section 4037 when the~~
13 ~~pharmacy ships, mails, or delivers any controlled substances,~~
14 ~~dangerous drugs, or dangerous devices to residents of this state.~~
15 ~~The board shall not adopt any regulations that require face-to-face~~
16 ~~consultation for a prescription that is shipped, mailed, or delivered~~
17 ~~to the patient. The regulations adopted pursuant to this subdivision~~
18 ~~shall not result in any unnecessary delay in patients receiving their~~
19 ~~medication.~~

20 ~~(j) The registration fee shall be the fee specified in subdivision~~
21 ~~(a) of Section 4400.~~

22 ~~(k) The registration requirements of this section shall apply only~~
23 ~~to a nonresident pharmacy that ships, mails, or delivers controlled~~
24 ~~substances, dangerous drugs, and dangerous devices into this state~~
25 ~~pursuant to a prescription.~~

26 ~~(l) Nothing in this section shall be construed to authorize the~~
27 ~~dispensing of contact lenses by nonresident pharmacists except as~~
28 ~~provided by Section 4124.~~

29 *SECTION 1. Section 1367.245 is added to the Health and*
30 *Safety Code, to read:*

31 *1367.245. (a) A health care service plan that provides*
32 *prescription drug benefits shall authorize an enrollee to receive*
33 *those benefits, which may include a 90-day supply of covered*
34 *drugs, at any of its in-network pharmacies that are retail*
35 *pharmacies, and shall not require any additional authorizations*
36 *by the plan or the prescriber that are not required for the enrollee*
37 *to receive those benefits at a mail order pharmacy. This subdivision*
38 *shall not apply to drugs that are not available in retail pharmacies*
39 *because of limited distribution by the manufacturer.*

1 (b) A pharmacist who dispenses a 90-day supply of covered
2 drugs shall comply with Section 4064.5 of the Business and
3 Professions Code.

4 SEC. 2. Section 10123.193 is added to the Insurance Code, to
5 read:

6 10123.193. (a) A health insurer that provides prescription
7 drug benefits shall authorize an insured to receive those benefits,
8 which may include a 90-day supply of covered drugs, at any of its
9 in-network pharmacies that are retail pharmacies, and shall not
10 require any additional authorizations by the insurer or the
11 prescriber that are not required for the insured to receive those
12 benefits at a mail order pharmacy. This subdivision shall not apply
13 to drugs that are not available in retail pharmacies because of
14 limited distribution by the manufacturer.

15 (b) A pharmacist who dispenses a 90-day supply of covered
16 drugs shall comply with Section 4064.5 of the Business and
17 Professions Code.

18 ~~SEC. 2.~~

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.