California Association of Health Plans

CAHP LEGISLATIVE INFORMATION

SB 852 (Pan)
Chapter 207, Statutes of 2020

As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.

HEALTH CARE: PRESCRIPTION DRUGS

BACKGROUND

Senate Bill 852 was introduced by Senator Richard Pan (D-Sacramento), the Chair of the Senate Health Committee. The bill Requires California Health and Human Services Agency (CHHSA) to enter into partnerships resulting in the production or distribution of generic prescription drugs, with the intent that these drugs be made widely available to public and private purchasers, providers and suppliers, and pharmacies. The goal of the bill is to increase competition, lower prices, and address shortages in the market for generic prescription drugs, to reduce the cost of prescription drugs for public and private purchasers, taxpayers, and consumers, and, to increase patient access to affordable drugs.

SB 852 is similar to proposal that Governor Newsom introduced as part of his 2020-21 Budget. His Budget included a series of proposals aimed at lowering prescription drugs prices were introduced. One proposal created a generic contracting program which would have enabled the state to negotiate partnerships to establish the state's own generic drug label. The final budget did not include this proposal. SB 852 became the vehicle for this concept instead.

This bill was supported by a diverse set of interest groups including labor, consumer organizations, and health plans. Kaiser Permanente and Blue shield of California were supporters of the bill. CAHP submitted a letter of Support in Concept. CAHP supported the heightened emphasis the Governor and Legislature were placing on making health care more affordable and accessible. Our members are particularly interested in seeing if this effort could bring more generics options on the insulin market to help to address the high prices consumers are currently paying for these drugs.

SB 852 had no opposition and enjoyed bipartisan support in both houses.

REQUIREMENTS

SB 852 adds Chapter 10 (commencing with Section 127690) to Part 2 of Division 107 of, and repeals Sections 127694 and 127695 of, the Health and Safety Code, relating to health care.

Specifically, SB 852 does the following:

1) Requires CHHSA to enter into partnerships resulting in the production or distribution of generic prescription drugs, with the intent that these drugs be made widely available to public and private purchasers, providers and suppliers, and pharmacies, as appropriate. Requires these generic drugs to be produced or distributed by a drug company or generic drug manufacturer that is registered with the FDA. Requires CHHSA to only enter into partnerships to produce a generic drug at a price that results in savings, targets failures in the market for generic drugs, and improves patient access to affordable medications.

2) Requires CHHSA, for drugs identified pursuant to the criteria under this bill, to determine if viable pathways exist for partnerships to manufacture or distribute generic drugs by examining the relevant legal, market, policy, and regulatory factors. Requires CHHSA to consider specified costs when setting the price of the generic drug.

3) Requires each drug to be made available to providers, patients, and purchasers at a transparent price and without rebates, other than federally required rebates.

4) Requires CHHSA to prioritize the selection of generic drugs that have the greatest impact on lowering drug costs to patients, increasing competition and addressing shortages in the prescription drug market, improving public health, or reducing the cost of prescription drugs to public and private purchasers.

5) Requires CHHSA, in identifying generic drugs to be produced, to consider specified reports from the Department of Managed Health Care and Department of Insurance related to drug pricing, and pharmacy spending data from Medi-Cal and other entities for which the state pays the cost of generic drugs.

6) Requires the partnerships entered into by CHHSA to include the production of at least one form of insulin, provided that a viable pathway for manufacturing a more affordable form of insulin exists. Requires CHHSA to prioritize drugs for chronic and high-cost conditions, and to consider prioritizing those that can be delivered through mail order.

7) Requires CHHSA to consult with specified public and private purchasers to assist in developing a list of generic drugs to be manufactured or distributed through partnerships and to determine the volume of each generic drug that can be procured over a multiyear period to support a market for a lower cost generic drug. Specifies that private purchases that are consulted with are not required to purchase generic drugs manufactured through a contract with CHHSA.

8) Requires CHHSA, before effectuating a partnership pursuant to this bill, to determine minimum thresholds for procurement of an entity's expected volume of a targeted drug from the company or manufacturer over a multiyear period. Requires CHHSA, in making advance commitments, to consult with the Statewide Pharmaceutical Program and the California Pharmaceutical Collaborative.

9) Requires CHHSA to submit a report to the Legislature, by July 1, 2023, to assesses the feasibility of directly manufacturing generic drugs and selling generic drugs at a fair price, only if the Legislature appropriates funds for this purpose. Requires the report to include an analysis of governance structure options for manufacturing functions, including chartering a private organization, a public-private partnership, or a public board of directors.

10) Requires CHHSA, by July 1, 2022, to report to the Legislature a description of the status of all drugs targeted under this bill and an analysis of how the activities of CHHSA may impact competition, access to targeted drugs, the costs of those drugs, and the costs of generic drugs to public and private purchasers.

11) Specifies that all nonpublic information and documents obtained under this bill are not required to be disclosed pursuant to the California Public Records Act.

12) Makes the provisions of this bill severable, so that if any provision or this bill's application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.