Assembly Bill No. 2352

CHAPTER 590

An act to add Section 1367.207 to the Health and Safety Code, and to add Section 10123.204 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2352, Nazarian. Prescription drug coverage.

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 the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or health insurance policy that provides coverage for outpatient prescription drugs to cover medically necessary prescription drugs and subjects those policies to certain limitations on cost sharing and the placement of drugs on formularies. Existing law limits the maximum amount an enrollee or insured may be required to pay at the point of sale for a covered prescription drug to the lesser of the applicable cost-sharing amount or the retail price, and requires that payment to apply to the applicable deductible.

This bill would require a health care service plan contract or health insurance policy issued, amended, delivered, or renewed on or after July 1, 2023, that provides prescription drug benefits and maintains one or more drug formularies to furnish specified information about a prescription drug upon request by an enrollee or insured, or their prescribing provider. The bill would require the plan or insurer to respond in real time to that request and ensure the information is current no later than one business day after a change is made. The bill would prohibit a health care service plan or health insurer from, among other things, restricting a prescribing provider from sharing the information furnished about the prescription drug or penalizing a provider for prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug. Because a willful violation of these provisions 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.

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

SECTION 1. Section 1367.207 is added to the Health and Safety Code, to read:

1367.207. (a) A health care service plan contract issued, amended, delivered, or renewed on or after July 1, 2023, that provides prescription drug benefits and maintains one or more drug formularies shall do all of the following:

(1) Upon request of an enrollee or an enrollee's prescribing provider, furnish all of the following information regarding a prescription drug to the enrollee or the enrollee's prescribing health care provider:

(A) The enrollee's eligibility for the prescription drug.

(B) The most current formulary or formularies.

(C) Cost-sharing information for the prescription drug and other formulary alternatives, consistent with cost-sharing requirements as set forth in the contract and accurate at the time it is provided, including any variance in cost sharing based on the patient's preferred dispensing pharmacy, whether retail or mail order, or the health care provider.

(D) Applicable utilization management requirements for the prescription drug and other formulary alternatives.

(2) Respond in real time to a request made pursuant to paragraph (1) through a standard API.

(3) Allow the use of an interoperability element to provide the information required pursuant to paragraph (1).

(4) Ensure that the information provided pursuant to paragraph (1) is current no later than one business day after a change is made and is provided in real time.

(5) Provide the information pursuant to paragraph (1) if the request is made using the drug's unique billing code and National Drug Code.

(b) A health care service plan shall not do any of the following:

(1) Deny or delay a response to a request for the purpose of blocking the release of information pursuant to subdivision (a).

(2) Restrict, prohibit, or otherwise hinder a prescribing provider from communicating or sharing to an enrollee any of the following:

(A) The information provided pursuant to subdivision (a).

(B) Additional information on any lower cost or clinically appropriate alternative drugs, whether or not they are covered under the enrollee's health care service plan contract.

(C) Information about the cash price of the drug.

(3) Except as required by law, interfere with, prevent, or materially discourage access, exchange, or use of the information provided pursuant to subdivision (a). "Interfere with, prevent, or materially discourage access, exchange, or use of the information" includes charging fees for access to the information, not responding to a request at the time made consistent with this section, or instituting enrollee consent requirements.

(4) Penalize a prescribing provider for disclosing the information provided pursuant to subdivision (a). For purposes of this paragraph, "penalize"

includes an action intended to punish a provider for disclosing the information set forth in subdivision (a) or intended to discourage a provider from disclosing this information in the future.

(5) Penalize a prescribing provider for prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug. For purposes of this paragraph, "penalize" includes an action intended to punish a provider who has prescribed, administered, or ordered a lower cost or clinically appropriate alternative drug, or intended to discourage a provider from prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug in the future.

(c) For purposes of this section:

(1) "Cost sharing" includes applicable copayments, coinsurances, or deductibles.

(2) "Cost-sharing information" means the actual out-of-pocket amount an enrollee would be required to pay a dispensing pharmacy or prescribing provider for a prescription drug under the terms of the enrollee's health care service plan contract.

(3) "Formulary" has the same meaning as in Section 1367.205.

(4) "Interoperability element" means integrated technologies or services necessary to provide a response to an enrollee or an enrollee's prescribing provider.

(5) "Prescribing provider" is a health care provider authorized to write a prescription to treat a medical condition, including prescriptions to treat mental health and substance use disorders, for a health plan enrollee.

(6) "Standard API" means an application interface that is standardized for vendors to conform to in order to access the information pursuant to Section 170.215 of Title 45 of the Code of Federal Regulations.

(d) (1) This section does not authorize further disclosure inconsistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191) and the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(2) This section does not alter or interfere with requirements that a health care service plan cover prescription drugs consistent with this chapter and regulations promulgated thereunder.

(3) This section does not alter or interfere with a health care service plan's other obligations under this chapter, including requirements to disclose or explain its prescription drug benefit.

SEC. 2. Section 10123.204 is added to the Insurance Code, to read:

10123.204. (a) A health insurance policy issued, amended, delivered, or renewed on or after July 1, 2023, that provides prescription drug benefits and maintains one or more drug formularies shall do all of the following:

(1) Upon request of an insured or an insured's prescribing provider, furnish all of the following information regarding a prescription drug to the insured or the insured's prescribing health care provider:

(A) The insured's eligibility for the prescription drug.

(B) The most current formulary or formularies.

(C) Cost-sharing information for the prescription drug and other formulary alternatives, consistent with cost-sharing requirements as set forth in the policy and accurate at the time it is provided, including any variance in cost sharing based on the patient's preferred dispensing pharmacy, whether retail or mail order, or the health care provider.

(D) Applicable utilization management requirements for the prescription drug and other formulary alternatives.

(2) Respond in real time to a request made pursuant to paragraph (1) through a standard API.

(3) Allow the use of an interoperability element to provide the information required pursuant to paragraph (1).

(4) Ensure that the information provided pursuant to paragraph (1) is current no later than one business day after a change is made and is provided in real time.

(5) Provide the information pursuant to paragraph (1) if the request is made using the drug's unique billing code and National Drug Code.

(b) A health insurer shall not do any of the following:

(1) Deny or delay a response to a request for the purpose of blocking the release of information pursuant to subdivision (a).

(2) Restrict, prohibit, or otherwise hinder a prescribing provider from communicating or sharing to an insured any of the following:

(A) The information provided pursuant to subdivision (a).

(B) Additional information on any lower cost or clinically appropriate alternative drugs, whether or not they are covered under the insured's health insurance policy.

(C) Information about the cash price of the drug.

(3) Except as required by law, interfere with, prevent, or materially discourage access, exchange, or use of the information provided pursuant to subdivision (a). "Interfere with, prevent, or materially discourage access, exchange, or use of the information" includes charging fees for access to the information, not responding to a request at the time made consistent with this section, or instituting insured consent requirements.

(4) Penalize a prescribing provider for disclosing the information provided pursuant to subdivision (a). For purposes of this paragraph, "penalize" includes an action intended to punish a provider for disclosing the information set forth in subdivision (a) or intended to discourage a provider from disclosing this information in the future.

(5) Penalize a prescribing provider for prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug. For purposes of this paragraph, "penalize" includes an action intended to punish a provider who has prescribed, administered, or ordered a lower cost or clinically appropriate alternative drug, or intended to discourage a provider from prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug in the future.

(c) For purposes of this section:

(1) "Cost sharing" includes applicable copayments, coinsurances, or deductibles.

(2) "Cost-sharing information" means the actual out-of-pocket amount an insured would be required to pay a dispensing pharmacy or prescribing provider for a prescription drug under the terms of the insured's health insurance policy.

(3) "Formulary" has the same meaning as in Section 10123.192.

(4) "Interoperability element" means integrated technologies or services necessary to provide a response to an insured or an insured's prescribing provider.

(5) "Prescribing provider" is a health care provider authorized to write a prescription to treat a medical condition, including prescriptions to treat mental health and substance use disorders, for an insured.

(6) "Standard API" means an application interface that is standardized for vendors to conform to in order to access the information pursuant to Section 170.215 of Title 45 of the Code of Federal Regulations.

(d) (1) This section does not authorize further disclosure inconsistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191) and the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(2) This section does not alter or interfere with requirements that a health insurer cover prescription drugs consistent with this chapter and regulations promulgated thereunder.

(3) This section does not alter or interfere with a health insurer's other obligations under this article, including requirements to disclose or explain its prescription drug benefit.

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

O