

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1050 (Gray) – As Amended April 19, 2021

Policy Committee: Health Vote: 15 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

**SUMMARY:**

This bill prohibits the Department of Health Care Services from taking any action that materially increases the administrative burden or cost of dispensing 340B drugs by federally qualified health centers (FQHCs) and rural health clinics (RHCs), including, but not limited to, changes that adversely impact the use of contract pharmacy arrangements.

It requires DHCS, before taking an action that materially impacts the 340B drug program, to prepare a detailed report describing the proposed action, including a determination that the action does not violate the prohibition described above.

It also requires an application for Medi-Cal benefits to request consent from an applicant to communicate through text messaging.

**FISCAL EFFECT:**

The fiscal impact of this bill is indeterminate, but it could potentially affect savings assumed under a planned transition to a new drug coverage model under Medi-Cal fee-for-service (FFS), called Medi-Cal Rx. Medi-Cal Rx will transition from covering drugs under managed care to carving out all drug coverage and instead delivering the drug benefit through Medi-Cal FFS.

Because the Medi-Cal Rx transition could be interpreted to materially increase the cost of dispensing 340B drugs and could affect the use of contract pharmacy arrangements as it pertains to Medi-Cal patients, this bill could be interpreted to prohibit implementation of the Medi-Cal Rx transition as currently envisioned.

Assuming this bill fully prevents implementation of Medi-Cal Rx, it would result in foregone savings to the state. The Legislative Analyst's Office (LAO) recently estimated the ongoing fiscal effect of Medi-Cal Rx to be \$150 million in net General Fund savings annually (\$504 million in annual total fund savings). This savings would not occur if this bill blocked the implementation of Medi-Cal Rx. If Medi-Cal Rx proposal, instead of being blocked, had to be modified to prevent violating this bill, it could result in a lower level of ongoing savings to the state than currently assumed.

Alternatively, if the transition to Medi-Cal Rx occurs before this bill is enacted and effective, the bill would not affect the Medi-Cal Rx transition but could have indeterminate effects on future Medi-Cal drug spending associated with reduced flexibility imposed by the bill.

**COMMENTS:**

- 1) **Purpose.** This bill is supported by a large number of FQHCs to protect the 340B revenue on which clinics rely to support services. Supporters state this bill would allow the Medi-Cal Rx transition to move forward without creating instability for clinics and hardship for the individuals and families that rely on clinic services.
- 2) **Background.** The federal 340B Drug Pricing Program allows “covered entities”—generally, health care providers like hospitals and clinics that serve large numbers of low-income patients—to purchase prescription drugs at discounted prices from manufacturers.

Because most prescription drugs are reimbursed in Medi-Cal through managed care, such reimbursement to a clinic participating in 340B can be higher than the clinic’s cost to purchase the drug under 340B, resulting in net revenue for the clinic. In this way, the 340B program functions as a subsidy to 340B covered entities, as the discounted 340B prices are not passed on to managed care plans. The managed care plans are, in turn, paid rates by the state that reflect these higher, non-discounted costs.

Drug manufacturers are also required to provide rebates on drugs purchased by Medi-Cal, but a single drug can either be eligible for a rebate or be purchased through 340B—not both. There is a federal prohibition on such duplicative discounts, and DHCS is charged with ensuring drug discounts in the Medi-Cal program comply with that prohibition.

Clinics’ use of contract pharmacies further complicates 340B transactions and oversight of drug discounts by DHCS. According to a recent LAO analysis, contract pharmacies, in the context of the 340B program, are pharmacies owned and operated separately from a covered entity but who have a contract with a covered entity to dispense 340B prescription drugs on the covered entity’s behalf. CVS and Rite Aid, for example, might serve as contract pharmacies for certain covered entities. A contract pharmacy dispenses a drug and, later, the 340B entity and the pharmacy go through a reconciliation process with the manufacturer that effectively lowers the purchase price of the dispensed drug to its 340B price. According to LAO, covered entities, contract pharmacies and potentially others share in the 340B savings under contract pharmacy arrangements.

- 3) **Medi-Cal Rx and Planned Phase-out of 340B.** The 2018-19 Governor’s Budget proposed to eliminate the use of the 340B Program in Medi-Cal and instead rely exclusively on the federally required drug rebates. That proposal would have centralized savings associated with drug discounts at the state level, but faced resistance from clinics that relied on revenue related to their 340B status.

In another move toward simplification and centralization, Governor Newsom, in 2019, issued an executive order directing DHCS to carve out the Medi-Cal pharmacy services benefit from managed care and transition the drug benefit entirely to FFS. This came to be called “Medi-Cal Rx.” To mitigate financial losses to clinics associated with changes to reimbursement under Medi-Cal Rx, the proposal included establishment of a supplemental payment program for non-hospital-affiliated community clinics. This was effectuated through the Budget Act of 2020, which included \$52.5 million (\$26.3 million General Fund) to provide supplemental payments to specified non-hospital clinics who participated in the federal 340B pharmacy program. These payments were intended to grow to \$105 million (\$52.5 million General Fund) in 2021-22 and annually thereafter.

Medi-Cal Rx was scheduled for implementation on January 1, 2021, but was postponed while the department reviews conflict-of-interest concerns related to an acquisition of the vendor chosen to administer the program. The planned implementation date is unknown.

**Analysis Prepared by:** Lisa Murawski / APPR. / (916) 319-2081