SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 70 (Wiener) - Prescription drug coverage

Version: April 18, 2023
Urgency: No
Hearing Date: May 1, 2023
Policy Vote: HEALTH 10 - 1
Mandate: Yes
Consultant: Agnes Lee

Bill Summary: SB 70 would prohibit health plans and insurers from limiting or excluding coverage for a drug, dose of a drug, or dosage form of a drug on the basis that drug, dose of a drug, or dosage form is different from the use approved for marketing by the federal Food and Drug Administration if specified conditions are met, including that the drug has been previously covered for a chronic condition or cancer. The bill would prohibit plans and insurers from requiring additional cost-sharing for a drug, dosage, or dosage form of a drug that was previously approved, as specified, including for off-label use of drugs, as specified.

Fiscal Impact:

- The Department of Managed Health Care estimates costs for state administration to be approximately $2,159,000 in 2023-24, $3,139,000 in 2024-25, $3,447,000 in 2025-26, $3,776,000 in 2026-27, and $3,767,000 in 2027-28 and annually thereafter (Managed Care Fund).

- The Department of Insurance estimates costs for state administration to be $6,000 (Insurance Fund) in 2023-24.

- The California Health Benefits Review Program (CHBRP) estimates annual expenditures for CalPERS premiums would increase by $310,000.

Background: Existing law establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Act and the California Department of Insurance (CDI) to regulate health insurance.

Existing law regarding “off-label” use of prescription drugs prohibits a health plan contract or insurance policy that covers prescription drug benefits from limiting or excluding coverage for a drug on the basis that the drug is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration (FDA), provided that specific conditions are met, including that the drug is on the plan formulary. Current law does not prohibit the use of a formulary, copayment, technology assessment panel, or similar mechanism as a means for appropriately controlling the utilization of a drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the FDA.

Existing law prohibits a health plan contract (and some health insurance that covers essential health benefits) from limiting or excluding coverage for a drug for an enrollee if

the drug previously had been approved for coverage by the plan for a medical condition of the enrollee and the plan's prescribing provider continues to prescribe the drug for the medical condition, provided that the drug is appropriately prescribed and is considered safe and effective for treating the enrollee's condition. This does not preclude the prescriber from prescribing another covered drug that is medically appropriate or a generic substitution and does not prohibit a health plan from charging a subscriber or enrollee a copayment or a deductible for prescription drug benefits or from setting forth, by contract, limitations on maximum coverage of prescription drug benefits. These provisions related to continuity of use of prescription drugs do not apply to off-label use of drugs.

Proposed Law: Specific provisions of the bill would:

- Prohibit health plans and insurers from limiting or excluding coverage for a drug, dose of a drug, or dosage form of a drug on the basis that drug, dose of a drug, or dosage form is different from the use approved for marketing by the federal Food and Drug Administration if specified conditions are met, including that the drug has been previously covered for a chronic condition or cancer.

- Prohibit plans and insurers from requiring additional cost-sharing, as specified, for a drug, dosage, or dosage form of a drug that was previously approved, as specified; and apply this provision to off-label use of drugs, as specified.

- Permit the Insurance Commissioner to promulgate regulations subject to the Administrative Procedure Act to implement and enforce this bill.

Related Legislation: SB 853 (Wiener, 2022) included provisions similar to this bill. SB 853 was held on the suspense file in the Assembly Appropriations Committee.

Staff Comments: According to the California Health Benefits Review Program (CHBRP), SB 70 would increase total net annual expenditures by $27,070,000 for enrollees with DMHC-regulated plans and CDI-regulated policies. This is due to a $22,985,000 increase in total health insurance premiums and a $4,085,000 increase in enrollee cost sharing. This includes an increase of $310,000 for CalPERS premiums. The bill would not have an impact on Medi-Cal managed care plan expenditures.

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