

56420

05/15/17 05:40 PM  
RN 17 14382 PAGE 1

An act to amend Sections 120955 and 120956 of, and to add Chapter 6.1 (commencing with Section 120972) to Part 4 of Division 105 of, the Health and Safety Code, relating to public health, and making an appropriation therefor.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 120955 of the Health and Safety Code is amended to read:

120955. (a) (1) To the extent that state and federal funds are appropriated in the annual Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immunodeficiency syndrome (AIDS), and to persons who are HIV-negative who have been prescribed preexposure prophylaxis included on the ADAP formulary for the prevention of HIV infection. To the extent allowable under federal law, and as appropriated in the annual Budget Act, the director may expend funding from the AIDS Drug Assistance Program Rebate Fund for this HIV infection prevention program to cover the costs of prescribed ADAP formulary medications for the prevention of HIV infection and related medical copays, coinsurance, and deductibles. (AIDS). If the director makes a formal determination that, in any fiscal year, funds appropriated for the program will be insufficient to provide all of those drug treatments to existing eligible persons for the fiscal year and that a suspension of the implementation of the program is necessary, the director may suspend eligibility determinations and enrollment in the program for the period of time necessary to meet the needs of existing eligible persons in the program.

(2) The director, in consultation with the AIDS Drug Assistance Program Medical Advisory Committee, shall develop, maintain, and update as necessary a list of drugs to be provided under this program. The list shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340),



Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

(b) The director may grant funds to a county public health department through standard agreements to administer this program in that county. To maximize the recipients' access to drugs covered by this program, the director shall urge the county health department in counties granted these funds to decentralize distribution of the drugs to the recipients.

(c) The director shall establish a rate structure for reimbursement for the cost of each drug included in the program. Rates shall not be less than the actual cost of the drug. However, the director may purchase a listed drug directly from the manufacturer and negotiate the most favorable bulk price for that drug.

(d) Manufacturers of the drugs on the list shall pay the department a rebate equal to the rebate that would be applicable to the drug under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) plus an additional rebate to be negotiated by each manufacturer with the department, except that no rebates shall be paid to the department under this section on drugs for which the department has received a rebate under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) or that have been purchased on behalf of county health departments or other eligible entities at discount prices made available under Section 256b of Title 42 of the United States Code.

(e) The department shall submit an invoice, not less than two times per year, to each manufacturer for the amount of the rebate required by subdivision (d).



(f) Drugs may be removed from the list for failure to pay the rebate required by subdivision (d), unless the department determines that removal of the drug from the list would cause substantial medical hardship to beneficiaries.

(g) The department may adopt emergency regulations to implement amendments to this chapter made during the 1997–98 Regular Session, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(h) Reimbursement under this chapter shall not be made for any drugs that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.

(i) The department may also subsidize certain cost-sharing requirements for persons otherwise eligible for the AIDS Drug Assistance Program (ADAP) with existing non-ADAP drug coverage by paying for prescription drugs included on the ADAP formulary within the existing ADAP operational structure up to, but not exceeding, the amount of that cost-sharing obligation. This cost sharing may only be applied in circumstances in which the other payer recognizes the ADAP payment as counting toward the individual's cost-sharing obligation. The department may subsidize, using



available federal funds and moneys from the AIDS Drug Assistance Program Rebate Fund, costs associated with a health care service plan or health insurance policy, including medical copayments and deductibles for outpatient care, and premiums to purchase or maintain health insurance coverage.

SEC. 2. Section 120956 of the Health and Safety Code is amended to read:

120956. (a) The AIDS Drug Assistance Program Rebate Fund is hereby created as a special fund in the State Treasury.

(b) All rebates collected from drug manufacturers on drugs purchased through the AIDS Drugs Assistance Program (ADAP) implemented pursuant to this chapter and, notwithstanding Section 16305.7 of the Government Code, interest earned on these moneys shall be deposited in the fund exclusively to cover costs related to the purchase of drugs and services provided through ~~ADAP~~, ADAP and the HIV prevention program as described in Section 120972.

(c) Notwithstanding Section 13340 of the Government Code, moneys in the fund ~~shall be~~ are continuously appropriated without regard to fiscal year to State Department of ~~Health Services~~ Public Health and available for expenditure for those purposes specified under this section.

SEC. 3. Chapter 6.1 (commencing with Section 120972) is added to Part 4 of Division 105 of the Health and Safety Code, to read:



## CHAPTER 6.1. HUMAN IMMUNODEFICIENCY VIRUS (HIV) PREVENTION

120972. (a) To the extent that funds are available for these purposes, the director may establish and administer a program within the department's Office of AIDS to subsidize certain costs of medications for the prevention of HIV infection and other related medical services, as authorized by this section, to persons who meet all of the following requirements:

(1) Are residents of California who are at least 18 years of age.

(2) Are HIV negative.

(3) Meet the financial eligibility requirements identified in Section 120960.

(4) Have been prescribed medication listed on the AIDS Drug Assistance Program (ADAP) formulary as provided in paragraph (2) of subdivision (a) of Section 120955.

(b) To the extent allowable under federal law, and upon available funds, the director may expend funding for this program from the AIDS Drug Assistance Program Rebate Fund as implemented pursuant to Section 120956.

(c) To the extent that funding is made available for this purpose, the program may subsidize all of the following costs of medication for the prevention of HIV infection and related medical services for eligible individuals:

(1) Costs for HIV pre-exposure prophylaxis (PrEP)-related medical services for uninsured individuals who are enrolled in a drug manufacturer's PrEP medication assistance program.



(2) Medical copays, coinsurance, and deductibles for PrEP-related medical services for insured individuals who are enrolled in a drug manufacturer's PrEP medication assistance program.

(3) For insured individuals, the cost of medications for the prevention of HIV infection after the individual's insurance and the drug manufacturer's medication assistance program's contributions are applied.

(d) If the director makes a formal determination that, in any fiscal year, funds appropriated for the program will be insufficient to provide medications for the prevention of HIV infection or related medical costs to existing eligible persons for the fiscal year and that a suspension of the implementation of the program is necessary, the director may suspend either of the following:

(1) The program.

(2) The eligibility determinations and enrollment in the program for the period of time necessary to meet the needs of existing eligible persons in the program.

(e) Reimbursement under the program shall not be made for any drugs or related services that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision if it would result in cost savings to the state.

(f) If the department utilizes a contractor or subcontractor to administer any aspect of the program, the provisions of Section 120970, except subdivision (i) of that section, shall apply.



(g) All types of information, whether written or oral, concerning a client, made or maintained in connection with the administration of this program, shall be confidential, and shall not be used or disclosed except for any of the following:

(1) For purposes directly connected with the administration of the program.

(2) If disclosure is otherwise authorized by law.

(3) Pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

(h) For purposes of verifying financial eligibility for the program, the department shall verify the accuracy of the modified adjusted gross income reported by an applicant or recipient of the program, with data, if available, from the Franchise Tax Board. The Franchise Tax Board and the department are authorized to disclose personally identifiable data to one another, solely for this purpose, and in accordance with the data exchange process identified in Section 120962.

(i) For purposes of this section, the term “uninsured” means an individual who has no health insurance, or other source of third-party coverage, that provides medication for the prevention of HIV infection or related medical services.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Section 120972 to the Health and Safety Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:





56420

05/15/17 05:40 PM  
RN 17 14382 PAGE 9

In order to protect private and confidential medical information, it is necessary  
for that information to remain confidential.

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## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_

General Subject: Human Immunodeficiency Virus (HIV): prevention.

Existing law requires the State Public Health Officer, to the extent that state and federal funds are appropriated, to establish, and authorizes him or her to administer, a program to provide drug treatments to persons who are HIV-negative who have been prescribed pre-exposure prophylaxis (PrEP) included on the AIDS Drug Assistance Program (ADAP) formulary for the prevention of HIV infection. Existing law authorizes the State Public Health Officer, to the extent allowable under federal law, and as appropriated in the annual Budget Act, to expend money from the AIDS Drug Assistance Program Rebate Fund, a continuously appropriated fund, for this HIV infection prevention program to cover the costs of prescribed ADAP formulary medications for the prevention of HIV infection and other specified costs.

This bill would revise and recast the above provisions regarding the HIV infection prevention program by deleting the above provisions and instead authorizing the State



Public Health Officer, to the extent that funds are available for these purposes, to establish and administer a program within the State Department of Public Health's Office of AIDS to subsidize certain costs of medications on the ADAP formulary for the prevention of HIV infection and other related medical services, as provided. The bill would require all types of information concerning a client of the program to be kept confidential and not disclosed, except as provided. The bill would authorize the State Public Health Officer, to the extent allowable under federal law, and upon the availability of funds, to expend money from the AIDS Drug Assistance Program Rebate Fund for this HIV infection prevention program to cover the costs of prescribed ADAP formulary medications for the prevention of HIV infection and other specified costs. Because the bill would authorize a new purpose for a continuously appropriated fund, the bill would create an appropriation.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

