

2021 California Healthcare Bills

Part 2: Prescription Drug Pricing and Price and Quality Transparency Initiatives

Last month, we highlighted California's proposed healthcare bills from this legislative session that focus on [healthcare market and system reform](#) measures. This month, we're covering more proposed healthcare bills that focus on prescription drug pricing regulation and price transparency. The bills outlined in this post were designed with the health care consumer in mind and are attempts to curtail excessive health care bills and pharmaceutical pricing, while increasing transparency around consumer's healthcare plans.

Prescription Drug Pricing Regulation

Americans spend more on prescription drugs than any other country. In response to rising drug costs and lack of transparency, legislators this session attempt to regulate the pharmaceutical industry through three bills that would curb prescription drug costs.

AB 458 would allow for the importation of prescription drugs from Canada into California. This bill would create the Affordable Prescription Drug Importation Program within the California Health and Human Services Agency (CHHSA). Under the program, the state would be a licensed wholesaler that imports prescription drugs for the exclusive purpose of dispensing those drugs to program participants.^[1] The bill would require CHHSA to seek federal approval for this program on or before June 1, 2022.^[2] A contracted importer would be required to establish a wholesale prescription drug importation list that identifies the prescription drugs that have the highest potential for cost savings to California, and identify and contract with Canadian suppliers who agree to export drugs on that list.

The program would authorize a contracted importer to import a prescription drug from a Canadian supplier if specified requirements are met, including, but not limited to that the prescription drug meets the FDA's standards related to safety and effectiveness, importing the drug wouldn't violate federal patent laws, and importing the drug is expected to generate cost savings.

AB 752, known as the Patient Choice and Transparency Act, would increase prescription drug price transparency by requiring a health care service plan or health insurer to provide specified information about a prescription drug upon request by an enrollee or insured, health care provider, or third party acting on their behalf. The bill would ensure that information about an enrollee or insured's benefits and the out-of-pocket costs for prescription drugs would be provided at the time of care. A health care service plan or health insurer would also be prohibited from restricting a health care provider from sharing information about a prescription drug or penalizing a provider for prescribing a lower cost drug.

AB 933 would require an enrollee's or insured's defined cost sharing for each prescription drug to be calculated at the time of transaction and would lower out-of-pocket pharmacy costs by requiring health care service plans or health insurers to pass on at least 90% of the pharmaceutical rebates. Currently, health insurers and pharmacy benefit managers negotiate rebates when medications are purchased from manufacturers. These negotiated rebates are rarely passed on to consumers. In a news release addressing the proposed bill, Assemblymember Tom Daly stated, "the current rebate system bypasses patients, while saving health insurers and the pharmacy intermediaries billions of dollars each year. The system needs reform so patients benefit from negotiated rates."[\[3\]](#) By requiring these negotiated rebates to be passed on to consumers in California for the first time, AB 933 has the potential to significantly reduce prescription costs for consumers.

Health Care Cost and Transparency Measures

There were a few significant bills introduced this legislative session targeting health care cost and transparency. California assemblymembers and senators introduced these bills to increase transparency around medical billing and costs and to provide

consumers with more control over their health care. Three of these bills are outlined below, which target cost-sharing, billing and financial assistance, and surprise medical bills.

SB 368 calls for increased transparency around deductibles and out-of-pocket expenses. High deductible health plans (HDHP) are relatively new in the American healthcare system, and they represent an increasing share of health insurance plans.[\[4\]](#) One in four covered employees are enrolled in an HDHP with a single-person deductible of at least \$2,000.[\[5\]](#) Despite such a large number of individuals enrolled in these plans, there is often a lack of transparency around how much enrollees have spent towards their deductibles and out-of-pocket expenses.[\[6\]](#) SB 368 is an attempt to change this by requiring health care service plans or health insurers to monitor an enrollee's accrual balance towards their annual deductible and out-of-pocket maximum. Health care plans and health insurers would be required to provide an enrollee with their accrual balance toward their annual deductible and out-of-pocket maximum for every month in which benefits were used, and the enrollee could also request their most recent accrual balance from their health care plan or insurer at any time.

Currently, California hospitals are required to maintain an understandable written policy regarding discount payments for financially qualified patients as well as an understandable written charity care policy.[\[7\]](#) **AB 532** would require this written patient notice to also include the internet address of a specified health consumer assistance entity, including Health Consumer Alliance, and information regarding Covered California and Medi-Cal eligibility. The bill would require the notice to be provided at the time of service if the patient is conscious and able to receive written notice at that time. This notice would be provided with an estimate of charges the hospital will require the person to pay for the services, procedures, and supplies that are reasonably expected to be provided to the patient.[\[8\]](#)

Surprise medical bills are a major issue in the American health care system, and legislation that attempts to regulate surprise and balance billing is disjointed and greatly varies from state to state.[\[9\]](#) California currently has some of the strongest protections against surprise and balance billing.[\[10\]](#) Current California legislation on surprise and balance billing requires that a noncontracting individual health

professional meet specified criteria before billing or collecting the out-of-network amount directly from an enrollee, including getting the enrollee's consent in writing at least 24 hours in advance of care. **AB 510** takes it a step further to add additional patient protections from surprise medical bills. The bill would authorize a noncontracting individual health professional to bill or collect the out-of-network amount from the enrollee only if the enrollee consents in writing or electronically at least 72 hours in advance of care, extending the current required time period between consent and care by two full days. The consent would also be required to include a list of contracted providers at the facility who would be able to provide the services in-network.

Overall, these bills seek to lower health care costs through increased prescription pricing regulation and price transparency for consumers. June 4th is the last day for each house to pass bills introduced in that house, so time will tell which of these bills pass this important roadblock on the way to the Governor's desk.

[1] A program participant includes, among a couple of other listed entities, a health care service plan or health insurer, a licensed California pharmacy or wholesaler approved by the agency, or an individual with a valid prescription from a United States prescriber, if authorized by federal legislation.

[2] In 2003, Congress passed a statute that would allow certain drugs to be imported from Canada. This could only be done, however, if the secretary of the Department of Health and Human Services agreed it could be done safely. HHS secretaries under George W. Bush and Obama did not agree it could be done safely, so the program never took off. One of Trump's HHS secretaries, Alex Azar, gave the approval in September 2020. Current HHS Secretary, Xavier Becerra, voted in support of the federal drug importation law in 2003. However, Becerra and the Biden Administration have yet to show their support.

[3] *News Release - Measure Will Help Reduce Prescription Drug Costs for Californians*, Assembly Member Tom Daly (February 18, 2021), <https://a69.asmdc.org/sites/a69.asmdc.org/files/pdf/AB%20933%20Press%20Release.pdf>.

[4] In 2020, the IRS defined a high-deductible health plan as any plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family.

[5] Jay Hancock, *High-Deductible Health Plans Fall From Grace In Employer-Based Coverage*, Kaiser Health News (October 3, 2018), https://khn.org/news/high-deductible-health-plans-fall-from-grace-in-employer-based-coverage/?utm_campaign=KHN%3A%20Topic-based&utm_source=hs_email&utm_medium=email&utm_content=67578355&hsenc=p2ANqtz-9aoktheXrdWD9DfFG9mUSY9YciB1ZLaKGJYaBv27xnNEA2PiPvZli96QZ0kQzeNv1QR_DPg-K_MoyFnQ2cQF1Q7bP7TA&_hsmi=67578355.

[6] Out-of-pocket expenses are the limit of what an enrollee has to pay per plan year for health care. After an enrollee pays their maximum amount of out-of-pocket health care expenses, their health insurance plan has to cover the remaining 100% for the remainder of the plan year. Most enrollees do not reach their out-of-pocket maximum, but those that do often have conditions that are very expensive to treat.

[7] [Cal. Health & Safety Code § 127405](#) (2006).

[8] This is also a requirement by California statute, Cal. Health & Safety Code § 1339.585 (2005).

[9] Federal legislation targeting the practice of surprise billing was just passed in the final days of 2020. The No Surprises Act, which becomes law on January 1, 2022, provides federal consumer protections against surprise medical bills. The new federal law does not preempt state law as long as state law does not prevent the application of the new act.

[10] Ada Shao, *State Surprise Billing Protections: Are States Making the Grade for Patients?*, The Source on Healthcare Price & Competition (January 15, 2021), <https://2zele1bn0sl2i91io41niae1-wpengine.netdna-ssl.com/wp-content/uploads/2021>

[/01/State-Surprise-Billing-Protections.pdf](#).