

SB 1021 (Wiener): Consumer Protections for Prescription Co-Pays and Formularies

Updated April 30, 2018

SB 1021 (Wiener), sponsored by Health Access, will ensure consumers have access to vital medications by continuing existing consumer protections on prescription drug copays and formulary standards that were established in AB 339 (Gordon, Chapter 619 of 2015). These protections will sunset at the end of 2019 unless legislation is enacted to make them permanent.

Co-Pay Caps Help Consumers Afford Their Prescription Drugs

Prescription drug costs continue to skyrocket. Consumers are facing price increases on everything from longtime generics used to treat common conditions such as diabetes, high blood pressure, and high cholesterol to new treatments for chronic diseases such as hepatitis C.

Before the AB 339 consumer protections were put in place, Californians with serious and chronic conditions like cancer, HIV/AIDS, multiple sclerosis (MS), and lupus were particularly vulnerable to higher out-of-pocket costs because high-cost specialty drugs were often placed on the highest tier of a drug formulary. Consumers often reached their out-of-pocket limit of as much as \$6,000 in the first month of the plan year when filling just one of their prescriptions. AB 339 capped co-pays for a 30-day supply of a prescription drug at \$250. SB 1021 will continue the co-pay cap of \$250 for prescription drugs by extending the sunset on that provision, ensuring that consumers' drug co-pays will remain affordable.

Standards for Each Tier of a Drug Formulary Help Consumers Choose Plan with Appropriate Prescription Drug Coverage

Before AB 339, as a result of sky-rocketing drug prices, insurance companies would routinely shift drug costs onto consumers by placing high-cost specialty drugs on the upper tiers of their drug formularies, which meant higher cost-sharing for consumers.

Health plans list medications they offer on a drug list called a formulary, which is then grouped into categories called tiers, with less expensive medicines placed in the lower tiers, and more expensive drugs placed on the highest tiers. Health plans encourage doctors to prescribe lower-cost alternatives, found on the lower tiers, to help keep costs down. Before AB 339, consumers with no low-cost alternatives lacked consistent standards to help them navigate their prescription drug coverage. Consumers, especially those who rely on brand-name or specialty drugs for which there is no therapeutic alternative, faced high out-of-pocket costs because the drugs they needed were only found on the higher tiers of a formulary. ¹

For individual and small employer coverage, AB 339 set standards for each tier of a drug formulary (see chart below), to help prevent health plans from routinely placing all specialty drugs on the highest cost tier. The bill required health plans place a drug on a tier based on standards for safety and efficacy, not only cost. AB 339 also prohibited health plans from placing most or all of the drugs to treat a particular condition on the highest cost tier of a formulary – preventing discrimination based on a health condition.

FACT SHEET: SB 1021 (Wiener)

TIER	DRUGS INCLUDED
1	Low-cost preferred brand name drugs, and most generic drugs.
2	Preferred brand name drugs, non-preferred generic drugs, and drugs recommended by health plan's pharmacy and therapeutics committee based on safety, efficacy, and cost.
3	Non-preferred brand name drugs or drugs recommended by health plan's pharmacy and therapeutics committee based on safety, efficacy, and cost.
4	High-cost drugs, including: <ul style="list-style-type: none">• Biologics• Drugs the FDA or manufacturer require be distributed through a specialty pharmacy• Drugs that require enrollee to have special training or clinical monitoring for self-administration Drugs that cost the health plan/insurer more than \$600, after rebates.

California standardized tiering definitions and limited how much insurers can shift the cost of drugs to consumers by requiring health plans to offer standardized benefit designs.ⁱⁱ Standard benefit designs help consumers who purchase coverage as individuals either through Covered California or directly from a health plan because it allows consumers to compare health plans, the benefits covered and their level of cost-sharing for prescription drugs.^{iii, iv} These standard benefit designs also help limit consumers' out-of-pocket costs by setting fixed co-payments for four different tiers of drugs. Unfortunately, without SB 1021, the provisions in existing law that limit co-pays to \$250 and set standards for tiers in drug formularies expire at the end of 2019. The nondiscrimination protections are not subject to the sunset.

Protecting Consumers from Being Caught in the Middle

Health plans and drug companies battle over high drug prices. Consumers should not be caught in the middle. SB1021 includes consumer protections so that the copays, deductibles, and other cost sharing paid by consumers are reasonable. SB 1021 prohibits health plans from having drug formularies with more than four tiers, codifies a DMHC regulation which additionally caps drug co-pays at the retail price, if the retail price is lower than the co-pay, and ensures that retail co-pays are applied toward consumers' deductibles and maximum out-of-pocket limits

SB 1021 will ensure that all Californians, including those living with chronic conditions, are able to afford life-saving prescription drugs by keeping co-pays affordable for consumers and maintaining standards for formulary tiers, helping consumers have access to the prescriptions they need.

For more information about SB 1021 (Wiener), contact:

Myriam Valdez, Health Access California
mvaldez@health-access.org or (916) 497-0923

ⁱ <https://www.kff.org/health-costs/issue-brief/patient-cost-sharing-in-marketplace-plans-2016/>

ⁱⁱ <http://www.commonwealthfund.org/publications/blog/2015/nov/state-efforts-to-reduce-consumers-cost-sharing-for-prescription-drugs>

ⁱⁱⁱ http://www.commonwealthfund.org/~media/files/publications/issue-brief/2013/dec/1720_monahan_what_states_are_doing_simplify_rb.pdf

^{iv} <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.0902> <http://consumersunion.org/wp-content/uploads/2017/07/Healthcare-By-Design-July-2017.pdf>