

CALIFORNIA HEALTH AND SAFETY CODE  
DIVISION 112  
CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM

130600. (a) This division shall be known, and may be cited as, the California State Pharmacy Assistance Program.

(b) For the purposes of this division, the following definitions apply:

(1) "Program" means the California State Pharmacy Assistance Program.

(2) "Department" means the State Department of Health Services.

(3) "Resident" means a California resident pursuant to section 17014 of the Revenue and Taxation Code.

(4) "Recipient" means a resident that has completed an application and has been determined eligible for the program.

(5) "Prescription drug" means any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(6) "Fund" means the California State Pharmacy Assistance Program Fund.

(7) "Private discount drug program" means a prescription drug discount card or manufacturer patient assistance program that provides discounted or free drugs to eligible individuals. For the purposes of this division, private discount drug programs are not considered insurance or a third-party payer program.

130601. (a) There is hereby established the California State Pharmacy Assistance Program.

(b) The department shall administer the program by contracting with a private third party vendor to perform the Department responsibilities enumerated in this article. The Department may, if necessary, directly negotiate rebates with drug manufacturers or perform other responsibilities.

(c) Any California resident may enroll in the Program if determined eligible pursuant to section 130602.

130602. (a) To be eligible for the program, an individual must meet all of the following requirements at the time of application or reapplication for the program:

(1) Be a resident;

(2) Have family income, as reported pursuant to 130602.1, that does not exceed three hundred percent of the federal poverty guidelines, as revised annually by the United States department of Health and Human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended;

(3) Not have outpatient prescription drug coverage paid for in whole or in part by any of the following:

- (A) A third-party payer;
- (B) The Medi-Cal program;
- (C) The children's health insurance program;
- (D) The disability medical assistance program;

(E) Another health plan or pharmacy assistance program that uses state or federal funds to pay part or all of the cost of the individual's outpatient prescription drugs. Notwithstanding any provision of this division to the contrary, people enrolled in Medicare may participate in this program to the extent allowed by federal law for prescription drugs not covered by Medicare.

(4) Not have had outpatient prescription drug coverage specified in (3) of this subdivision during any of the 3 months preceding the month in which the application or reapplication for the program is made, unless any of the following applies:

- (A) The third-party payer that paid all or part of the coverage filed for bankruptcy under federal bankruptcy laws.
- (B) The individual is no longer eligible for coverage provided through a retirement plan subject to protection under the "Employee Retirement Income Security Act of 1974," 88 Stat. 832, 29 U.S.C. 1001, as amended.
- (C) The individual is no longer eligible for the Medi-Cal program, children's health insurance program, or disability medical assistance program.

(b) Application and a simple annual reapplication for the program shall be made pursuant to section 130602.1. An applicant may apply or reapply on behalf of the applicant and the applicant's spouse and children. The guardian or custodian of an applicant may apply or reapply on behalf of the applicant.

130602.1 (a) The department shall develop an application form for the determination of a resident's eligibility for the program.

(b) The application, at minimum, shall do the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application about the applicant;

(2) Require that the applicant attest that the information the applicant provides in the application is accurate to the best knowledge and belief of the applicant;

(3) Include a statement printed in bold letters informing the applicant that knowingly making a false statement is punishable as perjury.

(4) Specify the application fee due upon application submission. The application fee shall be \$10 for the initial enrollment. The initial application may be made at participating pharmacies or through the private third party vendor. The third party vendor shall develop the renewal application, shall utilize a secure Internet based application process for this program, and shall provide a call center to assist people in enrolling.

(c) In assessing the income requirement for program eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy participating in the program. The pharmacy completing the application shall keep the application fee as reimbursement for its cost of processing the application. If it is determined the applicant is already enrolled in the program, the pharmacy shall return the fee to the applicant and inform the applicant of their current status as a recipient.

(e) The department may provide for a secure electronic application process that can be used by pharmacies to enroll applicants in this program.

(f) During normal business hours, the department shall make a determination of eligibility within 4 hours of receipt of the application. The Department shall mail the recipient an identification card no later than 4 days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department may issue a recipient identification number for eligible applicants to the pharmacy for immediate access to the program.

130602.2. (a) The department shall attempt to execute agreements with private discount drug programs to provide a single point of entry for eligibility determination and claims processing for drugs available in those private discount drug programs.

(b) An applicant may be required to provide additional information to determine the applicant's eligibility for other discount card and patient assistance programs.

(1) An applicant shall not be, in any circumstance, required to participate in, or to disclose information that would determine the applicant's eligibility to participate in these private discount drug programs in order to participate in the program provided in this division.

(2) Notwithstanding paragraph (1), an applicant may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

(c) For those drugs available pursuant to subdivision (a), the department shall develop a system that provides a recipient with the best prescription drug discounts that are available to them through this program or through private discount drug programs.

(d) The recipient identification card issued pursuant to 130602.1(f) shall serve as the single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a health benefit card.

130602.3. (a) To the extent that funds are available, the department shall conduct outreach programs to inform residents about this program. No outreach material shall contain the name or likeness of a drug or the likeness of an elected state official. The name of the organization sponsoring the material pursuant to subdivision (b) may appear on the material once and in a font no larger than 10 point.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about this program. ~~Neither Section 11005 of the Government Code nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations.~~ For purposes of this section, outreach services may include, but shall not be limited to, coordinating and implementing outreach efforts and plans, and outreach materials may include, but shall not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(c) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from the provisions of Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

130603. (a) Any pharmacy licensed pursuant to Chapter 9 of the Business and Professions Code may participate in the program provided for under this division.

(b) Any drug manufacturer may participate in the program provided for under this division.

130604. (a) This division shall apply only to prescription drugs dispensed to non-institutionalized recipients.

(b) The amount a recipient pays for a drug within the program shall be equal to the participating provider's usual and customary charge or the pharmacy contract rate pursuant to (d), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.

(c) In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug's manufacturer, the state's share of the discount and any amount provided to a contractor pursuant to sections 130604.1 and 130607.

(d) On behalf of the department, the private third party vendor may contract with participating pharmacies for a rate other than the pharmacies' usual and customary rate.

(e) The private third party vendor shall provide a claims processing system that:

(1) Provides the price charged pursuant to (b).

(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides a single point of entry for access to private discount drug programs pursuant to 130602.2.

(4) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8).

(f) The private third party vendor shall pay a participating pharmacy the discount provided to recipients pursuant to subdivision (b) by a date that is not later than two weeks after the claim is received by the department.

130604.1. (a) The department or the private third party vendor shall attempt to negotiate drug rebate agreements with drug manufacturers to provide for program drug discounts.

(b) The drug rebate agreements shall:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require that the manufacturer make a rebate payment to the department for each drug specified under division (b)(1) of this section dispensed to a recipient.

(4) Require that the rebate payment for a drug shall be equal to the amount determined by multiplying the applicable per unit rebate by the number of units dispensed.

(5) Require that the definition of a unit comply with the standards set by the National Council for Prescription Drug Programs.

(6) Require that the manufacturer make the rebate payments to the department on at least a quarterly basis.

(7) Require the manufacturer to provide, upon request by the department, documentation the department can use to validate that the per unit rebate provided complies with (b)(4).

(8) Permit a drug manufacturer to audit claims for their drugs provided in the program. Claims information provided to manufacturers shall comply with all federal and state privacy statutes to protect a recipient's individual health information.

(9) Develop a program to prevent the occurrence of fraud in this program.

(10) Develop a mechanism for recipients to report problems or complaints regarding the program.

(c) The department or third party vendor shall seek to contract for drug rebates equal to the Medicaid best price. For those drugs most commonly used, the department or third party vendor shall seek to contract for drug rebates lower than the Medicaid best price.

(d) To obtain the most favorable discounts, the department may limit the number drugs available within the program.

(e) No less than 95 percent of the drug rebates negotiated pursuant to this section must go to reducing the cost of purchasing buying drugs by the participants in the program. The legislature shall annually appropriate an amount to cover the state's share of the discount provided by this subdivision.

(f) The department and third party vendor may collect prospective rebates from drug manufacturers for payment to pharmacies pursuant to section 130604(f). The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to 130604.1.

130605. (a) The department shall deposit all payments it directly receives pursuant to Sections 130604.1 and 130602.3 into the California State

Pharmacy Assistance Program Fund, which is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to Section 130604 and for defraying the costs of administering this division. Notwithstanding any other law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

130409. (a) The department may hire any staff needed for the implementation and oversight of the program created by this division.

(b) The department shall contract with a public or private entities, such as pharmacy benefit management companies, to implement or administer the program completely or in part.

(1) Drug rebate contracts negotiated by the third party vendor shall be subject to review by the department. The department shall be able to cancel a contract that it finds not to be in the best interest of the state or the recipients of the program.

(2) The third party vendor may directly collect rebates from manufacturers in order to facilitate the payment to pharmacies pursuant to section 130604(f). The department shall develop a system to prevent diversion of funds collected by the entity.

(3) Entities must issue monthly reports to the department that, at minimum, provide:

(A) Drug utilization information.

(B) Amount paid to pharmacies.

(C) Amount of rebate collected from manufacturers.

(D) Summary of the problems or complaints received regarding the program.

(E) Information provided in (A), (B), and (C) shall be at the national drug code level.

(c) Payment of fees to contract entities pursuant to subdivision (b) shall be from the fund.

130608. (a) The department shall seek and obtain confirmation from the federal Centers for Medicare and Medicaid Services, that the program created by this division complies with the definition of a state pharmaceutical assistance program pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) and that discounts provided under the program are exempt from Medicaid best price.

130609. Contracts executed for the purposes of this division are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. The Department must select the third party vendor through a competitive procurement. Contracts with pharmacies and pharmaceutical manufactures may be done on a bid or non-bid basis.

1306010. The Department may cancel this program if it determines that there are insufficient discounts to participants to make this program viable, that there are an insufficient number of applicants or if the Department is unable to find a responsible third party vendor to run this program.

The Legislature hereby appropriates from the General Fund to the department the amount of \$3,000,000 to fund staff and contract cost for this program.

Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action.