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SB-362 Chain community pharmacies: quotas. (2021-2022)

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Senate Bill No. 362

CHAPTER 334

An act to add Sections 4113.7 and 4317 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 27, 2021. Filed with Secretary of State September 27, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 362, Newman. Chain community pharmacies: quotas.

Under the Pharmacy Law, the California State Board of Pharmacy licenses and regulates the practice of pharmacy and the conduct of a pharmacy in this state. The Pharmacy Law refers to various types of pharmacies, including community pharmacies, as specified. Existing law prohibits a community pharmacy from requiring a pharmacist to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless another employee, as specified, is made available to assist the pharmacist at all times.

This bill would prohibit a chain community pharmacy, as defined, from establishing a quota, defined as a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the chain community pharmacy or its agent measures or evaluates the number of times either an individual pharmacist or pharmacy technician performs tasks or provides services while on duty. The bill would also prohibit a chain community pharmacy, through employees, contractors, or third parties, from communicating the existence of quotas to pharmacists or pharmacy technicians who are its employees or with whom it contracts. The bill would authorize the board to take an enforcement action against a chain community pharmacy that violates these provisions, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California's pharmacists and pharmacy technicians employed by multibillion dollar, publicly-traded, pharmacy chain stores will imminently be called upon to accomplish something unprecedented: to vaccinate tens of millions of California patients on top of their already overwhelming workloads.

(b) However, widespread, profit-driven, and long-decried performance quotas imposed by these chains upon their licensed professional employees place at risk the ability of pharmacists and pharmacy technicians safely to vaccinate Californians properly while at the same time performing their already life-or-death duties.

(c) Documents and data obtained by investigative reporters, public prosecutors, and researchers have established that large, publicly-traded pharmacy chains impose performance quotas on licensed pharmacists and pharmacy technicians that place at

risk the health and well-being of patients. For example:

(1) More than one-half of the chain and retail pharmacists reported high stress work environments from “having to meet quotas.”

(2) Eighty-three percent of pharmacists reported in one survey that “performance metrics contributed to dispensing errors.”

(3) Another survey by the California State Board of Pharmacy found that about 85 percent of the pharmacists surveyed indicated “workload” was “too high.” Prescription errors can be found and corrected 89 percent of the time during such consultations. However, performance quotas such as timed metrics inhibit consistent consultations.

(4) An investigative report by The Los Angeles Times documented enormous pressure placed upon pharmacy employees by vast drug chains to meet quotas. One pharmacist is quoted as saying, “Everyone knows that if we don’t hit our quotas, people can lose their jobs,” and The Times writes “[c]ompany documents . . . have shown that CVS workers are expected to enroll at least 40% of patients into the [automatic prescription renewal] program. Failure to do so can result in loss of raises or bonuses. Other drugstores, notably Target, Rite Aid and Walgreens, have similar quotas [.]”

(5) In 2011, the California State Board of Pharmacy brought to three District Attorneys’ offices information about the three biggest retail chains failing to properly provide needed personal consultation to prescription drug customers. All three of these major retailers were forced to pay huge fines and were permanently enjoined to comply with California’s standards for patient consultations. Indeed, major drug store chains have been forced to pay millions to settle claims brought by the United States Department of Justice and other public agencies for overzealous and unlawful profit-increasing practices.

(d) Performance quotas in normal times pose a risk to the public health. When implemented during a time when pharmacists and pharmacy technicians will have imposed upon them for an indefinite period significant new and vital public health duties, quotas are unacceptable.

SEC. 2. Section 4113.7 is added to the Business and Professions Code, to read:

4113.7. (a) A chain community pharmacy, as defined in subdivision (c) of Section 4001, shall not establish a quota related to the duties for which a pharmacist or pharmacy technician license is required.

(b) A chain community pharmacy shall not, through employees, contractors, or third parties, communicate the existence of quotas, that are illegal pursuant to this section, to pharmacists or pharmacy technicians who are employees of the chain community pharmacy or with whom the chain community pharmacy contracts.

(c) (1) For purposes of this section, “quota” means a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the chain community pharmacy or its agent measures or evaluates the number of times either an individual pharmacist or pharmacy technician performs tasks or provides services while on duty. “Quota” includes a fixed number or formula related to any of the following:

(A) Prescriptions filled.

(B) Services rendered to patients.

(C) Programs offered to patients.

(D) Revenue obtained.

(2) For purposes of this section, “quota” does not mean any of the following:

(A) A measurement of the revenue earned by a particular licensed chain community pharmacy not calculated in relation to, or measured by, the tasks performed, or services provided by, individual pharmacists or pharmacy technicians.

(B) Any evaluation or measurement of the competence, performance, or quality of care provided to patients of a pharmacist or pharmacy technician if the evaluation does not use quotas, as defined in paragraph (1).

(C) Any performance metric required by state or federal regulators that does not use quotas, as defined in paragraph (1).

(d) This section does not prohibit a chain community pharmacy from establishing policies and procedures that assist in assessing the competency and performance of a pharmacist or pharmacy technician in providing care to patients if the measurements used are not, or do not include, quotas, as defined in subdivision (c).

SEC. 3. Section 4317 is added to the Business and Professions Code, immediately following Section 4316, to read:

4317. The board may take an enforcement action against a chain community pharmacy, as defined in subdivision (c) of Section 4001, that violates Section 4113.7 unless, by clear and convincing evidence, the chain community pharmacy demonstrates that the violation was contrary to its policy.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.