

AMENDED IN ASSEMBLY JUNE 13, 2013

AMENDED IN SENATE MARCH 6, 2013

SENATE BILL

No. 146

Introduced by Senator Lara

January 31, 2013

An act to amend Section 4603.2 of the Labor Code, relating to workers' compensation, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as amended, Lara. Workers' compensation: medical treatment: billing.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury, and generally provides for the reimbursement of medical providers for services rendered in connection with the treatment of a worker's injury. Existing law requires a pharmacy to submit its request for payment with an itemization of services provided and the charge for each service, a copy of all reports showing the services performed, the prescription or referral from the primary treating physician if the services were performed by a person other than the primary treating physician, and any evidence of authorization for the services that may have been received.

This bill would prohibit a copy of the prescription from being required with a request for payment of pharmacy services, ~~unless otherwise agreed to by the provider of services~~ *unless the provider of services has*

entered into a written agreement, as provided, that requires a copy of a prescription for a pharmacy service, and would give any entity ~~90 days after January 1, 2014, until March 31, 2014,~~ to resubmit pharmacy bills for payment, originally submitted on or after January 1, 2013, where payment was denied because the bill did not include a copy of the prescription from the treating physician. The bill would also clarify that an employer, insurer, pharmacy benefits manager, or 3rd-party claims administrator would not be precluded from requesting a copy of a prescription during a review of any records of prescription drugs dispensed by a pharmacy.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4603.2 of the Labor Code is amended to
 2 read:
 3 4603.2. (a) (1) Upon selecting a physician pursuant to Section
 4 4600, the employee or physician shall notify the employer of the
 5 name and address, including the name of the medical group, if
 6 applicable, of the physician. The physician shall submit a report
 7 to the employer within five working days from the date of the
 8 initial examination, as required by Section 6409, and shall submit
 9 periodic reports at intervals that may be prescribed by rules and
 10 regulations adopted by the administrative director.
 11 (2) If the employer objects to the employee's selection of the
 12 physician on the grounds that the physician is not within the
 13 medical provider network used by the employer, and there is a
 14 final determination that the employee was entitled to select the
 15 physician pursuant to Section 4600, the employee shall be entitled
 16 to continue treatment with that physician at the employer's expense
 17 in accordance with this division, notwithstanding Section 4616.2.
 18 The employer shall be required to pay from the date of the initial
 19 examination if the physician's report was submitted within five
 20 working days of the initial examination. If the physician's report
 21 was submitted more than five working days after the initial
 22 examination, the employer and the employee shall not be required

1 to pay for any services prior to the date the physician's report was
2 submitted.

3 (3) If the employer objects to the employee's selection of the
4 physician on the grounds that the physician is not within the
5 medical provider network used by the employer, and there is a
6 final determination that the employee was not entitled to select a
7 physician outside of the medical provider network, the employer
8 shall have no liability for treatment provided by or at the direction
9 of that physician or for any consequences of the treatment obtained
10 outside the network.

11 (b) (1) Any provider of services provided pursuant to Section
12 4600, including, but not limited to, physicians, hospitals,
13 pharmacies, interpreters, copy services, transportation services,
14 and home health care services, shall submit its request for payment
15 with an itemization of services provided and the charge for each
16 service, a copy of all reports showing the services performed, the
17 prescription or referral from the primary treating physician if the
18 services were performed by a person other than the primary treating
19 physician, and any evidence of authorization for the services that
20 may have been received. Nothing in this section shall prohibit an
21 employer, insurer, or third-party claims administrator from
22 establishing, through written agreement, an alternative manual or
23 electronic request for payment with providers for services provided
24 pursuant to Section 4600.

25 (A) Notwithstanding the requirements of this paragraph, a copy
26 of the prescription shall not be required with a request for payment
27 for pharmacy services, ~~unless the provider of services otherwise~~
28 ~~agrees to follow the requirements of this paragraph.~~ *unless the*
29 *provider of services has entered into a written agreement, as*
30 *provided in this paragraph, that requires a copy of a prescription*
31 *for a pharmacy service.*

32 (B) Notwithstanding timely billing and payment rules
33 established by the Division of Workers' Compensation, any entity
34 submitting a pharmacy bill for payment, on or after January 1,
35 2013, and denied payment for not including a copy of the
36 prescription from the treating physician, ~~shall have 90 days after~~
37 ~~January 1, 2014, to resubmit those bills for payment.~~ *may resubmit*
38 *those bills for payment until March 31, 2014.*

39 (C) Nothing in this section shall preclude an employer, insurer,
40 pharmacy benefits manager, or third-party claims administrator

1 from requesting a copy of the prescription during a review of any
2 records of prescription drugs that were dispensed by a pharmacy.

3 (2) Except as provided in subdivision (d) of Section 4603.4, or
4 under contracts authorized under Section 5307.11, payment for
5 medical treatment provided or prescribed by the treating physician
6 selected by the employee or designated by the employer shall be
7 made at reasonable maximum amounts in the official medical fee
8 schedule, pursuant to Section 5307.1, in effect on the date of
9 service. Payments shall be made by the employer with an
10 explanation of review pursuant to Section 4603.3 within 45 days
11 after receipt of each separate, itemization of medical services
12 provided, together with any required reports and any written
13 authorization for services that may have been received by the
14 physician. If the itemization or a portion thereof is contested,
15 denied, or considered incomplete, the physician shall be notified,
16 in the explanation of review, that the itemization is contested,
17 denied, or considered incomplete, within 30 days after receipt of
18 the itemization by the employer. An explanation of review that
19 states an itemization is incomplete shall also state all additional
20 information required to make a decision. Any properly documented
21 list of services provided and not paid at the rates then in effect
22 under Section 5307.1 within the 45-day period shall be paid at the
23 rates then in effect and increased by 15 percent, together with
24 interest at the same rate as judgments in civil actions retroactive
25 to the date of receipt of the itemization, unless the employer does
26 both of the following:

27 (A) Pays the provider at the rates in effect within the 45-day
28 period.

29 (B) Advises, in an explanation of review pursuant to Section
30 4603.3, the physician, or another provider of the items being
31 contested, the reasons for contesting these items, and the remedies
32 available to the physician or the other provider if he or she
33 disagrees. In the case of an itemization that includes services
34 provided by a hospital, outpatient surgery center, or independent
35 diagnostic facility, advice that a request has been made for an audit
36 of the itemization shall satisfy the requirements of this paragraph.

37 An employer's liability to a physician or another provider under
38 this section for delayed payments shall not affect its liability to an
39 employee under Section 5814 or any other provision of this
40 division.

1 (3) Notwithstanding paragraph (1), if the employer is a
2 governmental entity, payment for medical treatment provided or
3 prescribed by the treating physician selected by the employee or
4 designated by the employer shall be made within 60 days after
5 receipt of each separate itemization, together with any required
6 reports and any written authorization for services that may have
7 been received by the physician.

8 (4) Duplicate submissions of medical services itemizations, for
9 which an explanation of review was previously provided, shall
10 require no further or additional notification or objection by the
11 employer to the medical provider and shall not subject the employer
12 to any additional penalties or interest pursuant to this section for
13 failing to respond to the duplicate submission. This paragraph shall
14 apply only to duplicate submissions and does not apply to any
15 other penalties or interest that may be applicable to the original
16 submission.

17 (c) Any interest or increase in compensation paid by an insurer
18 pursuant to this section shall be treated in the same manner as an
19 increase in compensation under subdivision (d) of Section 4650
20 for the purposes of any classification of risks and premium rates,
21 and any system of merit rating approved or issued pursuant to
22 Article 2 (commencing with Section 11730) of Chapter 3 of Part
23 3 of Division 2 of the Insurance Code.

24 (d) (1) Whenever an employer or insurer employs an individual
25 or contracts with an entity to conduct a review of an itemization
26 submitted by a physician or medical provider, the employer or
27 insurer shall make available to that individual or entity all
28 documentation submitted together with that itemization by the
29 physician or medical provider. When an individual or entity
30 conducting an itemization review determines that additional
31 information or documentation is necessary to review the
32 itemization, the individual or entity shall contact the claims
33 administrator or insurer to obtain the necessary information or
34 documentation that was submitted by the physician or medical
35 provider pursuant to subdivision (b).

36 (2) An individual or entity reviewing an itemization of service
37 submitted by a physician or medical provider shall not alter the
38 procedure codes listed or recommend reduction of the amount of
39 the payment unless the documentation submitted by the physician
40 or medical provider with the itemization of service has been

1 reviewed by that individual or entity. If the reviewer does not
2 recommend payment for services as itemized by the physician or
3 medical provider, the explanation of review shall provide the
4 physician or medical provider with a specific explanation as to
5 why the reviewer altered the procedure code or changed other parts
6 of the itemization and the specific deficiency in the itemization or
7 documentation that caused the reviewer to conclude that the altered
8 procedure code or amount recommended for payment more
9 accurately represents the service performed.

10 (e) (1) If the provider disputes the amount paid, the provider
11 may request a second review within 90 days of service of the
12 explanation of review or an order of the appeals board resolving
13 the threshold issue as stated in the explanation of review pursuant
14 to paragraph (5) of subdivision (a) of Section 4603.3. The request
15 for a second review shall be submitted to the employer on a form
16 prescribed by the administrative director and shall include all of
17 the following:

18 (A) The date of the explanation of review and the claim number
19 or other unique identifying number provided on the explanation
20 of review.

21 (B) The item and amount in dispute.

22 (C) The additional payment requested and the reason therefor.

23 (D) The additional information provided in response to a request
24 in the first explanation of review or any other additional
25 information provided in support of the additional payment
26 requested.

27 (2) If the only dispute is the amount of payment and the provider
28 does not request a second review within 90 days, the bill shall be
29 deemed satisfied and neither the employer nor the employee shall
30 be liable for any further payment.

31 (3) Within 14 days of a request for second review, the employer
32 shall respond with a final written determination on each of the
33 items or amounts in dispute. Payment of any balance not in dispute
34 shall be made within 21 days of receipt of the request for second
35 review. This time limit may be extended by mutual written
36 agreement.

37 (4) If the provider contests the amount paid, after receipt of the
38 second review, the provider shall request an independent bill review
39 as provided for in Section 4603.6.

1 (f) Except as provided in paragraph (4) of subdivision (e), the
2 appeals board shall have jurisdiction over disputes arising out of
3 this subdivision pursuant to Section 5304.

4 *SEC. 2. This act is an urgency statute necessary for the*
5 *immediate preservation of the public peace, health, or safety within*
6 *the meaning of Article IV of the Constitution and shall go into*
7 *immediate effect. The facts constituting the necessity are:*

8 *In order to avoid jeopardizing injured workers' access to*
9 *medically necessary medications, it is necessary that this bill take*
10 *effect immediately.*

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