

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 68

Introduced by Assembly Member Waldron

December 18, 2014

An act to add Section 14133.06 to the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 68, as amended, Waldron. Medi-Cal.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, and under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Covered benefits under the Medi-Cal program include the purchase of prescribed drugs, subject to the Medi-Cal List of Contract Drugs and utilization controls.

This bill, which would be known as the Patient Access to Prescribed Epilepsy Treatments Act, would require, to the extent permitted by federal law, that any drug in the seizure or epilepsy therapeutic drug class would be a covered benefit under the Medi-Cal program. The bill would require a Medi-Cal managed care plan to provide coverage for these drugs, regardless of whether the drug is on the plan's formulary, if the treating provider demonstrates ~~that~~, *that* in his or her reasonable, professional judgment, the drug is medically necessary, *not on the Medi-Cal managed care plan formulary*, and consistent with specified federal rules and ~~regulations~~. ~~If the managed care plan elects not to~~

~~cover a drug described in the bill, the drug would be deemed a noncapitated benefit not reimbursed by the managed care plan, which would be available on a fee-for-service basis, and the plan's contracted rate would be reduced to reflect the cost to the state of providing the benefit to the patient, as specified. This bill would declare the intent of the Legislature that a prescriber's reasonable, professional judgment prevail in prescribing the drugs described in the bill to Medi-Cal patients. regulations, under which circumstances the beneficiary would be entitled to an automatic urgent appeal, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Patient Access to Prescribed Epilepsy Treatments Act.
3 SEC. 2. Section 14133.06 is added to the Welfare and
4 Institutions Code, to read:
5 14133.06. (a) It is the intent of the Legislature in enacting this
6 section that ~~a prescriber's reasonable, professional judgment prevail~~
7 ~~in prescribing to Medi-Cal patients any drug in the therapeutic~~
8 ~~drug class that includes drugs approved by the federal Food and~~
9 ~~Drug Administration for use in the treatment of seizures or~~
10 ~~epilepsy, but are not on Medi-Cal managed care plan formularies,~~
11 ~~or are subject to prior authorization requirements. Medi-Cal~~
12 ~~beneficiary shall have prompt access to medically necessary drugs~~
13 ~~for use in the treatment of seizures and epilepsy that have been~~
14 ~~approved by the federal Food and Drug Administration for use in~~
15 ~~the treatment of seizures or epilepsy, including drugs that are not~~
16 ~~on the formulary of a Medi-Cal managed care plan or that are~~
17 ~~subject to prior authorization.~~
18 (b) To the extent permitted by federal law, if any drug ~~in the~~
19 ~~seizure or epilepsy therapeutic drug class used in the treatment of~~
20 ~~seizures and epilepsy~~ as described in subdivision (a) is prescribed
21 by a Medi-Cal beneficiary's treating provider, that drug shall be
22 a covered benefit under this chapter.
23 (c) ~~Except as provided in subdivision (d), and notwithstanding~~
24 ~~the establishment of a statewide outpatient drug formulary, a~~
25 ~~Medi-Cal managed care plan shall provide coverage for a drug in~~
26 ~~the seizures and epilepsy therapeutic class, as described in~~

1 ~~subdivision (a), regardless of whether the drug is on the plan's~~
 2 ~~formulary, (1) A drug is covered pursuant to this section if the~~
 3 ~~treating provider demonstrates, consistent with federal law that,~~
 4 ~~law, that in his or her reasonable, professional judgment, the drug~~
 5 ~~is medically necessary and consistent with the federal Food and~~
 6 ~~Drug Administration's labeling and use rules and regulations, as~~
 7 ~~supported in at least one of the official compendia identified in~~
 8 ~~Section 1927(g)(1)(B)(i) of the federal Social Security Act (42~~
 9 ~~U.S.C. Sec. 1396r-8(g)(1)(B)(i)). 1396r-8(g)(1)(B)(i), and the~~
 10 ~~drug is not on the formulary for the Medi-Cal managed care plan.~~

11 ~~(d) (1) If a Medi-Cal managed care plan elects not to cover a~~
 12 ~~seizure or epilepsy drug described in subdivision (b), the drug shall~~
 13 ~~be deemed a noncapitated benefit not reimbursed by the managed~~
 14 ~~care plan, and shall be available on a fee-for-service basis. The~~
 15 ~~treating provider shall follow fee-for-service billing instructions~~
 16 ~~for reimbursement under these circumstances.~~

17 ~~(2) If a drug is deemed a noncapitated benefit not reimbursed~~
 18 ~~by a Medi-Cal managed care plan, as described in paragraph (1),~~
 19 ~~the plan's contracted rate shall be reduced to reflect the cost of~~
 20 ~~providing the benefit to the patient on a fee-for-service basis.~~

21 ~~(2) In a case in which a plan denies coverage for a drug~~
 22 ~~prescribed under this section, the beneficiary shall be entitled to~~
 23 ~~an automatic urgent appeal. For purposes of this paragraph,~~
 24 ~~"automatic urgent appeal" means an appeal in which the plan~~
 25 ~~immediately notifies the department of the denial of coverage, and~~
 26 ~~the beneficiary is not required to take any further action. An~~
 27 ~~automatic urgent appeal shall be resolved within 48 hours after~~
 28 ~~denial by the plan. The 48-hour period specified in this paragraph~~
 29 ~~shall be in addition to any time prescribed by federal law.~~