

AMENDED IN ASSEMBLY MAY 4, 2015  
AMENDED IN ASSEMBLY MARCH 16, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 73**

---

---

**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 73, as amended, Waldron. Prescriber Prevails Act.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, 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. Existing law specifies the benefits provided pursuant to the program, including the purchase of prescribed drugs that are covered subject to utilization controls. Utilization controls include a requirement that the treatment provider obtain prior authorization for providing medical treatment, as specified.

This bill would, to the extent permitted by federal law, provide that drugs in specified therapeutic drug classes that are prescribed by a Medi-Cal beneficiary's treating provider are covered Medi-Cal benefits. The bill would require, except as specified, that a Medi-Cal managed care plan cover the drug ~~upon demonstration by the provider if the treating provider demonstrates~~ that the drug is medically necessary, *not on the Medi-Cal managed care plan formulary*, and consistent with federal rules and regulations for labeling and ~~use, as specified~~ *use, 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 Prescriber Prevails 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~~  
7 ~~prevails for the therapeutic drug classes specified in subdivision~~  
8 ~~(b) that are not on managed care plan formularies or have prior~~  
9 ~~authorization requirements.~~ *Medi-Cal beneficiary shall have*  
10 *prompt access to medically necessary drugs for use in the treatment*  
11 *of the conditions specified in this section and that have been*  
12 *approved by the federal Food and Drug Administration for the*  
13 *treatment of those conditions, including drugs that are not on the*  
14 *formulary of the Medi-Cal managed care plan or that are subject*  
15 *to prior authorization.*  
16 (b) To the extent permitted by federal law, if a drug in any of  
17 the following therapeutic drug classes is prescribed by a Medi-Cal  
18 beneficiary's treating provider, that drug shall be covered under  
19 the Medi-Cal program:  
20 (1) Antiretroviral drugs for HIV/AIDS.  
21 (2) Antipsychotics.  
22 (3) Antirejection drugs.  
23 (4) Drugs used to treat seizures or epilepsy.  
24 (c) ~~Except as provided in subdivision (d), and notwithstanding~~  
25 ~~the establishment of a statewide outpatient drug formulary, a~~  
26 ~~Medi-Cal managed care plan shall cover a drug specified in~~  
27 ~~subdivision (b), regardless of whether the drug is on the plan's~~  
28 ~~formulary, if, upon demonstration—(1) A drug is covered pursuant~~  
29 ~~to this section if the treating provider demonstrates, consistent~~  
30 ~~with federal law by the provider law, that the drug, in his or her~~  
31 ~~reasonable, professional judgment, the drug is medically necessary~~  
32 ~~and consistent with the federal Food and Drug Administration's~~  
33 ~~labeling and use rules and regulations, as supported in at least one~~

1 of the official compendia, as defined in Section 1927(g)(1)(B)(i)  
2 of the federal Social Security Act (42 U.S.C. Sec.  
3 ~~1396r-8(g)(1)(B)(i)~~; 1396r-8(g)(1)(B)(i)), and the drug is not on  
4 the formulary for the Medi-Cal managed care plan.

5 (2) *In a case in which a plan denies coverage for a drug*  
6 *prescribed under this section, the beneficiary shall be entitled to*  
7 *an automatic urgent appeal. For purposes of this paragraph,*  
8 *“automatic urgent appeal” means an appeal in which the plan*  
9 *immediately notifies the department of the denial of coverage, and*  
10 *the beneficiary is not required to take any further action. An*  
11 *automatic urgent appeal shall be resolved within 48 hours after*  
12 *denial by the plan. The 48-hour period specified in this paragraph*  
13 *shall be in addition to any time prescribed by federal law.*

14 (1)

15 (3) Medi-Cal managed care plans shall continue to develop  
16 formularies and may also administer prior authorization programs  
17 for the drugs specified in subdivision (b). Providers prescribing  
18 those drugs may be required to provide the plans with requested  
19 information or clinical documentation to support prior authorization  
20 requests. The plans may continue to provide a temporary three-day  
21 supply of medication when medically necessary.

22 (2)

23 (4) Consistent with federal law, if a Medi-Cal managed care  
24 plan is unable to complete a prior authorization due to missing  
25 information or because the prescriber’s reasonable, professional  
26 judgment has not been adequately demonstrated, as required under  
27 this subdivision, the plan shall issue a notice of action to the  
28 provider and the beneficiary. The plan shall include in the notice  
29 of action a description of the information that is required from the  
30 provider or the beneficiary in order for the plan to complete the  
31 authorization, and the beneficiary’s rights regarding appeal and  
32 fair hearing options, *and independent review by the Department*  
33 *of Managed Health Care.*

34 ~~(d) (1) If a Medi-Cal managed care plan chooses not to cover~~  
35 ~~the drugs specified in subdivision (b), the drugs shall be carved~~  
36 ~~out of that plan and covered on a fee-for-service basis.~~

- 1     ~~(2) If a drug is carved out of a Medi-Cal managed care plan as~~
- 2     ~~described in paragraph (1), the plan's contracted rate shall be~~
- 3     ~~reduced accordingly.~~