

AMENDED IN SENATE JUNE 16, 2015

AMENDED IN SENATE MAY 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 627

Introduced by Assembly Member Gomez
(Principal coauthor: Senator Stone)

February 24, 2015

An act to amend ~~Section~~ *Sections 4430 and 4432* of, and to add Section 4440 to, the Business and Professions Code, relating to pharmacy benefit managers.

LEGISLATIVE COUNSEL'S DIGEST

AB 627, as amended, Gomez. Pharmacy benefit managers: contracting pharmacies.

Existing law imposes specified requirements on an audit of pharmacy services provided to beneficiaries of a health benefit plan, and defines certain terms for its purposes, including, among others, pharmacy benefit manager.

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This bill would exempt certain contracts governing the medicines and medical supplies that are required to be provided to injured employees in workers' compensation cases from these requirements. The bill would also require a pharmacy benefit manager that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis to include in a contract, initially entered into, or renewed on its scheduled renewal date, on or after January 1, 2016, information identifying any national drug pricing compendia or other data sources used to determine the

maximum allowable cost for the drugs on a maximum allowable cost list and to provide for an appeal process for the contracting pharmacy, as specified. The bill would also require a pharmacy benefit manager to make available to a contracting pharmacy, upon request, the most up-to-date maximum allowable cost list or lists used by the pharmacy benefit manager for patients served by the pharmacy in a readily accessible, secure, and usable Web-based format or other comparable format. The bill would prohibit a drug from being included on a maximum allowable cost list or from being reimbursed on a maximum allowable cost basis unless certain requirements are met, including, but not limited to, that the drug is not obsolete.

Vote: majority. 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 4430 of the Business and Professions
 2 Code is amended to read:
 3 4430. For purposes of this chapter, the following definitions
 4 shall apply:
 5 (a) “Carrier” means a health care service plan, as defined in
 6 Section 1345 of the Health and Safety Code, or a health insurer
 7 that issues policies of health insurance, as defined in Section 106
 8 of the Insurance Code.
 9 (b) “Clerical or recordkeeping error” includes a typographical
 10 error, scrivener’s error, or computer error in a required document
 11 or record.
 12 (c) “Extrapolation” means the practice of inferring a frequency
 13 or dollar amount of overpayments, underpayments, nonvalid
 14 claims, or other errors on any portion of claims submitted, based
 15 on the frequency or dollar amount of overpayments,
 16 underpayments, nonvalid claims, or other errors actually measured
 17 in a sample of claims.
 18 (d) “Health benefit plan” means any plan or program that
 19 provides, arranges, pays for, or reimburses the cost of health
 20 benefits. “Health benefit plan” includes, but is not limited to, a
 21 health care service plan contract issued by a health care service
 22 plan, as defined in Section 1345 of the Health and Safety Code,
 23 and a policy of health insurance, as defined in Section 106 of the
 24 Insurance Code, issued by a health insurer.

1 (e) “Maximum allowable cost” means the maximum amount
2 that a pharmacy benefit manager will reimburse a pharmacy for
3 the cost of a drug.

4 (f) “Maximum allowable cost list” means a list of drugs for
5 which a maximum allowable cost has been established by a
6 pharmacy benefit manager.

7 (g) “Obsolete” means a drug that may be listed in national drug
8 pricing compendia but is no longer available to be dispensed based
9 on the expiration date of the last lot manufactured.

10 (h) “Pharmacy” has the same meaning as provided in Section
11 4037.

12 (i) “Pharmacy audit” means an audit, either onsite or remotely,
13 of any records of a pharmacy conducted by or on behalf of a carrier
14 or a pharmacy benefits manager, or a representative thereof, for
15 prescription drugs that were dispensed by that pharmacy to
16 beneficiaries of a health benefit plan pursuant to a contract with
17 the health benefit plan or the issuer or administrator thereof.
18 “Pharmacy audit” does not include a concurrent review or desk
19 audit that occurs within three business days of transmission of a
20 claim, or a concurrent review or desk audit where no chargeback
21 or recoupment is demanded.

22 (j) “Pharmacy benefit manager” means a person, business, or
23 other entity that, pursuant to a contract or under an employment
24 relationship with a carrier, health benefit plan sponsor, or other
25 third-party payer, either directly or through an intermediary,
26 manages the prescription drug coverage provided by the carrier,
27 plan sponsor, or other third-party payer, including, but not limited
28 to, the processing and payment of claims for prescription drugs,
29 the performance of drug utilization review, the processing of drug
30 prior authorization requests, the adjudication of appeals or
31 grievances related to prescription drug coverage, contracting with
32 network pharmacies, and controlling the cost of covered
33 prescription drugs.

34 *SEC. 2. Section 4432 of the Business and Professions Code is*
35 *amended to read:*

36 4432. Notwithstanding any other law, a contract that is issued,
37 amended, or renewed on or after January 1, 2013, between a
38 pharmacy and a carrier or a pharmacy benefit manager to provide
39 pharmacy services to beneficiaries of a health benefit plan shall

1 comply with the provisions of this chapter. *This chapter shall not*
2 *apply to contracts authorized by Section 4600.2 of the Labor Code.*

3 ~~SEC. 2.~~

4 SEC. 3. Section 4440 is added to the Business and Professions
5 Code, immediately following Section 4439, to read:

6 4440. (a) A pharmacy benefit manager that reimburses a
7 contracting pharmacy for a drug on a maximum allowable cost
8 basis shall comply with this section.

9 (b) A pharmacy benefit manager shall include in a contract,
10 initially entered into, or renewed on its scheduled renewal date,
11 on or after January 1, 2016, with the contracting pharmacy
12 information identifying any national drug pricing compendia or
13 other data sources used to determine the maximum allowable cost
14 for the drugs on a maximum allowable cost list.

15 (c) A pharmacy benefit manager shall make available to a
16 contracting pharmacy, upon request, the most up-to-date maximum
17 allowable cost list or lists used by the pharmacy benefit manager
18 for patients served by that pharmacy in a readily accessible, secure,
19 and usable Web-based format or other comparable format.

20 (d) A drug shall not be included on a maximum allowable cost
21 list or reimbursed on a maximum allowable cost basis unless all
22 of the following apply:

23 (1) The drug is listed as “A” or “B” rated in the most recent
24 version of the federal Food and Drug Administration’s ~~(FDA)~~
25 approved drug products with therapeutic equivalent evaluations,
26 also known as the Orange Book, or has an “NA,” “NR,” or “Z”
27 rating or a similar rating by a nationally recognized pricing
28 reference, such as Medi-Span or First DataBank.

29 (2) The drug is generally available for purchase in the state from
30 a national or regional wholesaler.

31 (3) The drug is not obsolete.

32 (e) For contracts initially entered into, or renewed on the
33 scheduled renewal date, on or after January 1, 2016, a pharmacy
34 benefit manager shall review and shall make necessary adjustments
35 to the maximum allowable cost of each drug on a maximum
36 allowable cost list using the most recent data sources available at
37 least once every seven days.

38 (f) For contracts initially entered into, or renewed on the
39 scheduled renewal date, on or after January 1, 2016, a pharmacy
40 benefit manager shall have a clearly defined process for a

1 contracting pharmacy to appeal the maximum allowable cost for
2 a drug on a maximum allowable cost list that includes all of the
3 following:

4 (1) A contracting pharmacy may base its appeal on either of the
5 following:

6 (A) The maximum allowable cost for a drug is below the cost
7 at which the drug is available for purchase by similarly situated
8 pharmacies in the state from a national or regional wholesaler.

9 (B) The drug does not meet the requirements of subdivision (d).

10 (2) A contracting pharmacy shall be provided no less than 14
11 business days following receipt of payment for the claim upon
12 which the appeal is based to file an appeal with a pharmacy benefit
13 manager. The pharmacy benefit manager shall make a final
14 determination regarding a contracting pharmacy's appeal within
15 seven business days of the pharmacy benefit manager's receipt of
16 the appeal.

17 (3) If an appeal is denied by a pharmacy benefit manager, the
18 pharmacy benefit manager shall provide to the contracting
19 pharmacy the reason for the denial and the national drug code
20 (NDC) of an equivalent drug that may be purchased by a similarly
21 situated pharmacy at the price that is equal to or less than the
22 maximum allowable cost of the appealed drug.

23 (4) If an appeal is upheld by a pharmacy benefit manager, the
24 pharmacy benefit manager shall adjust the maximum allowable
25 cost of the appealed drug for the appealing contracting pharmacy
26 and all similarly situated contracting pharmacies in the state within
27 one calendar day of the date of determination. The pharmacy
28 benefit manager shall permit the appealing pharmacy to reverse
29 and resubmit the claim upon which the appeal was based in order
30 to receive the corrected reimbursement.

31 (g) A contracting pharmacy shall not disclose to any third party
32 the maximum allowable cost list and any related information it
33 receives either directly from a pharmacy benefit manager or
34 through a pharmacy services administrative organization or similar
35 entity with which the contracting pharmacy has a contract to
36 provide administrative services for that pharmacy.

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