

AMENDED IN SENATE AUGUST 17, 2015

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AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1124

Introduced by Assembly Member Perea

February 27, 2015

An act to *amend Sections 4600.1, 4600.2, and 5307.27 of, and to add Sections 5307.28 and 5307.29 to*, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1124, as amended, Perea. Workers' compensation: prescription medication formulary.

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 employment. The administrative director is authorized to adopt, amend, or repeal, after public hearings, any rules and regulations that are reasonably necessary to enforce the state workers' compensation provisions, except when that power is specifically reserved to the Workers' Compensation Appeals Board. *Existing law requires the administrative director to adopt a medical treatment utilization schedule*

that addresses the frequency, duration, intensity, and appropriateness of all common treatments performed in workers' compensation cases.

~~This bill would require the administrative director to, on or before January 1, 2017, establish a medical evidence-based workers' compensation drug formulary for medications prescribed in the workers' compensation system, to be effective commencing July 1, 2017. The bill requires the administrative director to revise the formulary to adopt appropriate changes, as specified, and to publish any revisions on the Internet Web site of the Division of Workers' Compensation. The bill would require the administrative director to convene a Workers' Compensation Formulary Advisory Committee to assist in the development of the formulary, and would require the committee to study and make recommendations, as specified, on the development of a workers' compensation formulary in California.~~

This bill would require the administrative director to establish an outpatient prescription drug formulary, on or before July 1, 2017, as part of the medical treatment utilization schedule, for medications prescribed in the workers' compensation system. The bill would require the administrative director to make certain considerations, as specified, in establishing the formulary. The bill would require the administrative director to meet and consult with stakeholders, as specified, prior to the adoption of the formulary. The bill would require the administrative director to publish at least 2 interim reports on the Internet Web site of the Division of Workers' Compensation describing the status of the establishment of the formulary, beginning July 1, 2016, until the formulary is effective. The bill would require the administrative director to update the formulary at least on a quarterly basis to allow for the availability of all appropriate medications, including medications newly approved for use. The bill would also make conforming changes to related code sections.

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. Section 5307.28 is added to the Labor Code, to~~
2 ~~read:~~
3 ~~5307.28. (a) On or before January 1, 2017, the administrative~~
4 ~~director shall establish a medical evidence-based workers'~~
5 ~~compensation drug formulary for medications prescribed in the~~

1 workers' compensation system, to be effective commencing July
2 1, 2017.

3 (b) ~~The formulary shall be revised to adopt appropriate changes~~
4 ~~no later than 60 days after the administrative director receives~~
5 ~~recommendations from the Workers' Compensation Formulary~~
6 ~~Advisory Committee and determines that evidence-based revisions~~
7 ~~are warranted. The administrative director shall determine the~~
8 ~~effective date of the changes, and shall issue an order, exempt from~~
9 ~~Sections 5307.3 and 5307.4 and the rulemaking provisions of the~~
10 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
11 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
12 ~~Code), informing the public of the changes and their effective date.~~
13 ~~All orders issued pursuant to this subdivision shall be published~~
14 ~~on the Internet Web site of the Division of Workers' Compensation.~~

15 SEC. 2. ~~Section 5307.29 is added to the Labor Code, to read:~~

16 5307.29. ~~(a) The administrative director shall convene a~~
17 ~~Workers' Compensation Formulary Advisory Committee to assist~~
18 ~~in the development of a formulary pursuant to Section 5307.28.~~
19 ~~The committee shall be composed of members appointed by the~~
20 ~~director and shall include, but not be limited to, health care~~
21 ~~providers, insurers, employers, pharmacists, attorneys who~~
22 ~~represent applicants, an appointee of the Speaker of the Assembly,~~
23 ~~and an appointee of the Senate Rules Committee.~~

24 ~~(b) The committee shall study and make recommendations on~~
25 ~~the development of a workers' compensation formulary in~~
26 ~~California.~~

27 ~~(c) The committee shall convene on a quarterly basis and provide~~
28 ~~its recommendations to the administrative director on or before~~
29 ~~December 31, 2016.~~

30 ~~(d) The recommendations developed pursuant to subdivision~~
31 ~~(c) shall ensure all of the following:~~

32 (1) ~~Injured worker access to appropriate opioids, including those~~
33 ~~with abuse-deterrent properties, other pain management~~
34 ~~prescriptions, and off-label prescription drugs, when medically~~
35 ~~necessary.~~

36 (2) ~~A gradual detoxification plan for a worker receiving~~
37 ~~potentially addictive prescription drug treatment.~~

38 (3) ~~Timely formulary updates that minimize delays involved in~~
39 ~~adding new drugs to the formulary.~~

1 SECTION 1. *It is the intent of the Legislature to establish an*
 2 *outpatient prescription drug formulary for medications prescribed*
 3 *in the workers' compensation system, to be effective July 1, 2017.*
 4 *In establishing the formulary, the Administrative Director of the*
 5 *Division of Workers' Compensation shall consider, with the*
 6 *maximum transparency possible, a medical evidence-based*
 7 *formulary, and, in addition to the provisions of this act, at least*
 8 *all of the following:*

9 (a) *Medical evidence-based guidelines for access to appropriate*
 10 *medication pursuant to pain management prescription drug*
 11 *therapies.*

12 (b) *Medical evidence-based guidelines for access to off-label*
 13 *prescription drugs when evidence-based and medically necessary.*

14 (c) *Guidance of utilization review, pursuant to Section 4610 of*
 15 *the Labor Code, as applicable to medications within the established*
 16 *formulary and circumstances that may warrant use of medications*
 17 *outside the established formulary.*

18 SEC. 2. *Section 4600.1 of the Labor Code is amended to read:*

19 4600.1. (a) *Subject to subdivision (b), any person or entity*
 20 *that dispenses medicines and medical supplies, as required by*
 21 *Section 4600, shall dispense the generic drug equivalent.*

22 (b) *A person or entity shall is not be required to dispense a*
 23 *generic drug equivalent under either of the following*
 24 *circumstances:*

25 (1) ~~When~~ *If a generic drug equivalent is unavailable.*

26 (2) ~~When~~ *If the prescribing physician specifically provides in*
 27 *writing that a nongeneric drug must be dispensed.*

28 (c) *For purposes of this section, "dispense" has the same*
 29 *meaning as the definition contained in Section 4024 of the Business*
 30 *and Professions Code.*

31 (d) ~~Nothing in this~~ *This section shall be construed to does not*
 32 *preclude a prescribing physician, who is also the dispensing*
 33 *physician, from dispensing a generic drug equivalent.*

34 (e) *This section applies only to medicines prescribed or*
 35 *dispensed prior to the effective date of the outpatient prescription*
 36 *drug formulary adopted pursuant to Section 5307.27.*

37 SEC. 3. *Section 4600.2 of the Labor Code is amended to read:*

38 4600.2. (a) *Notwithstanding Section 4600, when if a*
 39 *self-insured employer, group of self-insured employers, insurer of*
 40 *an employer, or group of insurers contracts with a pharmacy, group*

1 of pharmacies, or pharmacy benefit network to provide medicines
2 and medical supplies required by this article to be provided to
3 injured employees, those injured employees that are subject to the
4 contract shall be provided medicines and medical supplies in the
5 manner prescribed in the contract for as long as medicines or
6 medical supplies are reasonably required to cure or relieve the
7 injured employee from the effects of the injury. *Medicines provided*
8 *pursuant to the contract are subject to the outpatient prescription*
9 *drug formulary adopted pursuant to Section 5307.27, and a*
10 *contract shall not limit the availability of medications otherwise*
11 *indicated pursuant to the formulary.*

12 ~~(b) Nothing in this section shall affect the ability of~~
13 ~~employee-selected physicians to continue to prescribe and have~~
14 ~~the employer provide medicines and medical supplies that the~~
15 ~~physicians deem reasonably required to cure or relieve the injured~~
16 ~~employee from the effects of the injury.~~

17 (e)

18 (b) Each contract described in subdivision (a) shall comply with
19 standards adopted by the administrative director. In adopting those
20 standards, the administrative director shall seek to reduce
21 pharmaceutical costs and may consult any relevant studies or
22 practices in other states. The standards shall provide for access to
23 a pharmacy within a reasonable geographic distance from an
24 injured employee's residence.

25 ~~(d)~~

26 (c) *An employer or insurer that has established a medical*
27 *provider network pursuant to Section 4616 is in compliance with*
28 *this section if pharmacy network services are included within its*
29 *medical provider network plan filed with the administrative*
30 *director pursuant to paragraph (1) of subdivision (b) of Section*
31 *4616.*

32 *SEC. 4. Section 5307.27 of the Labor Code is amended to read:*
33 *5307.27. On or before December 1, 2004, the (a) The*
34 *administrative director, in consultation with the Commission on*
35 *Health and Safety and Workers' Compensation, shall adopt, after*
36 *public hearings, a medical treatment utilization schedule, that shall*
37 *incorporate the evidence-based, peer-reviewed, nationally*
38 *recognized standards of care recommended by the commission*
39 *pursuant to Section 77.5, and that shall address, at a minimum, the*
40 *frequency, duration, intensity, and appropriateness of all treatment*

1 procedures and modalities commonly performed in workers’
 2 compensation cases.

3 (b) *On or before July 1, 2017, the medical treatment utilization*
 4 *schedule adopted by the administrative director shall include an*
 5 *outpatient prescription drug formulary. This section does not*
 6 *prohibit the authorization of medications that are not in the*
 7 *formulary when the variance is demonstrated, in accordance with*
 8 *subdivision (a) of Section 4604.5, to cure or relieve the injured*
 9 *worker from the effects of his or her injury.*

10 (c) *The outpatient prescription drug formulary shall include a*
 11 *phased implementation for workers injured prior to July 1, 2017,*
 12 *in order to ensure injured workers safely transition to medications*
 13 *on the formulary. This section does not prohibit medically*
 14 *necessary tapering or weaning of medications to treat workers*
 15 *injured on or after July 1, 2017.*

16 (d) *On or before July 1, 2017, the medical treatment utilization*
 17 *schedule shall include guidelines for the development of a*
 18 *detoxification plan for an injured worker receiving potentially*
 19 *addictive prescription drug treatment or drug treatment if a*
 20 *detoxification plan is necessary for patient safety.*

21 SEC. 5. *Section 5307.28 is added to the Labor Code, to read:*
 22 *5307.28. (a) Prior to the adoption of an outpatient*
 23 *prescription drug formulary as required by Section 5307.27, the*
 24 *administrative director shall meet and consult regarding the*
 25 *establishment of a formulary with stakeholders, including, but not*
 26 *limited to, employers, insurers, private sector employee*
 27 *representatives, public sector employee representatives, treating*
 28 *physicians actively practicing medicine, pharmacists, pharmacy*
 29 *benefit managers, attorneys who represent applicants, and injured*
 30 *workers.*

31 (b) *The administrative director may meet and consult with an*
 32 *ad hoc group of physicians and pharmacists to address proposed*
 33 *updates after the formulary is implemented.*

34 (c) *Beginning July 1, 2016, and concluding with the effective*
 35 *date of the formulary, the administrative director shall publish at*
 36 *least two interim reports on the Internet Web site of the Division*
 37 *of Workers’ Compensation describing the status of the*
 38 *establishment of the formulary.*

39 SEC. 6. *Section 5307.29 is added to the Labor Code, to read:*

1 5307.29. *The administrative director shall update the outpatient*
2 *prescription drug formulary at least on a quarterly basis to allow*
3 *for the availability of all appropriate medications, including*
4 *medications newly approved for use.*

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