

AMENDED IN SENATE AUGUST 31, 2015  
AMENDED IN SENATE AUGUST 17, 2015  
AMENDED IN SENATE JULY 14, 2015  
AMENDED IN SENATE JULY 8, 2015  
AMENDED IN ASSEMBLY JUNE 1, 2015  
AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1124**

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**Introduced by Assembly Member Perea**

February 27, 2015

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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 establish ~~an outpatient prescription~~ a 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 exempt an order updating the formulary from the Administrative Procedure Act and other provisions, as specified.* 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. 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, that~~ the Administrative Director of  
 5 the Division of Workers’ Compensation ~~shall consider, create an~~  
 6 *evidence-based drug formulary*, with the maximum transparency  
 7 possible, ~~a medical evidence-based formulary, and, for use in the~~  
 8 *workers’ compensation system. The formulary shall go into effect*  
 9 *on or before July 1, 2017, and shall include,* in addition to the  
 10 provisions of this act, at least all of the following:

11 (a) ~~Medical evidence-based~~ *Evidence-based* guidelines for  
 12 access to appropriate ~~medication~~ *medications* pursuant to pain  
 13 management prescription drug therapies.

14 (b) ~~Medical evidence-based guidelines for access to off-label~~  
 15 ~~prescription drugs when evidence-based and medically necessary.~~

1 (b) *Guidance regarding the manner in which a physician may*  
2 *present medical evidence to document an injured worker’s need*  
3 *for off-label use of prescription drugs.*

4 (c) ~~Guidance of regarding the manner in which~~ utilization  
5 ~~review, pursuant to Section 4610 of the Labor Code, as applicable~~  
6 ~~to review applies to formulary medications within the established~~  
7 ~~formulary~~ and circumstances that may warrant the use of  
8 medications outside the established ~~formulary~~. *formulary,*  
9 *including, but not limited to, emergent and inpatient care.*

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

11 4600.1. (a) Subject to subdivision (b), any person or entity  
12 that dispenses medicines and medical supplies, as required by  
13 Section 4600, shall dispense the generic drug equivalent.

14 (b) A person or entity is not required to dispense a generic drug  
15 equivalent under either of the following circumstances:

16 (1) If a generic drug equivalent is unavailable.

17 (2) If the prescribing physician specifically provides in writing  
18 that a nongeneric drug must be dispensed.

19 (c) For purposes of this section, “dispense” has the same  
20 meaning as the definition contained in Section 4024 of the Business  
21 and Professions Code.

22 (d) This section does not preclude a prescribing physician, who  
23 is also the dispensing physician, from dispensing a generic drug  
24 equivalent.

25 (e) This section applies only to medicines ~~prescribed or~~  
26 ~~dispensed prior to the effective date of the outpatient prescription~~  
27 ~~drug formulary adopted pursuant to Section 5307.27.~~

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

29 4600.2. (a) Notwithstanding Section 4600, if a self-insured  
30 employer, group of self-insured employers, insurer of an employer,  
31 or group of insurers contracts with a pharmacy, group of  
32 pharmacies, or pharmacy benefit network to provide medicines  
33 and medical supplies required by this article to be provided to  
34 injured employees, those injured employees that are subject to the  
35 contract shall be provided medicines and medical supplies in the  
36 manner prescribed in the contract for as long as medicines or  
37 medical supplies are reasonably required to cure or relieve the  
38 injured employee from the effects of the injury. Medicines provided  
39 pursuant to the contract ~~are shall be~~ subject to the ~~outpatient~~  
40 ~~prescription~~ drug formulary adopted *by the administrative director*

1 pursuant to Section 5307.27, and a contract shall not limit the  
 2 availability of medications otherwise ~~indicated pursuant to the~~  
 3 ~~formulary; prescribed pursuant to the formulary based on whether~~  
 4 *the pharmacy services are provided within or outside a medical*  
 5 *provider network.*

6 (b) *This section does not affect the ability of employee-selected*  
 7 *physicians to continue to prescribe and have the employer provide*  
 8 *medicines subject to the drug formulary and medical supplies that*  
 9 *the physicians deem reasonably required to cure or relieve the*  
 10 *injured employee from the effects of the injury.*

11 ~~(b)~~  
 12 (c) Each contract described in subdivision (a) shall comply with  
 13 standards adopted by the administrative director. In adopting those  
 14 standards, the administrative director shall seek to reduce  
 15 pharmaceutical costs and may consult any relevant studies or  
 16 practices in other states. The standards shall provide for access to  
 17 a pharmacy within a reasonable geographic distance from an  
 18 injured employee’s residence.

19 ~~(e) An employer or insurer that has established a medical~~  
 20 ~~provider network pursuant to Section 4616 is in compliance with~~  
 21 ~~this section if pharmacy network services are included within its~~  
 22 ~~medical provider network plan filed with the administrative director~~  
 23 ~~pursuant to paragraph (1) of subdivision (b) of Section 4616.~~

24 SEC. 4. Section 5307.27 of the Labor Code is amended to read:

25 5307.27. (a) The administrative director, in consultation with  
 26 the Commission on Health and Safety and Workers’ Compensation,  
 27 shall adopt, after public hearings, a medical treatment utilization  
 28 schedule, that shall incorporate the evidence-based, peer-reviewed,  
 29 nationally recognized standards of care recommended by the  
 30 commission pursuant to Section 77.5, and that shall address, at a  
 31 minimum, the frequency, duration, intensity, and appropriateness  
 32 of all treatment procedures and modalities commonly performed  
 33 in workers’ compensation cases.

34 (b) On or before July 1, 2017, the medical treatment utilization  
 35 schedule adopted by the administrative director shall include ~~an~~  
 36 ~~outpatient prescription drug formulary; a drug formulary using~~  
 37 *evidence-based medicine.* This section does not prohibit the  
 38 authorization of medications that are not in the formulary when  
 39 the variance is demonstrated, ~~in accordance~~ *consistent* with

1 subdivision (a) of Section ~~4604.5~~, to cure or relieve the injured  
2 worker from the effects of his or her injury: ~~4604.5~~.

3 (c) The ~~outpatient prescription~~ drug formulary shall include a  
4 phased implementation for workers injured prior to July 1, 2017,  
5 in order to ensure injured workers safely transition to medications  
6 on the formulary. ~~This section does not prohibit medically~~  
7 ~~necessary tapering or weaning of medications to treat workers~~  
8 ~~injured on or after July 1, 2017.~~

9 (d) ~~On or before July 1, 2017, the medical treatment utilization~~  
10 ~~schedule shall include guidelines for the development of a~~  
11 ~~detoxification plan for an injured worker receiving potentially~~  
12 ~~addictive prescription drug treatment or drug treatment if a~~  
13 ~~detoxification plan is necessary for patient safety.~~

14 SEC. 5. Section 5307.28 is added to the Labor Code, to read:

15 5307.28. (a) Prior to the adoption of ~~an outpatient prescription~~  
16 a drug formulary as required by Section 5307.27, the administrative  
17 director shall meet and consult regarding the establishment of a  
18 formulary with stakeholders, including, but not limited to,  
19 employers, insurers, private sector employee representatives, public  
20 sector employee representatives, treating physicians actively  
21 practicing medicine, pharmacists, pharmacy benefit managers,  
22 attorneys who represent applicants, and injured workers.

23 (b) The administrative director may ~~meet and consult with~~  
24 ~~include an independent research organization and~~ an ad hoc group  
25 of physicians and pharmacists to ~~meet, and consult with,~~ to address  
26 proposed updates after the formulary is implemented.

27 (c) Beginning July 1, 2016, and concluding with the effective  
28 date of the formulary, the administrative director shall publish at  
29 least two interim reports on the Internet Web site of the Division  
30 of Workers' Compensation describing the status of the  
31 establishment of the formulary.

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

33 5307.29. The administrative director shall update the outpatient  
34 prescription drug formulary at least on a quarterly basis to allow  
35 for the availability of all appropriate medications, including  
36 medications newly approved for use. *Formulary updates shall be*  
37 *made through an order exempt from Sections 5307.3, 5307.4, and*  
38 *the rulemaking provisions of the Administrative Procedure Act*  
39 *(Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
40 *Division 3 of Title 2 of the Government Code), informing the public*

- 1 *of changes and their effective date. All orders issued pursuant to*
- 2 *this section shall be published on the Internet Web site of the*
- 3 *Division of Workers' Compensation.*

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