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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 establish 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.~~ *implemented.* The bill would require the administrative director to update the formulary at least on a quarterly basis to allow for the ~~availability~~ *provision* of all appropriate medications, including medications ~~newly approved for use.~~ *new to the market.* The bill would exempt an order updating the formulary from the Administrative Procedure Act and other provisions, as specified. ~~The bill would require the administrative director to establish an independent pharmacy and therapeutics committee to review and consult with the administrative director in connection with updating the formulary, 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 that the
2 Administrative Director of the Division of Workers' Compensation
3 create an evidence-based drug formulary, with the maximum
4 transparency possible, for use in the workers' compensation system.
5 ~~The formulary shall go into effect on or before July 1, 2017, and~~
6 ~~shall include, in addition to the provisions of this act, at least all~~
7 ~~of the following:~~ *system, and that the formulary include the*
8 *following in addition to the provisions of this act:*

1 (a) Evidence-based guidelines for access to appropriate
2 medications pursuant to pain management prescription drug
3 therapies.

4 (b) ~~Guidance regarding the manner in which a physician may~~
5 ~~present medical evidence to document how an injured worker's~~
6 ~~need for worker may access off-label use of prescription drugs.~~
7 ~~drugs, when evidenced-based and medically necessary.~~

8 (c) ~~Guidance regarding the manner in which utilization review~~
9 ~~applies to formulary medications and circumstances that may~~
10 ~~warrant the use of medications outside the established formulary,~~
11 ~~including, but not limited to, emergent and inpatient care.~~

12 (c) *Use of generic or generic-equivalent drugs in the formulary*
13 *pursuant to evidence-based practices, with consideration being*
14 *given to use of brand name medication when its use is*
15 *cost-effective, medically necessary, and evidence-based.*

16 (d) *The drug formulary shall not apply to care provided in an*
17 *emergency department or inpatient setting.*

18 (e) *Guidance on the use of the formulary to further the goal of*
19 *providing appropriate medications expeditiously while minimizing*
20 *administrative burden and associated administrative costs.*

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

22 4600.1. (a) Subject to subdivision (b), any person or entity
23 that dispenses medicines and medical supplies, as required by
24 Section 4600, shall dispense the generic drug equivalent.

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

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

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

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

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

36 (e) ~~This section applies~~ *shall only apply* to medicines dispensed
37 prior to the ~~effective~~ *operative* date of the drug formulary adopted
38 pursuant to Section 5307.27.

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

1 4600.2. (a) Notwithstanding Section 4600, if a self-insured
2 employer, group of self-insured employers, insurer of an employer,
3 or group of insurers contracts with a pharmacy, group of
4 pharmacies, or pharmacy benefit network to provide medicines
5 and medical supplies required by this article to be provided to
6 injured employees, those injured employees that are subject to the
7 contract shall be provided medicines and medical supplies in the
8 manner prescribed in the contract for as long as medicines or
9 medical supplies are reasonably required to cure or relieve the
10 injured employee from the effects of the injury. Medicines provided
11 pursuant to the contract shall be subject to the drug formulary
12 adopted by the administrative director pursuant to Section 5307.27,
13 ~~and a contract shall~~ *such contracts may* not limit the availability
14 of medications otherwise prescribed pursuant to the formulary
15 based on whether the pharmacy services are provided within or
16 outside a medical provider network.

17 (b) ~~This section does not~~ *Nothing in this section shall* affect the
18 ability of employee-selected physicians to continue to prescribe
19 and have the employer provide medicines subject to the drug
20 formulary and medical supplies that the physicians deem
21 reasonably required to cure or relieve the injured employee from
22 the effects of the injury.

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

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

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

1 (b) On or before July 1, 2017, the medical treatment utilization
2 schedule adopted by the administrative director shall include a
3 drug formulary using evidence-based medicine. ~~This section does~~
4 ~~not~~ *Nothing in this section shall* prohibit the authorization of
5 medications that are not in the formulary when the variance is
6 demonstrated, consistent with subdivision (a) of Section 4604.5.

7 (c) The drug formulary shall include a phased implementation
8 for workers injured prior to July 1, 2017, in order to ensure injured
9 workers safely transition to medications ~~on~~ *pursuant to* the
10 formulary.

11 (d) *This section shall apply to all prescribers and dispensers of*
12 *medications serving injured workers under the workers'*
13 *compensation system.*

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

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

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

27 ~~(e) Beginning~~

28 ~~(b) Commencing~~ July 1, 2016, and concluding with the effective
29 ~~date~~ *implementation* of the formulary, the administrative director
30 shall publish at least two interim reports on the Internet Web site
31 of the Division of Workers' Compensation describing the status
32 of the ~~establishment~~ *creation* of the formulary.

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

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

1 ~~Division 3 of Title 2 of the Government Code), informing the~~
 2 ~~public of changes and their effective date. All orders issued~~
 3 ~~pursuant to this section shall be published on the Internet Web site~~
 4 ~~of the Division of Workers' Compensation.~~

5 5307.29. (a) *The administrative director shall make provision*
 6 *for no less than quarterly updates to the drug formulary to allow*
 7 *for the provision of all appropriate medications, including those*
 8 *new to the market.*

9 (b) *Changes made to the list of drugs in the drug formulary*
 10 *described in Section 5307.27 shall be made through an order*
 11 *exempt from Sections 5307.3 and 5307.4, and the rulemaking*
 12 *provisions of the Administrative Procedure Act (Chapter 3.5*
 13 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
 14 *2 of the Government Code), informing the public of the changes*
 15 *and their effective date. All orders issued pursuant to this*
 16 *subdivision shall be published on the Internet Web site of the*
 17 *Division of Workers' Compensation.*

18 (c) *The administrative director shall establish an independent*
 19 *pharmacy and therapeutics committee to review and consult with*
 20 *the administrative director on available evidence of the relative*
 21 *safety, efficacy, and effectiveness of drugs within a class of drugs*
 22 *in the updating of an evidence-based drug formulary, as required*
 23 *by Section 5307.27.*

24 (1) *The committee shall consist of six members and the Executive*
 25 *Medical Director of the Division of Workers' Compensation. The*
 26 *committee shall consist of medical doctors or doctors of osteopathy*
 27 *holding a physician and surgeon license pursuant to Chapter 5*
 28 *(commencing with Section 2000) of Division 2 of the Business and*
 29 *Professions Code, and pharmacists licensed pursuant to Chapter*
 30 *9 (commencing with Section 4000) of Division 2 of the Business*
 31 *and Professions Code. A committee member shall have knowledge*
 32 *or expertise in one or more of the following:*

33 (A) *Clinically appropriate prescribing of covered drugs.*

34 (B) *Clinically appropriate dispensing and monitoring of covered*
 35 *drugs.*

36 (C) *Drug use review.*

37 (D) *Evidence-based medicine.*

38 (2) *Committee members shall not be employed by a*
 39 *pharmaceutical manufacturer, a pharmacy benefits management*
 40 *company, or a company engaged in the development of a*

1 *pharmaceutical formulary for commercial sale during his or her*
2 *term, and shall not have been so employed for 12 months prior to*
3 *his or her appointment.*

4 *(3) A committee member shall not have a substantial financial*
5 *conflict of interest pursuant to standards established by the*
6 *administrative director. The administrative director may, in his*
7 *or her sole discretion, disqualify a potential or current member*
8 *of the committee if the administrative director determines that a*
9 *substantial conflict of interest exists.*

10 *(4) A committee member shall agree to keep all proprietary*
11 *information confidential to the extent required by existing law.*

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