

Assembly Bill No. 1124

CHAPTER 525

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.

[Approved by Governor October 6, 2015. Filed with
Secretary of State October 6, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1124, 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 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 creation of the formulary, commencing July 1, 2016, until the formulary is implemented. The bill would require the administrative director to update the formulary at least on a quarterly basis to allow for the provision of all appropriate medications, including medications 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.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that the Administrative Director of the Division of Workers' Compensation create an evidence-based drug formulary, with the maximum transparency possible, for use in the workers' compensation system, and that the formulary include the following in addition to the provisions of this act:

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

(b) Guidance regarding how an injured worker may access off-label use of prescription drugs, when evidenced-based and medically necessary.

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

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

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

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

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

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

(1) When a generic drug equivalent is unavailable.

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

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

(d) Nothing in this section shall be construed to preclude a prescribing physician, who is also the dispensing physician, from dispensing a generic drug equivalent.

(e) This section shall only apply to medicines dispensed prior to the operative date of the drug formulary adopted pursuant to Section 5307.27.

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

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

pursuant to Section 5307.27, and such contracts may not limit the availability of medications otherwise prescribed pursuant to the formulary based on whether the pharmacy services are provided within or outside a medical provider network.

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

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

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

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

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

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

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

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

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

(b) Commencing July 1, 2016, and concluding with the implementation of the formulary, the administrative director shall publish at least two interim reports on the Internet Web site of the Division of Workers' Compensation describing the status of the creation of the formulary.

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

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

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

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

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

- (A) Clinically appropriate prescribing of covered drugs.
- (B) Clinically appropriate dispensing and monitoring of covered drugs.
- (C) Drug use review.
- (D) Evidence-based medicine.

(2) Committee members shall not be employed by a pharmaceutical manufacturer, a pharmacy benefits management company, or a company engaged in the development of a pharmaceutical formulary for commercial sale during his or her term, and shall not have been so employed for 12 months prior to his or her appointment.

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

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