

December 2, 2016
Ginger Volz, Hearing Representative
Black and Rose, LLP

I would like to propose that any time it is mentioned that a lien claimant serve supporting documents to the defense attorney and/or the insurance company/TPA/Self Insured/Self administered, that the supporting documents for the liens include any evidence the lien claimant intends to use at trial with an exhibit list of their proposed evidence. I agree it would be over burdensome to file some supporting documents at the WCAB – mostly the exhibit packets.

My rationale behind this is first, Defendants and the administrator of the claim often do not have all of the documents alleged and we spend a great deal of time “chasing” down those “supporting” documents in the form of medical reports, prescriptions, the medical reporting from the PTP adopting and incorporating their treatment as a second provider or the interpreter’s presence, to determine the validity of the lien. It slows the litigation process immensely and could be easily remedied by serving a lien with your exhibit packet.

Second, too many lien holders shackle their representatives and refuse to provide an exhibit list until they know for sure their lien will be set for trial. Some lien claimants just refuse to be ready, while others always walk in with their exhibit lists. The time spent at the WCAB then waiting for the exhibit lists is a waste of precious resources. There is no reason a lien representative or the defense should walk into the lien conference without the most time consuming portion of the Pre-Trial Conference statement completed – the exhibit list.

Third, once defendant serves their discovery or vice versa the lien claimant serves discovery, the party served should have 30 days to amend their exhibit list and exhibit packet, so we all may be prepared to negotiate or litigate at the WCAB prior to arriving. This is not encouraged, the Judges have no mechanism to enforce the preparedness of the lien claimants and/or defendants. The standard reply is “we are here until noon or five” which again, is a waste of public resources. If every party was aware their evidence would be excluded, absent good cause for not having filed evidence, this might motivate more people to be prepared and get liens resolved at the first lien conference or be prepared to move to trial rather than allowing 2 lien conferences.

I would also like to propose that a regulation be added, if possible, that any party must accept service of evidence on a Disk at the WCAB. Some files are too large to require people to accept “paper” service, but the number of lien claimants refusing service of my documents via a disk at a lien conference, especially when I have just subbed in, is ridiculous. I come back to the office and mail them, but they should be accepted at the WCAB by the rep for any party.

Thank you for your assistance in this matter and I am available by phone at any time to discuss this further or be of any possible assistance to help streamline the lien litigation process.

December 2, 2016

Michelle Thomas, Sr. Claims Representative
Workers' Compensation Claims
York Risk Services Group

This section about filing amended liens is confusing. It makes it sound like an amended lien can never be filed

(2) Only original (i.e., initial or opening) lien claims shall be filed. Except as provided in subdivisions (g) or (h) of section 10393 or as ordered by the Workers' Compensation Appeals Board, no amended lien claims shall be filed. Any amended lien previously filed or lodged for filing may be destroyed without notice.

Diplomate, American
Board of EEG and
Neurophysiology

Past President,
American Medical
EEG Association

Member, California
Society of Industrial
Medicine & Surgery

Member, American Academy
of Pain Management

ROBERT L. WEINMANN, M.D.
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Formerly,
Chairman
Editorial Board
CLINICAL EEG

Formerly, Editorial Board,
AMERICAN JOURNAL of
PAIN MANAGEMENT

Formerly Editorial Board,
CLINICAL EVOKED
POTENTIALS

Workers Compensation Appeals Board
Att'n: Gabrielli, Regulations Coordinator
P.O. Box 429459
San Francisco, CA. 94142-9459

Sirs:

5 December 2016

re WCAB PROPOSED RULEMAKING SCHEDULED FOR 4 JANUARY 2017

Sirs:

Re Title 8, CCRs, Sections 10770 (Amended) and 10770.7 (Newly Adopted), we understand that this proposed rule making is intended to set rules of practice and procedures to flesh out and implement SB 1160 (Mendoza), recently signed into law by Governor Brown. As currently envisioned this legislation will restrict access to care for injured workers. We ask that the Department of Industrial Relations, WCAB, and others comment on our objections as submitted in editorials from The Weinmann Report and also from workcompcentral.

In this regard I ask that careful attention be paid to www.workcompcentral.com, "Weinmann: Now Comes SB 1160: Unreasonable Denials," 2016-08-23, and www.politicsofhealthcare.com, "SB 1160 (Mendoza): anti-fraud legislation aimed at physicians permits MPN fraud," 2016-08-06.

For instance, while assuaging some of the treating doctors by relaxing some of the rules on Utilization Review, SB 1160 actually takes away more than it gives, e.g., the liens to which SB 1160 refers are not just treatment liens, but, in fact, may be any situation when the lien method becomes the last resort for getting payment for unpaid claims.

As to the sop tossed to the doctors in terms of relaxed Utilization Review for the first 30 days after the initial treatment, the truth is that only modest relaxation is being allowed to the so-called "no UR" rule. For example, MRI scanning will remain restricted and under UR control.

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WORKERS' COMPENSATION
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In conclusion, implementation of SB 1160 (Mendoza) by Title 8, Sections 10770 (amended) and 1077.0 (newly adopted) needs to be more patient-friendly and less hostile to injured workers' medical and surgical needs.

Yours truly,

A handwritten signature in cursive script that reads "Robert L. Weinmann, MD". The signature is written in black ink and is positioned to the right of the typed name.

Robert L. Weinmann, MD, Editor, The Weinmann Report (www.politicsofhealthcare.com)

encl: The Weinmann Report and workcompcentralcolumn (per above)

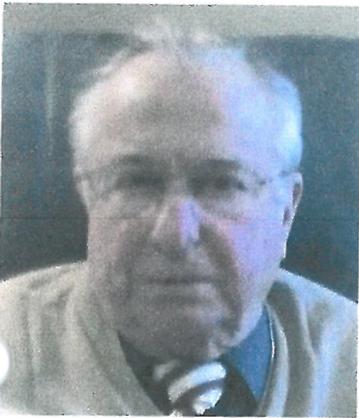


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State:

Weinmann: Now Comes SB 1160: Unreasonable Denials: [2016-08-23]

SB 1160 (Sen. Tony Mendoza, D-Artesia) would require that lien claimants in workers' comp file declarations with all liens as of Jan. 1, 2017. Failure to follow through on this step would enable the Workers' Compensation Appeals Board to dismiss the lien. As part of the signed declaration, physicians would be obliged to say that the dispute in question is not subject to independent bill review.



Dr. Robert Weinmann

As we know from previous posts, utilization review (UR) appointees and independent medical reviewers (IMR) do not have to be licensed to practice in California, do not have to disclose their names and are enabled by law to reject the most indicated and necessary treatment protocols. The situation is so dire that many treating physicians simply don't trust the utilization review or IMR process. In one recent post we disclosed how one UR doctor notified the injured worker's doctor about a denial of care at 10 p.m., while another notified the treating doctor's physician at 4 a.m. (nobody was home either time).

Carl Brakensiek, MBA, JD, Physician Advocate representing the California Neurology Society and the California Society of Industrial Medicine and Surgery, and others, has expressed concern "that some of the recently announced proposed amendments to SB 1160 will severely restrict access to care for many injured workers in California," and that certain "amendments being advanced by the Department of Industrial Relations will have a substantial adverse impact on many bona fide injured workers."

It was then pointed out that, fortunately, under the present system, because liens can be filed, there are physicians able and willing to provide medical care even though liability is being disputed. We call that a "Safety Net." It works because once proper liens are filed the providers of service get paid .

SB 1160 (Mendoza) throws all this past medical history out with the baby and the bathwater. It will require that liens for medical treatment be filed alongside declarations signed under penalty of perjury saying that the dispute isn't subject to independent medical review. Denial letters from adjusters or claims managers would no longer be automatically assumed to mean that "medical treatment has been neglected or unreasonably refused" and would allow employers to refuse coverage for injuries simply by asserting that the injury wasn't industrial. Brakensiek argues that this language should be revised "to specify clearly that if the employer has explicitly or

constructively denied liability for the injury, then the claimant may file a lien."

Another likely blow to injured workers has to do with the assignment of liens. This technique is a financing modality useful when a number of liens have piled up over time because insurance companies, buttressed by Utilization Review, in turn buttressed by Independent Medical Review, have wrongly denied claims. The Lien Report from the Commission on Health and Safety Workers Compensation has already weighed in on this issue. Here is what was said: "we find no evidence that the practice of assigning lien rights is a problem in and of itself." By abolishing this mechanism, the Department of Industrial Relations now intends to make it a problem "in and of itself."

In a nutshell, prohibiting the assignment of liens would then become one more nail in the coffin of injured workers since many physicians now accepting liens would no longer be able to continue in practice. All in all we do not find that SB 1160 is helpful legislation in its current form. We find that amendments are needed. Therefore, at the present time, we urge an OUA (oppose unless amended) approach.

Robert Weinmann is a San Jose neurologist and writes the blog [Politics of Healthcare](#), from which this entry was taken with permission.

G+ 2

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POLITICS OF HEALTH CARE WITH EMPHASIS ON CALIFORNIA LEGISLATION INCLUDING PHYSICIANS COMPENSATION AND UTILIZATION REVIEW AND FEDERAL LEGISLATION IN WASHINGTON, DC

thursday, october 6, 2016

SB 1160 (Mendoza): anti-fraud legislation aimed at physicians permits MPN fraud

Governor Brown signed SB 1160 (Mendoza) supposedly to combat fraud in the form of abusive lien practices by physicians. The trouble is that injured workers in disputed claims often rely on physicians to risk non-payment by accepting liens, hopefully eventually to be paid. SB 1160 shoots an arrow into the heart of this largess because its language is such that it discourages physicians from getting involved in any liens at all. *The net result is that many injured workers will no longer have access to medical care.*

In exchange for this slap-in-the-face the bill supposedly eases up on Utilization Review for the first 30 days following injury. The idea, or so said the press releases, was to facilitate treatment. The trouble in this part of the bill is that it actually specifically prevents physicians even in this 30 day period from getting certain crucial but specific diagnostic studies because they're deemed too expensive. *Access to profit trumps patient care in SB 1160.*

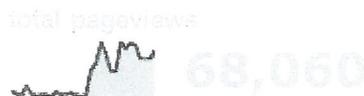
So much for easing up on Utilization Review. It appears that once again injured workers get the *short end of the stick if in fact they get any part of it at all.*

carworkers comp system and the state of injured workers: interview with dr. robert weinmann

THE WEINMANN REPORT
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San Jose, CA., 95128

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Ulrick Fong, President, Rehab Solutions
January 05, 2017

Subject: Comments for SB1160

With regards to the upcoming SB 1160, we would like to express our concern regarding the mandated Declaration Statement and the necessary information to complete it.

We're a durable medical equipment (DME) provider that works closely with doctors to provide their patients with any necessary medical equipment for rehabilitation. At our level of service, we're not privy to the type of case information necessary to accurately complete the Declaration Statement, so we are requesting it from the defense. However, there isn't any regulation requiring them to serve or disclose the information, and if they chose to delay or not provide it, we may possibly perjure ourselves by selecting the wrong choice on the Declaration.

We are also unable to petition the courts to require defense to disclose the information since we're not a party to the case because we haven't filed a lien. Therein lies the paradox.

This puts us in a difficult situation and has a catastrophic effect on our ability to negotiate our claims. If we are unable to file a lien, this would cause irreparable harm to our company.

We respectfully ask the WCAB to consider our situation as a provider of DME, and quite possibly other ancillary services that don't readily have access to the necessary information to accurately complete the Declaration under penalty of perjury.

From: Barbra Harris, In-House Counsel, Equian
January 10, 2017

Subject: WCAB rulemaking Section 10770 - Section 10770.7

Our clients are health plans that have paid medical expenses prior to the acceptance of the claim by WC.

It appears that the new law requires "actual bills" in support of all liens. Prior to this time, we have submitted a SUMMARY of the amounts that providers billed, what the health plan paid, the dates of service along with ICD and cpt codes.

Health plan reimbursement liens rules are a little difficult to filter from the new law and proposed regs. I am hoping you can provide some guidance-particularly with a direction to the correct form.

Q: As health plans, it appears that our client's liens still do not require a filing fee and are not subject to the independent bill review. Is that correct?

Q: Will the health plan have to provide the copies of provider bills as submitted to the health plan now?

Q: What FORM will be used for such health plan reimbursement liens? Please provide FORM identification number.

Please provide answers to these questions. I would appreciate any additional information that you find pertinent. We want our client's liens to be filed correctly! If it would be easier to discuss this, please call me directly at 502-214-6127.

Thank you.

January 14, 2017
David Shafer
DFS Interpreting

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 14, 2017
Jack

I have two concerns regarding the impact SB 1160 will have on me:

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Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

Sincerely,

Sent from my iPhone

January 15, 2017
Sylvia R Alonso
Certified Spanish Interpreter

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

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January 15, 2017
Sin Tsui

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

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Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 16, 2017
Teco Santi

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters will file are for services provided during Medical-legal examinations. Payment for interpreting services rendered during a medical treatment appointment will be pursued by filing a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment appointment".

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.



January 18, 2017

Annette Gabrielli
Regulations Coordinator
Division of Workers' Compensation
P O Box 420603
San Francisco CA 94142

WCABRules@dir.ca.gov

Subject: Notice of Proposed Amendments to Rules on Lien Claims Filings

State Compensation Insurance Fund appreciates the opportunity to provide input regarding the Division of Workers' Compensation's (DWC) proposed amendments to rules on lien claims filings. State Fund appreciates the DWC's efforts to provide further clarity to the regulations and submits the following comment for your consideration.

§ 10770.7. Requirement for Liens Filed Before January 1, 2017

Discussion

It is not clear whether or not this regulation applies to liens prior to 1/1/2013. The language in the regulation states "subject to a filing fee". This can be interpreted to mean that those liens that are subject to an "activation fee" are not required to file the new Declaration form. Liens filed prior to 1/1/2013 are only subject to the activation fee and not the filing fee.

Recommendation

State Fund recommends that the DWC clarify whether or not this regulation includes liens filed prior to 1/1/2013 since they are only subject to the activation fee and not the filing fee.

We thank you for the opportunity to provide feedback on the proposed amendments, and we offer our ongoing support in the development of these regulations.

Sincerely

A handwritten signature in blue ink, appearing to read "Karen Sims".

Karen Sims
Assistant Claims Operations Manager
Claims Medical and Regulatory Division

Cc: Jose Ruiz, Claims Operations Manager, Claims Medical and Regulatory Division
Elsa Tan, Director, Claims Medical and Regulatory Division
Mary Huckabaa, Assistant Chief Counsel

January 18, 2017
David R. Kauss, Ph.D.
Southern California Mental Health Associates

Please clarify what is necessary to comply with SB1160 as proposed. Specifically, SB 1160 (and Labor Code 4903.05) includes the following language:

“For liens filed on or after January 1, 2017, the lien shall also be accompanied by an original bill in addition to either the full statement or itemized voucher supporting the lien.” Please define “Original Bill.”

If “Original Bill” refers to HCFA 1500 Forms, the process of printing, scanning, and individually uploading to EAMS, potentially hundreds of HCFA 1500 Forms for those patients with many years of treatment, creates an extreme burden on lien claimants, with no apparent added benefit for any party. HCFA 1500 Forms are sent to insurance carrier billing departments as services are provided. Spending potentially hundreds of hours uploading this information into EAMS when it has already been served serves no purpose except to burden both lien claimants and administrative personnel.

Also, please define "original bill" for dates of service prior to the mandated use of HCFA 1500 Forms.

Clarification of these issues would improve the chances for these statutory changes to achieve maximum effect and would avoid otherwise inevitable filing errors costing significant time and money to all parties.

January 18, 2017
Pilar Garcia, President
Statewide Interpreters Corp.

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 18, 2017
Carolina Dangond, Lien Administrator, Workers' Compensation Cases
Statewide Interpreters Corp.

I have two concerns regarding the impact SB 1160 will have on me:

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Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.



WESTERN REGION

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Sacramento, CA 95814

916-442-7617

www.aiadc.org

Date: 1/3/17

To: Annette Gabrielli, Regulations Coordinator
Workers' Compensation Appeals Board
P.O. Box 429459
San Francisco CA 94142-9459

From: Katherine Pettibone, Vice President Western Region
American Insurance Association

Re: Comments on Filing and Service of Lien Claims Requirement for Liens Filed Before
January 1, 2017

On behalf of the American Insurance Association and its 325 member companies, which in California write approximately \$20 billion in premiums, we thank you for the opportunity to comment on the proposed changes on the filing and service of lien claims per the implementation of SB 1160 (Mendoza, Chp. 868, Statutes of 2017) and the attendant changes in AB 1244 (Gray, Chp 852, Statutes of 2016).

Our members appreciate and support the goals of the legislation and the implementing regulations. One of the important provisions amending liens on claims for legal costs was Labor Code Section 4906 (g), which states a disclosure form is not to be signed by the claimant until he/she has been advised which district office his/her claim will be filed, that he/she has met with an attorney *licensed by the California State Bar* (emphasis added), and advised of his/her rights as set forth as specified. The disclosure form must be *signed* by the employee *and attorney* under penalty of perjury. Previously under section 4906, an attorney was required to furnish a specified disclosure outlining the procedures, attorney's fees, and other rights that was to be signed by the employee and the attorney. We note that our members have told us that there has been a practice of stamps or typewritten name and title being used as the signature of the attorney. Section 4906 requires both a signature AND identification of the name of the attorney "shall be clearly and legibly set forth on the disclosure form." We submit that the clarification that the law requires BOTH the name and an actual signature – valid e-signature or actual- but not just a stamp or generic machine-generated name of any attorney for a valid lien would be helpful and ensure accuracy.

Additionally, Subdivision (h) and (i) under Section 4906 go on to add other requirements that an attorney must submit under penalty of perjury as well. Under proposed section 10770 (a)(1) a lien without these would be impermissible and we support this. These provisions serve important

public protections to be sure that claimants accurately understand their obligations and rights, as well as required procedures. We suggest that in furtherance of that goal, and to help the State Bar carry out their important oversight function of the practice of law, the addition of a line on the DWC-3 form for the attorney's state bar number to be placed. This would help ensure that the advising attorney is licensed and able to provide that accurate information to the employee.

Thank you for consideration for the above points raised by the AIA membership.

Sincerely,
Katherine Pettibone
Vice President, State Affairs
American Insurance Association

January 18, 2017

Vincent Mejia

I have two concerns regarding the impact SB 1160 will have on me: 1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition. Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available. I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination." 2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record! Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 18, 2017

Cata Gomez, State Certified Interpreter

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. There is no provision for this in 2017 lien filing. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available. **We should all have a uniform standard for interpreters.**

I urge you to change section (G) to read **"a qualified interpreter rendering services during a medical treatment examination."**

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record! Limited English proficient (LEP) injured workers have the right to meaningful and professional language access.

Thank you for your attention to these important matters.

January 18, 2017
Tonantzin Bolaños

To Whom it may concern:

There are several contradicting and concerning issues regarding the impact SB 1160 will have on Language Professionals and the injured workers they provide services to:

- 1) The only liens interpreters are able to file are for services provided during **MEDICAL TREATMENT** appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.
- 2) Some language pairs don't have certification.
- 3) Insurers' preferred vendors are sending non-certified individuals; often dismissing a certified interpreter. When the carrier, for whatever reason (neglect, incompetence, denial of claim) does not send an interpreter, a Language Service Provider, working on a lien basis is not allowed to send a non-certified interpreter even when it can be proven no other certified interpreters were available.

I urge you to change section (G) to read **"a qualified interpreter rendering services during a medical treatment examination."**

- 4) SB 1160 is a catch 22 situation for interpreters and LSPs: a lien cannot be filed without having the documentation to support the new declaration, yet a petition to the WCAB for medical documentation cannot be filed until we have become lien claimants of record!

Limited English Proficient (LEP) injured workers have the right to language access. Please don't restrict that access any further.

January 18, 2017
Victoria Torres

I have two concerns regarding the impact SB 1160 will have on me:

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Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 18, 2017
Bill Posada, California Interpreters Network

I feel interpreters should be exempt from this regulation. It is very difficult or impossible to confirm MPN in this system..... case in point, when requesting the MPN information from an insurance adjuster; they don't know nor can they tell where the information is located. **If adjusters don't or can't find the MPN info, how are interpreters able???**

See below for additional comments.

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January 18, 2017

Ruben Cortez

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Legislative and Administrative Agency Advocacy
Professional Association Management
Established 1983

January 4, 2017

Workers' Compensation Appeals Board
Attention: Annette Gabrielli, Regulations Coordinator
455 Golden Gate Avenue, Ninth Floor
San Francisco, CA

Via electronic mail only to: WCABRules@dir.ca.gov

Commissioners,

On behalf of our clients, the California Society of Industrial Medicine and Surgery (CSIMS), the California Workers' Compensation Interpreters Association (CWCIA), the California Society of Physical Medicine and Rehabilitation (CSPM&R), the California Neurology Society (CNS) and Maximum Medical, Inc. we thank you for the opportunity to comment on proposed amendments to 8CCR Section 10770 and the language of new Section 10770.7.

We especially appreciate the Board's sensitivity to the needs of the workers' compensation community and the value that its practical experience can bring to a regulatory process that despite the Board's exemption from portions of the Administrative Procedures Act, it has wisely sought input from the very group most affected by the provisions of SB 1160 (Chapter 868, statutes of 2016).

Another reason we appreciate your attention is that our clients did not support SB 1160 because they believed at the time and still do believe, that a number of its provisions, while perhaps well intentioned, required more care in crafting their language. Of course, at this point in time, the task at hand is to implement those provisions as is, and in a manner that works for all the constituents involved.

Among those provisions are amendments to Labor Code Section 4903.05 that directly affect the ability of injured workers in disputed cases to obtain appropriate health care and other necessary services during the period of time that those disputes are being resolved. Their fundamental right to access to care is at stake.

In substantial part, 8CCR Sections 10770 and 10770.7 do exactly what they are meant to do, implement the corresponding language of SB 1160.

As such, they perpetuate the issues referenced above and reinforce the issues we did not support. We strongly request that the WCAB and DWC work closely together to eliminate the vagaries created by the language of Labor Code Section 4903.05

For example, Labor Code Section 4903.05 (a) now reads in relevant part, "*on or after January 1, 2017, the lien shall also be accompanied by an original bill in addition to either the full statement or itemized voucher supporting the lien.*"

This new requirement is overly broad and its terminology ill-defined. Regarding the original bill, the language is singular, but what is to be done if there are original bills for more than one date of service? Since most original bills are itemized, will they also serve as the itemized voucher? No one knows and there are no business rules to provide guidance. Such rules should be written by the Division and thereby mitigate the possibility of new disputes that are sure to be raised as participants grope their way using their interpretations. How much time is the WCAB willing to dedicate to resolving the various interpretations in a manner that preserves due process?

Despite Senator Mendoza's effort, the lien filing process is now more complicated with the introduction of new terminology and the addition of new data fields to the Notice and Request for Allowance of Lien form. Although the changes were announced, no practical guidance has yet been provided by the Division with respect to how to correctly interpret, define and apply these changes.

Compounding these new problems is the fact that the Division's published Business Rules governing Jet Filing have not been updated since August, 2015. What's more, the "EAMS Reference Guide and Instruction Manual" currently posted on the Division's website is dated December, 2013.

It is unreasonable to expect that the diverse population of legitimate California lien claimants and employers, in the absence of appropriate and sufficient guidance, will be able to define and uniformly apply all of these new functional terms and data elements. The inevitable result will be controversy, unnecessary litigation and increased frictional costs.

We earnestly request the Board work with the DWC, urging the Division to remedy this situation by implementing appropriate regulations, updating the EAMS E-form Filing Reference Guide and the JET Filing Business Rules. The positive result will be proper guidance for all parties and successful navigation of these new, required changes.

Without taking additional steps, it appears that these vagaries may open the door for defendants to easily argue that liens were improperly filed. Judges will be the likely victims required to interpret the issues at trial. The resulting broad spectrum of outcomes will victimize legitimate everyone concerned, especially lien claimants who only occasionally find themselves in need of filing a lien.

Specifically regarding interpreters, we would be remiss if we did not remind the WCAB and DWC that amended Labor Code Section 4903.05 (c) authorizes liens only from certified interpreters in medical-legal situations. With more than 250 different languages being spoken in California and only 8 being certified, what are the others to do when their legitimate bills go unpaid? Just as important is the fact that in treatment situations even certified interpreters will be apparently hard pressed to file a lien. They often have no way

Testimony
8CCR, Section 10770 & 10770.7
January 18, 2017
Page 3 of 3

of determining the status of a claimant's case prior to providing interpreting services for a treatment visit. Therefore, it is virtually impossible for these individuals to perform the due diligence necessary to determine if they will be able to declare the legitimacy of any lien that may result. This circumstance will likely require that the interpreter obtain a judge's order to inspect the medical records or other documents necessary to establish the basis for his/her declaration. We respectfully question whether the WCAB has the time and human resources to take on this added burden.

When considering the impact of the friction caused by such imprecise language, please keep in mind the report from the Workers' Compensation Insurance Rating Bureau's Governing Committee that attributed virtually all of the .6% system-wide savings to fraud provisions in SB 1160 and AB 1244. No savings were credited to any of the provisions subject to this rulemaking. Therefore, any friction caused by the lack of precision and clarity in the lien declaration provisions will cause new costs; costs that will be absorbed in great part by the WCAB itself and passed along to employers.

Time invested now will save all participants and the Court, much time and perhaps cause disputes to be resolved sooner.

Cordially,



Stephen J. Cattolica
Director of Government Relations

January 18, 2017

SAI Professional Services

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.



California Workers' Compensation Institute

1333 Broadway Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763 -1592

January 18, 2017

VIA E-MAIL to WCABRules@dir.ca.gov

Workers' Compensation Appeals Board
Attention: Annette Gabrielli, Regulations Coordinator
Post Office Box 429459
San Francisco, CA 94142-9459

Re: Written Testimony – Proposed Amendments to Rules on Lien Claims Filings

Dear Ms. Gabrielli:

These comments on the proposed revisions to Rules on Lien Claims Filings are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 83% of California's workers' compensation premium, and self-insured employers with \$57B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz/Fireman's Fund Insurance Company, AmTrust North America, Berkshire Hathaway Group, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the proposed to Rules on Lien Claims Filings are indicated by **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§10770 Filing and Service of Lien Claims

Discussion

SB 1160, effective January 1, 2017, requires that lien claimants file original bills in addition to itemized voucher's at the time of the filing of a lien. The Institute supports the deletion of subsection (c)(3) and consequential renumbering of subsequent subsections, in order to permit compliance with new requirements of SB 1160.

§10770.7 Requirement for Liens Filed before January 1, 2017

Recommendation

Any Labor Code section 4903(b) lien that is subject to a filing fee pursuant to Labor Code section 4903.05 and that is filed before January 1, 2017, shall be dismissed with prejudice by operation of law unless, on or before July 1, 2017, the lien claimant electronically files a Supplemental Lien Form and Labor Code section 4903.05(c) Declaration on the form approved by the Appeals Board. The Declaration must attest that at least one of the classifications in Labor Code section 4903.05(c)(1)(A)-(G) is applicable, and must be signed under penalty of perjury. The filing of a false Declaration shall be grounds for dismissal of the lien with prejudice after notice, and shall provide a basis for sanctions pursuant to Rule 10561(b)(5).

§10770.8 Requirement for Liens Filed after January 1, 2017

Any Labor Code section 4903(b) lien that is filed on or after January 1, 2017 shall be dismissed with prejudice by operation of law unless the lien claimant completes and files the Labor Code section 4903.05(c) Declaration on the form approved by the Appeals Board. The Declaration must attest that at least one of the classifications in Labor Code section 4903.05(c)(1)(A)-(G) is applicable, and must be signed under penalty of perjury. The filing of a false Declaration shall be grounds for dismissal of the lien with prejudice after notice, and shall provide a basis for sanctions pursuant to Rule 10561(b)(5).

Discussion

Minor additions are recommended to the original proposed language for purposes of clarification. The addition of language requiring automatic dismissal for failure to comply with the Rule conforms this Rule to the statutory language in Labor Code §4903.05(c)(3) and the legislative intent under SB 1160. Finally, the inclusion of a consequence in the form of potential sanctions is suggested in order to dissuade the filing of false liens by those lien filers who do not meet any of the 4903.05(c)(1)(A)-(G) classifications.

The proposed changes to the WCAB Rules of Practice and Procedure address only “legacy liens” filed prior to January 1, 2017. An additional rule is necessary to clarify that liens filed after January 1, 2017, are also automatically dismissed in the absence of a properly completed section 4903.05(c) Declaration. Accordingly, the Institute recommends new §10770.8 to address liens filed after January 1, 2017.

[FORM] Supplemental Lien Form and Section 4903.05 Declaration

Discussion

The Supplemental Lien Form is intended for use in lien claims filed 1/1/2013-12/31/2016. The two-page form appears to include a basic coversheet for identification and data capture, and a second page containing the Labor Code section 4903.05(c) Declaration.

On the first page, in the “Injured Worker” section, there is a field labeled “LR” for a purpose that is not immediately apparent. The field should be removed or clarified. Under the “Lien Claimant” section, there is opportunity to fill in information for up to three providers. It is very unlikely that a single lien claimant would have need to file an identical Declaration for multiple providers related to services for the same injured worker. Pursuant to Labor Code section 4903.05(d)(3), the claims of two or more providers of goods or services may not be merged into a single lien. The second and third sections should be removed. In the remaining section, we recommend that “Provider Type” be defined with a drop-down menu of options. In its present form, it is unclear whether “Provider Type” is intended to differentiate between, for example, treatment/medical-legal, or medical/interpreter, or chiropractor/psychiatrist. Additionally, the field for “Other Provider Type” appears to be unnecessary. Both fields should be further defined, preferably by a drop-down menu, or eliminated in order to avoid confusion.

The second page, containing the Declaration, correctly limits completion to liens filed under Labor Code section 4903(b), and repeats nearly verbatim the requirements under that statute. We believe that the drop-down menu is a wise choice, and recommend only the following correction of typographical errors:

- (F) can show that the expense was incurred for an emergency medical condition, as defined in Health and Safety Code Section 1317.1(b).*
- (G) is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director.*

[FORM] Notice and Request for Allowance of Lien (rev. January 2017)

Discussion

The revised form correctly includes a new notification that the original bill and an itemized statement justifying the lien must be attached. However, the amended form now includes some of the same problems as outlined in the above discussion of the Supplemental Form.

Under the “Lien Claimant” section, there is opportunity to fill in information for up to three providers. It is very unlikely that a single lien claimant would have need to file an identical Declaration for multiple providers related to services for the same injured worker. Pursuant to Labor Code section 4903.05(d)(3), the claims of two or more providers of goods or services may not be merged into a single lien. The second and third sections should be removed. In the remaining section, we recommend that “Provider Type” be defined with a drop-down menu of options. In its present form, it is unclear whether “Provider Type” is intended to differentiate between, for example, treatment/medical-legal, or medical/interpreter, or chiropractor/psychiatrist. Additionally, the field for “Other Provider Type” appears to be unnecessary. Both fields should be further defined, preferably by a drop-down menu, or eliminated in order to avoid confusion.

The revised form also includes a section intended to represent the Declaration required by Labor Code section 4903.05(c). However, the form currently provides only a blank field with no instruction. We are concerned that Declarations could be filed without full compliance with Labor Code section 4903.05(c). For instance, a lien filer might complete the blank field with “is the employee’s treating physician” without attesting that care was provided through a medical provider network. The lien filer would contend that a Declaration has been filed, even though the lien claimant does not fall within any of the precisely defined classifications outlined under Labor Code section 4903.05(c)(1)(A)-(G). Moreover, in the absence of any instruction or guidance whatsoever, a lien filer who is unfamiliar with the (A)-(G) classifications might determine that the blank field should be filled in with the nature of the services provided, or even just his or her name. A drop-down menu of the (A)-(G) classification options, as included in the Supplemental Lien Form, would be far preferable and would ensure compliance with Labor Code section 4903.05(c).

Thank you for the opportunity to comment, and please contact me if additional information would be helpful.

Sincerely,

Ellen Sims Langille
General Counsel

ESL/pm

cc: Christine Baker, DIR Director
George Parisotto, DWC Acting Administrative Director
Richard Newman, Secretary WCAB
CWCI Legal Committee
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Regular Members
CWCI Associate Members

January 18, 2017
Liz West Interpreting Services.

I have several concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during **MEDICAL TREATMENT** appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Also, on some old cases it was not mandatory to use certified interpreters at the time.

Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "**a qualified interpreter rendering services during a medical treatment examination.**"

It is not clear at all what number shall I use as a "provider number", neither is a clear explanation for that. Besides, **NOBODY KNOWS** how to answer that question. As

Accurate as we want to be when completing the declaration when filing a lien, there is not specified anywhere how do we have to do it and what number we have to use.

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

Cornelia M Harmon, CMI
January 18, 2017

There are two concerns regarding SB1160 that greatly concern me as a Language Access Provider:

1) The only liens interpreters need to file are for services provided during **MEDICAL TREATMENT** appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors are authorized by the WCAB to send non-certified individuals whenever they please, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "**a qualified interpreter rendering services during a medical treatment examination.**"

2) SB 1160 is a catch 22 situation for interpreters who have not received payment for interpreting services provided during treatment appointments. We are not permitted to file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

I do have another concern that is not related to this bill, but related to SB 836. Many times Claims administrators have automatic authorization to send non-certified interpreters when in fact certified ones are available. This does not allow equal access to (LEP) injured workers, as many of the non-certified interpreters are not schooled as how to accurately interpret, nor are they aware of Interpreter Ethics. This can cause great harm to (LEP) injured workers.

January 18, 2017
Julio R. Villaseñor Jr.

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 18, 2017
Paul Boutin, CMI# 100211

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during **MEDICAL TREATMENT** appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

January 18, 2017

Maria Palacio

As a state-certified interpreter, I have two concerns regarding the impact SB 1160 will have on me and on the service I provide for injured workers::

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' use their preferred vendors and send non-certified individuals. The vendors post the jobs on the internet very often less than 24 hours before the appointment and thus cannot get a certified interpreter. They will use I assume whoever comes in with the lowest "bid" to work for them.

I am not allowed to do the same (provide a qualified interpreter) even when I can prove no other certified interpreters were available.

In addition, although the service I personally provide is in Spanish, my clients (both applicant and defendant) often contact me to provide other-than-Spanish services, even more difficult to cover.

Ultimately, I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch-22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please consider the language of SB 1160 and how it impacts not only interpreters but also injured workers.

Lastly, for future bills that involve interpreters, I strongly encourage you to request input from the actual interpreters who provide the services and understand the workers' compensation field of law. I strongly encourage you to request input from California Workers' Compensation Interpreters Association (www.cwcia.com), an association of interpreters who work in WC in California.

January 20, 2017
Jaquelyn Haley
Work Comp Supervisor

I am all for cracking down on medical providers that have been accused of fraudulent activities but making ALL lien claimants file these declarations is terribly unfair. My office represents numerous hospitals, physicians, anesthesiologists, imaging centers, etc and we have filed hundreds of liens because carriers continuously deny injuries, only to accept them later after an AME exam. Because injuries are denied, med-treatment is also denied and the providers that are willing to treat these injured workers, must file a lien, pay \$150.00 to do so and wait several years to be paid

If you suspect a lien claimant is guilty of fraudulent activities, disallow their lien!!!! Don't make every lien claimant in the work comp system comply this daunting task of filing a lien declaration on every lien they have filed! Doctors are simply going to refuse to treat any injured worker that they are the one that will suffer. Instead of cracking down on providers/lien claimants, try cracking down on the work comp carriers who continuously deny medical bills in error, never pay penalties and interest and never comply with LC5402 (c)

This will create an undue burden on thousands of medical providers in this state and again, if the workers comp system continues to treat providers in this manner, they will simply refuse to treat these injured workers as it is becoming way too much of a hassle!

I am hoping you reconsider this ridiculous requirement and overturn this decision.

January 20, 2017
Maribel Tossman
State Certified Medical Interpreter

I have two concerns regarding the impact SB 1160 will have on me:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination."

2) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.



ORTIZ SCHNEIDER

INTERPRETING & TRANSLATION

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ANNETTE GABRIELLI, REGULATIONS COORDINATOR
WORKERS' COMPENSATION APPEALS BOARD

PO BOX 429459
SAN FRANCISCO, CA 94142-9459

1/15/2017

Dear Ms. Gabrielli

My name is Lorena Ortiz Schneider, State Certified Administrative Hearing Interpreter since 1992. Our company provides injured workers with quality interpreting services at every step of the process, primarily in the Tri-Counties area.

I have three concerns regarding the impact that SB 1160 will have on interpreters and injured workers:

1) The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read "**a qualified interpreter rendering services during a medical treatment examination.**"

2) SB 1160 presents interpreters with a Catch-22: we cannot file the lien and sign the new declaration under penalty of perjury without already having the supporting documentation that cannot be obtained until after we have filed the aforementioned declaration and lien.

3) Interpreters have been placed in the same category as medical providers, yet we are distinctly different: we make it possible for people to communicate.

We are asked to interpret without any possibility of knowing the status of an injured worker's claim. This request happens in real time, in a doctor's office where the interpreter is on the spot to meet the expectations of the doctor, his staff and the patient.

Services rendered are objected to **after** the work has been done.

Injured workers, doctors, judges and lawyers rely on interpreters to understand and be understood by one another, regardless of the status of a claim.

SB 1160 risks doing away with professional, competent interpreters and language service providers who facilitate essential communication thousands of times a day.

I urge you to consider the civil rights of the limited English proficient (LEP) injured workers, afforded them by Title VI, and move interpreters out of the workers' compensation system's lien provider category.

LEP injured workers have the right to meaningful language access. Please keep their rights in mind.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorena".

Lorena Ortiz Schneider
California State Certified Administrative Hearing Interpreter • CT
CEO, Ortiz Schneider Interpreting & Translation

Cason White
January 27, 2017

To the Board,

There is nothing within the proposals to influence carriers to resolve and pay liens or to avoid the lien in the first place.

Suggestively, the carrier should be held to reimburse lien fees where the treatment or services is found to arise out of the work injury.

Why should providers bear the cost? Who will want to assist the injured worker if they have to lien every instance of service?

Thank you for considering my suggestion.

January 30, 2017

Worker's Compensation Appeals Board
Attention Annette Gabrielli, Regulations Coordinator
P.O. Box 429459
San Francisco CA 94142-9459

Dear Ms. Gabrielli:

I have two concerns regarding the impact SB1160 will have on me:

1. The only liens interpreters file are for services provided during **MEDICAL TREATMENT** appointments. Payment for interpreting services rendered during a medical-legal examination are pursued thru a petition.

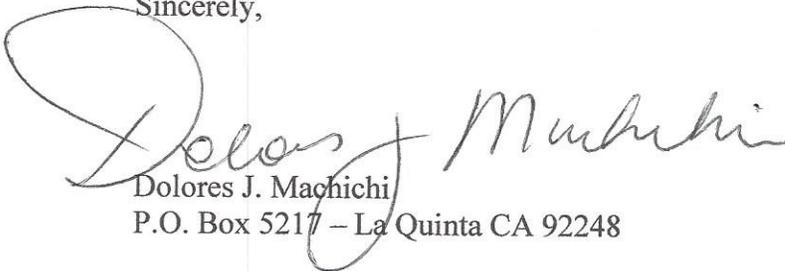
Some language pairs don't have certification. Insurance carrier's preferred vendors get to send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters are available.

I urge you to change section (G) to read "**a qualified interpreter rendering services during a medical treatment examination.**"

2. SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

Sincerely,



Dolores J. Machichi
P.O. Box 5217 - La Quinta CA 92248

Irma Gomez | Collection Manager
WestStar Physical Therapy
January 30, 2017

As a secondary provider , free standing physical Therapy provider , West Star Physical Therapy and WSPT network are extremely, prejudiced by the mandates of SB 1160.

As Physical TherapistS we are told we are not considered Physicians, we must PETITION FOR MEDICAL RECORDS. Meanwhile, defendants have created a pattern of not responding to any liens as require by LC 4603.2 (b). As potential lien claimants/ holders of bills ,we are more often than not, **not paid** or not even sent an objection letter advising us of the reason(s) we are not being paid. We are told we have to file Petitions to get the medical records.

We have been filing Petitions for Records to attempt to comply **with SB 1160**. Attached see a sample of the petition and a sample of a response we are getting from Judges because we are not lien claimants. In some instances we have not received denial from the judges , but phone call from secretaries telling us the Judge will not sign until we file a lien.

It is a catch 22, we need to file a lien to be privy to the medical record and demonstrate, denial of care, prove up that our services are reasonable and necessary, etc... Yet, we cannot file the lien until declaration is complete. The Declaration cannot be completed in many case because we do not have the medical records.

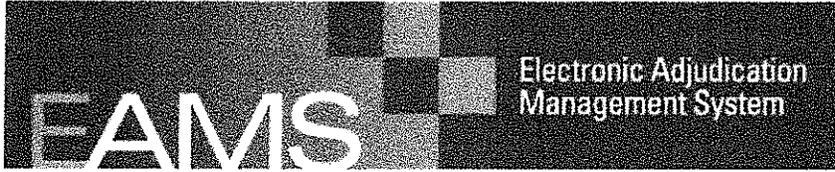
During the month of January we have been unable to file many liens simply because we were denied Due process, we cannot get medical records.

Did anyone think this through? As a free standing Physical Therapy facility we have always practiced off of a prescription, same as a Pharmacy, Durable goods, interpreters and other providers of services facility etc...

The claims adjusters have a complete file, why are they not required to file an affidavit under Penalty of Perjury as to the contents of the file and why treatment has not been provided and or paid for? It has become acceptable not to even object, even though the Labor code says the must. There is no repercussion for their failure to do so. Why is this burden place on medical providers and providers of services that have had their due process revoked with previous changes in the law?

Furthermore, The MPN research lacks transparency. The DWC website does not have links in which we can research whether or not an employer has a binding contract with the carriers MPN. Although MPN is defense affirmative defense we are being told we now have to prove under penalty of perjury whether the employer has a valid MPN or not. How can this be accomplished? Transparency must be mandated of employers and carriers in order for doctor, providers of services and attorneys can comply with MPN requirements.

I hope this is amended to create a fair expectation from providers, otherwise this can translate into the applicant not getting timely and adequate medical care.



Submission of this eform through EAMS constitutes service upon any internal DWC unit.

Batch ID: 26043204 Date: 01/18/2017 09:46:02 AM

F52111

OK

1 WSPT NETWORK
PO Box 6199
2 Garden Grove, CA 92846
(714) 827-4822
3

4 EAMS:
WSPT NETWORK
5 ERN # 6860584

6 Lien Claimant,

7
8 STATE OF CALIFORNIA
9 DEPARTMENT OF INDUSTRIAL RELATIONS
10 WORKERS' COMPENSATION APPEALS BOARD
11

12
13 ELA MATUTE Applicant,) Case No.: ADJ9788085
14 vs.)
15 PMS PROFESSIONAL MAINTENANCE S;) PETITION BY NON-
16 BERKSHIRE HATHAWAY;) PHYSICIAN LIEN CLAIMANT
17 Defendant,) FOR MEDICAL INFORMATION
18) IN ACCORDANCE WITH
19) LABOR CODE §4903.6(d)
20)

21 COMES NOW, WS PHYSICAL THERAPY NETWORK, lien claimant in the above matter,
22 with a Petition By Non-Physician Lien Claimant for Medical Information in accordance with
23 Labor Code § 4903.6(d). Lien claimant requests the following medical records and documents
24 containing "medical information" be served, for the following reasons:
25

- 26 1. The complete medical records of NATHAN FORD from 11/23/2014 to 10/18/2016
27 which pertain to this case. NATHAN FORD was the referring and prescribing Physician
28 for lien claimant and his medical records are needed to substantiate the reasonableness of

1 treatment, to rebut Defendant's allegation that medical control was established, to prove
2 industrial causation, to comply with SB 1160.

- 3 2. The complete medical records of <any other known Doctors or medical facilities, by date
4 if possible from 11/23/2014 to 10/18/2016 and all other primary and secondary treating
5 physicians in this case. These medical records will be necessary in establishing
6 reasonableness of treatment, to rebut Defendant's allegation that medical control was
7 established. A complete medical index from defendants.
- 8 3. The reporting of any medical legal doctors from 11/23/2014 to 10/18/2016 and any and
9 all other medical legal reporting obtained in this case. These records are necessary to
10 substantiate the reasonableness of treatment, to rebut Defendant's allegation that medical
11 control was established, to prove industrial causation, and comply with SB 1160.
- 12 4. Any and all utilization review documentation for physical therapy requested by
13 NATHAN FORD or other primary treating physicians from 11/23/2014 to 10/18/2016.
14 These are required to rebut Defendant's potential alleged utilization review denial of
15 services provided by lien claimant and are included here as they may contain "medical
16 information".
- 17 5. The transcript from the Applicant's deposition, and any other depositions that have taken
18 place. A factual dispute exists regarding the injury and Should the Applicant fail to
19 respond to a subpoena, this (or these) document(s) would be necessary to rebut testimony
20 from Defendant's witnesses, to rebut Defendant's allegation that medical control was
21 established, to prove industrial causation. It is included here in the event it is decided to
22 contain "medical information".
- 23 6. Medical Provider Network noticing and other information as outlined in Labor Code
24 §9767.12 from BERKSHIRE HATHAWAY. These are needed to rebut Defendant's
25 allegation that a duly noticed, properly established MPN was in place, and is included
26 herein as it may contain "medical information", MPN ID # to properly identify MPN for
27 which defendants are relying upon.
- 28 7. A benefits paid printout per Title 8, California Code of Regulations §10607. Title 8,
California Code of Regulations §10607 states "*If a party requests that a defendant*

1 *provide a computer printout of benefits paid...the defendant shall provide the requesting*
2 *party with a current computer printout of benefits paid.”* This is requested in the interest
3 of complete transparency as to the extent of medical treatment, and acceptance or denial
4 of the claim during the case in chief. It is included here in the event it is decided to be
5 “medical information”.

6 8. Lien claimant requires the above documents to meet its burden of proof. According to
7 Labor Code §3202.5 “*All parties and lien claimants shall meet the evidentiary burden of*
8 *proof on all issues by a preponderance of the evidence in order that all parties are*
9 *considered equal before the law.”* Should lien claimant be forced to prove injury or
10 reasonableness of its treatment without the requested documents, it would be indirectly
11 prevented from doing so, resulting in prejudice against it.

12 9. **Lien claimant has made this Petition as specific as possible, based on the**
13 **information available and issues presented by Defendant.** California Civil Procedure
14 §2017.010 states “*...any party may obtain discovery regarding any matter, not*
15 *privileged, that is relevant to the subject matter involved in the pending action...if the*
16 *matter is itself admissible evidence or appears reasonably calculated to lead to the*
17 *discovery of admissible evidence.”* Lien claimant believes the above documents will be
18 or will lead to admissible evidence in this case.

19 10. **In the event that the honorable judge addressing this petition wishes more**
20 **specificity than lien claimants can provide at this time, lien claimant request that a**
21 **meet and confer be ordered so lien claimants and defendants can narrow the issues**
22 **and disclose all evidence available.**

23 11. **Lien Claimant cannot comply with the requirements of SB1160** absent being
24 provided the above information, a denial of due process upon lien claimant will result in
25 irreparable harm (*Beverly Hills multispecialty, Inc. v WCAB (1994) 26Cal.App.4th 789,*
26 *59 Cal Comp Cases 461 [59 CCCA 61].*)

1 CONCLUSION

2

3 For the above stated reasons, lien claimant requests Defendant be ordered to serve the

4 requested documents within 10 days. Defendant may not have disclosed all issues in this case,

5 and further discovery may be needed beyond the above requested documents.

6

7 Dated: 01/~~18~~/2017

Respectfully Submitted

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9

10 _____

11 By: Nora Madrigal
Collections, WSPT NETWORK

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VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF Orange)

I am the representative for West Star Physical Therapy in the above-entitled action. I have read the foregoing NON PHYSICIAN PETITION FOR MEDICAL RECORDS and know its contents. I am the representative for West Star Physical Therapy, a party to this action, and am authorized to make this verification for and on his behalf, and I make this verification for that reason. The matters stated in the foregoing documents are true and my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct at Garden Grove, California, this 01/10/2017.



Nora Madrigal

1 WSPT NETWORK
2 PO Box 6199
3 Garden Grove, CA 92846
4 (714) 827-4822

4 EAMS:
5 WSPT NETWORK GARDEN GROVE
6 ERN # 6860584

7 STATE OF CALIFORNIA
8 DEPARTMENT OF INDUSTRIAL RELATIONS
9 WORKERS' COMPENSATION APPEALS BOARD
10
11

12 ELA MATUTE Applicant,) Case No.: ADJ9788085
13 vs.)
14 PMS PROFESSIONAL MAINTENANCE) ORDER FOR SERVICE OF
15 S; BERKSHIRE HATHAWAY) MEDICAL INFORMATION IN
16 Defendant,) ACCORDANCE WITH LABOR
17) CODE §4903.6(d)
18)
19)

20 It is ordered that the Defendant, BERKSHIRE HATHAWAY, serve medical
21 records as outlined in the Petition By Non-Physician Lien Claimant for Medical
22 Information in accordance with Labor Code § 4903.6(d), dated January 17, 2017 on the
23 Petitioner, WSPT Network.

24 Absent good cause to the contrary, expressed in writing and filed and served on
25 all parties within 20 days of the date of service hereof, this ORDER shall issue.

26 Dated:

27 _____
28 Worker's Compensation Judge

Served on parties on the above date by:

- Uniform Assigned Name WESTSTAR PHYS THERAPY GARDEN GROVE
- EAMS Administrator Name MELISSA KRUEGER
- EAMS Administrator Phone (714) 827-4822
- EAMS Administrator Email melissak@apmi.net

ADJ9788085

PROOF OF SERVICE

1013 a (3) CCP

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is: 12062 VALLEY VIEW ST, STE 200 GARDEN GROVE, CA 92845.

On January 18, 2017 I Served the attached PETITION BY NON-PHYSICIAN LIEN CLAIMANT FOR MEDICAL INFORMATION on the interested parties in said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

HALLETT EMERICK CALABASAS	LAW FIRM	23622 CALABASAS RD STE 251 CALABASAS CA 91302
JOHN JANSEN SANTA ANA	LAW FIRM	2114 N BROADWAY STE 200 SANTA ANA CA 92706
PMS PROFESSIONAL MAINTENANCE SYS	EMPLOYER	4912 NAPLES ST SAN DIEGO CA 92110
TRAVELERS INSURANCE HARTFORD	CLAIMS ADMINISTRATOR	ONE TOWER SQ HARTFORD CT 06183
ELA MATUTE	INJURED WORKER	3635 COLLEGE AVE APT 59 SAN DIEGO CA 92115

I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Garden Grove, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after deposit for mailing in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 01/18/2017 at Garden Grove, California



 Tanya Rincon

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. ADJ9788085

ELA MATUTE,

Applicant,

vs.

**PMS PROFESSIONAL MAINTENANCE
SYSTEM; CYPRESS INSURANCE
COMPANY** administered by
**BERKSHIRE HATHAWAY; TRAVELERS
INSURANCE;**

Defendants.

**ORDER DENYING PETITION FOR
SERVICE OF MEDICAL REPORTS**

The Court is in receipt of the Petition filed on January 18, 2017 by West Star Physical Therapy Network seeking an Order to serve medical documents on a non-physician pursuant to *Labor Code Section 4903.6(d)*. The Petition is denied without prejudice for the following reasons:

Neither WSPT **nor** West Star Physical Therapy **nor** West Star Physical Therapy Network have a lien of record in this case. As of the date of this Order, the **only** liens are from a pharmacy, from the Department of Health in Sacramento and from a San Diego practitioner, Jay Yu.

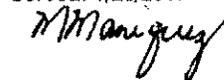
Dated in Santa Ana on January 26, 2017



ANGEL BARNES
WORKERS' COMPENSATION JUDGE

SERVICE ON:
BERKSHIRE HATHAWAY SAN DIEGO, US Mail
DIMACULANGAN ASSOCIATES ORANGE, Email
HALLETT EMERICK CALABASAS, US Mail
WSPT US Mail – PO BOX 6199 GARDEN GROVE CA 92846

Served: 1/26/2017



By: MManiquez

Raymond Chon
Ace Life Inc. dba Ace Translation Services
January 31, 2017

Regarding captioned subject, I ask followings to be considered

1. There is no need to amend labor code section to require that section 4903b declare to include information about the type of service

2. If it should be amended , the declaration form should add new 'H' section so that the provider must select as one option

(H) is a certified interpreter rendering services during medical treatments, test , psychological evaluation , psychotherapy and physical therapy etc or has an expense allowed as a lien under rules adopted by the administrative director

Hope you will reflect my comments on the hearing

Thanks

Patricia M. Lyman, State Certified Interpreter
January 31, 2017

I would like the following concerns regarding SB 1160.

- 1) Interpreters only file liens for *medical treatment* appointments. Reimbursement for medical-legal exams is addressed by way of a petition. Section (G) does not include language for interpreters or language service providers seeking to file a lien for reimbursement for **MEDICAL TREATMENT** appointments.
- 2) Section (G) states "*...a certified interpreter rendering services during a medical-legal examination...*" this excludes language pairs for which no certification exists.
- 3) In its current form SB 1160 requires that interpreters submit medical documentation in order to file a lien and become a lien holder, yet only lien holders are allowed to petition for medical records to obtain this documentation. This makes absolutely no sense.

California is currently one of the few States that provide for the right to **meaningful language access for injured workers** who are limited English proficient, in this current anti-immigrant climate all efforts should be made to keep it that way.

Thank you

WILLIAM F CLARK
ATTORNEY and COUNSELOR AT LAW

February 1, 2017

Workers Compensation Appeals Board
Rules and Regulations Coordinator

Re: SB 1160 (Stats. 2016, ch. 868), which amended Labor Code section 4903.05 to require that section 4903(b) lien claimants file a declaration

Hon. Commissioners:

I recently retired as a Senior Deputy City Attorney. I now represent, pro bono, an interpreting firm attempting to recover fees denied by the claims administrators. Liens are the bane of everyone's existence. It is not the lien, however, but the fact the interpreters are not initially paid.

Noted below, we contend that if there were procedures, authorization and penalties, for interpreter fees, the liens would be eliminated.

The new Declaration is causing many issues as described by the witnesses. Many interpreter liens are denied because the interpreter is not "certified".

1. CERTIFIED vs QUALIFIED

Please note that 4903.05 c 1 G states: "is a *certified interpreter* rendering services...." I believe Labor Code 5811 now expands the definition to be a "*qualified interpreter...*" and as such will allow the hundreds of qualified, not necessarily certified, interpreters to sign the declaration.

Labor Code 5811 b 2 defines qualified.

A qualified interpreter is ...

certified, or deemed certified...Emphasis added

There are few certified interpreters. The regulations require that certified interpreters are used for med-legal proceedings of WCAB Hearings, Depositions, AME exams, QME, unless a certified interpreter is not available.

2. DELAY UNTIL CASE RESOLVED

Many interpreter bills are denied because the medical provider's bill has been denied, not necessarily for liability, but for fee schedule. And even though the medical provider is later paid the interpreter is told to wait until the case is "resolved".

Currently, interpreter liens are put at the end of the very long train -3 to 7 years. or more, and the interpreter must wait for the issue of permanent disability determination to be paid for an initial medical evaluation 7 years earlier.

This could be avoided by a rule that for interpreters resolved means the liability for the underlying service, medical treatment, has been established or admitted. If the doctor is paid so should the interpreter be paid. If not, penalty and interest required.

3. REQUIRE AUTHORIZATION OR ADVICE OF AUTHORIZATION

Interpreters are faced with the conundrum of not knowing the status of the underlying claim, but are challenged by the 18-month statute for filing lien.

Interpreters request authorization without response, and many times receive denial of payment without legal authority simply delaying payment.

There are no requirements that the claim administrators provide the interpreter (or any provider?) with information that the claim/benefit is authorized, or not, for the provider to make a decision to serve without payment.

Liens, interpreters and others, are a major impediment to providing services to the injured worker. Preventing the interpreter from getting paid, 7 years later, is not the solution as ultimately there will not be enough interpreters to serve either the Board or Applicants. We greatly appreciate your efforts to resolve this procedural and benefit crisis.

Respectfully,

William Clark

William Clark, Esq.

Certified Specialist
Workers' Compensation
1975-2015

Matthew Sacks
January 31, 2017

Commissioners,

Thank you for the opportunity to comment on the proposed rulemaking.

Labor Code Section 4903.05 now reads in relevant part, “For liens filed on or after January 1, 2017, the lien shall also be accompanied by an original bill in addition to either the full statement or itemized voucher supporting the lien.”

This new requirement to include an “original bill” will have significant unintended consequences.

I am the EAMS Administrator of a psych clinic that provides treatment to injured workers with claims or body parts (psyche) that have been initially denied. It can be years before compensability is determined or a claim resolves. Up until now, it has been our policy to file liens when we are finished providing treatment (within 18 months) or when a case resolves, *only after* we attempt resolution of our lien.

The possibility of having to spend a full day scanning and individually uploading potentially hundreds of original bills into EAMS has forced us to start filing liens on the first day we are legally allowed to.

The unintended consequences of Labor Code Section 4903.05 requiring all historical original bills are:

- 1) A major increase in the number of liens filed. Providers will file liens as quickly as possible.
- 2) Insurance carriers and their representatives will have outdated and undervalued lien data when checking EAMS for potential lien exposure.

Rosario's Interpreting, Inc.

PO Box 11336

Santa Ana, CA 92711-1336

Telephone: (714) 953-5893

Fax: (714) 953-5863

Email: rpinterpreting@yahoo.com

January 31, 2017

Workers' Compensation Appeals Board
Attention: Annette Gabrielli, Regulations Coordinator
P.O. Box 429459
San Francisco, CA 94142-9459

WCABRules@dir.ca.gov

RECEIVED BY

FEB 2 2017

WORKERS' COMPENSATION
APPEALS BOARD
OFFICE OF THE COMMISSIONERS

Dear Ms. Gabrielli,

I have two concerns regarding the impact SB 1160 will have on me:

- 1.) The only liens interpreters file are for services provided during **MEDICAL TREATMENT** appointments. Payments for interpreting services rendered during a medical-legal examination are pursued thru a petition.

Some language pairs don't have certification. Insurance carriers' preferred vendors who send non-certified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.

I urge you to change section (G) to read **"a qualified interpreter rendering services during a medical treatment examination."**

- 2.) SB 1160 is a catch 22 situation for interpreters: we can't file a lien without having the documentation to support the new declaration, yet we are not allowed to petition the WCAB for medical documentation until we have become lien claimants of record!

Limited English proficient (LEP) injured workers have the right to meaningful language access. Please be kind to your interpreters.

Sincerely,



Rosario Palmer

Rosario's Interpreting Inc.