



California Workers' Compensation Institute

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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