

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations:
Rules of Practice and Procedure of the Workers' Compensation Appeals Board

By its authority under Labor Code sections 5307 and 5307.4 (see also Lab. Code, §§ 133, 5309 and 5708), the Workers' Compensation Appeals Board (WCAB) noticed and held a public hearing and accepted written comments on its proposal to adopt and amend certain Rules of Practice and Procedure (Rules) in Title 8, Division 1, Chapter 4.5, subchapter 2 (§ 10300 et seq.), of the California Code of Regulations. The public hearing on the initially proposed Rules modifications was held on January 4, 2017.

By analogy to Government Code Section 11346.9(b),¹ this FSOR incorporates the Initial Statement of Reasons (ISOR). Accordingly, not all of the provisions of the adopted Rules will be discussed in this FSOR. Instead, we will briefly discuss the oral and written comments we received and address the single modification we made to Rule 10770.7 as a result of the comments received during the public comment period.

At the public hearing on January 4, 2017, the WCAB received comments from four individuals.

Comment

Charles Rondeau commented that medical providers who treat on a lien basis are typically rendering treatment in a case where there is a dispute and pursuant to newly adopted Labor Code section 4903.05(c)(1)(e), those providers will need to document that treatment has been neglected or unreasonably refused. (January 4, 2017 Transcript of Public Hearing (Transcript) p.8:1-6.) However, Mr. Rondeau noted that the “payers are not under any statutory or regulatory obligation to serve providers...with any claims, status, notices like benefit letters.” (Transcript, p. 8:13-18.) Mr. Rondeau asked whether the WCAB or DWC had considered adopting regulations to require payers to serve these documents on providers.

Response

The WCAB Rules of Practice and Procedure are rules for parties to a case. While lien claimants are parties, providers who have not filed a lien are not. Therefore, the WCAB has not considered adopting the rule Mr. Rondeau suggested.

¹ As discussed more thoroughly in its ISOR (at p. 1, fn. 3), the WCAB is not subject to the rulemaking provisions of Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id.* § 11349 et seq.), Article 7 (*id.* § 11349.7 et seq.), and Article 8 (*id.* § 11350 et seq.) of the Administrative Procedure Act (APA), with one exception not relevant here.

Comment

Mr. Rondeau noted that the lien form may be filled out by a proper assignee and queried whether the assignee could sign the declaration. (Transcript, p. 9:3-10.)

Response

In adopting Rules of Practice and Procedure, the WCAB is engaging in rule-making activity rather than exercising its judicial powers. The commenter is directed to Labor Code section 4908.3 which addresses assignments.

Comment

Mr. Rondeau requested clarification on the term “original bill” in the lien form and clarification on how to attach an original bill to the lien. (Transcript, p. 9:16-25, 10:1-7.)

Response

The Division of Workers’ Compensation (DWC) has posted responses to frequently asked questions including examples of documents that may be submitted as an “original bill” at <http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm>.

Comment

Mr. Rondeau also requested clarification on how a billing provider could complete the form if it did not have an NPI number. (Transcript, p.10:9-19.)

Response

The Division of Workers’ Compensation (DWC) has posted responses to frequently asked questions about filing the January 1, 2017 lien form at <http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm>.

Comment

Steve Cattolica, representing the California Society of Industrial Medicine and Surgery, commented that there are no business rules attached to the use of the system and lien claimants need more clarity about terms used on the form such as “original bill.”

Response

The Division of Workers’ Compensation (DWC) has posted responses to frequently asked questions including examples of documents that may be submitted as an “original bill” at <http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm>.

Comment

Mr. Cattolica also commented that at the legislative hearings, it was indicated that these new requirements were instituted for the purpose of data collection, but the commenter is concerned that liens will be disallowed on technical grounds. (Transcript, p. 11:1-23.)

Response

The lien claimant filing a declaration must comply with both Labor Code section 4903.05 and the WCAB Rules of Practice and Procedure related to filing of documents. We have amended Rule 10770.7 to clarify that the WCAB filing rules apply to this form. Rule 10397 addresses rejection of documents subject to a statute of limitations. The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions about filing the January 1, 2017 lien form at <http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm>.

Comment

Mr. Cattolica also commented that the declaration does not address non-certified interpreters. (Transcript, p. 11:24-25, 12:1-4.)

Response

As amended, Labor Code section 4903.05 requires that the declaration include the options that have been included on the lien form and the supplemental lien form. Labor Code section 4903.05(c)(1)(G) allows a lien claimant to declare that he or she 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." DWC rule 9795.1.6 addresses payment of fees to interpreters for medical treatment. The comment addresses the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such is more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally *Agric. Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419–420.)

Comment

Mr. Cattolica also requested that the WCAB work with DWC to draft additional regulations and expressed concern that providers who infrequently file liens will be unable to navigate the filing process.

Response

The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions about filing the January 1, 2017 lien form at <http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm>.

Comment

Pilar Garcia, representing Statewide Interpreters, commented that the new verification requirement does not have an option that can be used for most interpreting liens. (Transcript, p. 13:1-23.) Statewide Interpreters requests authorization before rendering services but frequently those authorizations are denied. The interpreter may not know if an injured worker is treating outside of the MPN. The majority of medical treatment appointments are with non-certified interpreters. There's no provision in the declaration for non-certified interpreters. (Transcript, p. 14.)

Carolina Darond, also representing Statewide Interpreters, commented that they have difficulty obtaining medical reports proving that their interpreters attended an evaluation. (Transcript, p. 15:17-24.) The insurance companies are not accepting the market rate. (Transcript, p. 15:25.) They are turning down requests for service unless they are authorized in writing. Claims adjusters will give a verbal authorization and then require the interpreting service to prove that an authorization was given. (Transcript, p. 16:1-21.)

Pilar Garcia commented that there is no way to file the verification if the doctor is not part of the MPN and the interpreter is not certified. Statewide Interpreters has about 315 interpreters that they might use. Most of them are not certified. SB 863 mandated that interpreters be certified. But there is no certification program in some languages and the tests are time consuming and costly. Another out of state interpreting service is attempting to get a monopoly. (Transcript, p. 17-19.)

Response

As amended, Labor Code section 4903.05 requires that the declaration include the options that have been included on the lien form and the supplemental lien form. Labor Code section 4903.05(c)(1)(G) allows a lien claimant to declare that he or she 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.” DWC rule 9795.1.6 addresses payment of fees to interpreters for medical treatment. The comment addresses the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such is more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally *Agric. Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419–420.)

Below is a table of the written comments we have received and our response to them:

Comment	Response	Commenter
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	The WCAB appreciates the commenter’s inquiry. The language of the regulation states it is applicable to “any section 4903(b) lien that is subject to a filing fee pursuant to section 4903.05[.]” This language tracks the language	1.1 – State Compensation Insurance Fund; Karen Sims, Ass’t Claims Operations Manager

Comment	Response	Commenter
<p>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.</p>	<p>of the statute, which applies to “any lien claim filed before January 1, 2017, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.” The regulation therefore accurately and clearly tracks the statute, which applies to liens subject to a filing fee under Labor Code section 4903.05. To the extent the commenter seeks an interpretation of whether the lien activation fee required by Labor Code section 4903.06 is a “filing fee” for purposes of Labor section 4903.05 or the proposed section 10770.7, such an inquiry seeks interpretation of a statute not subject to this rulemaking, and it would therefore not be appropriate for the WCAB to respond at this time. (See generally <i>South Carolina ex rel. Tindal v. Block</i> (4th Cir. 1983) 717 F.2d 874, 886 (purpose of notice and comment period is to consider and respond to comments directly applicable to the proposed regulatory action).)</p>	
<p>Commenter 2 proposes “minor additions … for purposes of clarification” as follows:</p> <p><u>Any Labor Code</u> section 4903(b) lien that is subject to a filing fee pursuant to <u>Labor Code</u> section 4903.05 and that is filed before January 1, 2017, shall be dismissed <u>with prejudice by operation of law</u> unless, on or before July 1, 2017, the lien claimant electronically files a Supplemental Lien Form and <u>Labor Code section</u> 4903.05(c) Declaration on the form approved by the Appeals Board. <u>The</u></p>	<p>The WCAB appreciates the commenter’s suggestions and input. In the WCAB’s judgment, the proposed changes or additions are not necessary because they in effect restate the language of the Labor Code. Regulations are promulgated to implement and effectuate the purposes of a law, not to replace the statute they implement and effectuate. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.) The language of the Labor Code is binding and applicable without the need for repetition in the text of regulation.</p>	<p>2.1 – California Workers’ Compensation Institute</p>

Comment	Response	Commenter
<p><u>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.</u> 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).</p>	<p>With regard to the proposal to include a reference to sanctions within the rule, the current statutory and regulatory framework adequately addresses the consequences of filing false declarations. The WCAB intends to undertake a reorganization of its Rules of Practice and Procedure with a stated goal of eliminating duplicative rules. The proposed language would not be compatible with that project.</p>	
<p>Commenter proposes a new regulation as follows:</p> <p>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).</p>	<p>The WCAB appreciates the commenter's suggestions and input. In the WCAB's judgment, the new regulation is not necessary because it in effect restates the language of the Labor Code. Regulations are promulgated to implement and effectuate the purposes of a law, not to replace the statute they implement and effectuate. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.) The language of the Labor Code is binding and applicable without the need for a new regulation.</p> <p>With regard to the reference to sanctions within the proposed regulation, the current statutory and regulatory framework adequately addresses the consequences of filing false declarations. The WCAB intends to undertake a reorganization of its Rules of Practice and Procedure with a stated goal of eliminating duplicative rules. The proposed language would not be compatible with that project.</p>	<p>2.2 – California Workers' Compensation Institute</p>
With regard to the	We appreciate the comment. Liens	2.3 – California Workers'

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<p>Supplemental Lien Form:</p> <p>“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 4903.5 Declaration.</p> <p>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-</p>	<p>are filed electronically using an approved e-form. It appears that the commenter may have been reviewing a static mock-up of the lien form. E-forms are available for review at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm.</p>	<p>Compensation Institute</p>

Comment	Response	Commenter
<p>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.</p> <p>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:</p> <p>(F) can show that the expense was incurred for an emergency medical condition, as defined in Health and Safety Code Section 1317.1(b).</p> <p>(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.”</p> <p>With regard to the Notice and Request for Allowance of Lien form:</p> <p>“The revised form correctly includes a new notification that the original bill and an itemized statement justifying</p>		

Comment	Response	Commenter
<p>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.</p> <p>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.”</p>		
<p>“The revised form also includes a section intended to represent the Declaration required by Labor Code</p>	<p>The lien claimant filing a declaration must comply with both Labor Code section 4903.05 and the WCAB Rules of Practice and</p>	<p>2.4 – California Workers’ Compensation Institute</p>

Comment	Response	Commenter
<p>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).”</p>	<p>Procedure related to filing of documents. We have amended Rule 10770.7 to clarify that the WCAB filing rules apply to this form.</p>	
<p>“The only liens interpreters file are for services provided during MEDICAL TREATMENT appointments. Payment for interpreting services rendered during a</p>	<p>The WCAB appreciates the comments. The language used on the form is identical to the statutory language and we are without power to deviate from it.</p>	<p>3.1 – Several state-certified interpreters (Maria Palacio; David Shafer for DFS Interpreting; “Jack”; Sylvia R. Alonso; Sin Tsui; Teco Santi; Pilar Garcia and</p>

Comment	Response	Commenter
<p>medical-legal examination are pursued thru a petition.</p> <p>Some language pairs don't have certification. Insurance carriers' preferred vendors get to send noncertified individuals whenever they want, but I am not allowed to do so even when I can prove no other certified interpreters were available.</p> <p>I urge you to change section (G) to read "a qualified interpreter rendering services during a medical treatment examination.””</p>		Carolina Dangond for Statewide Interpreters Corp.; Vincent Mejia; Cata Gomez; Tonantzin Bolaños; Victoria Torres; Bill Posada for California Interpreters Network; Ruben Cortez; SAI Professional Services; Liz West Interpreting Services; Cornelia M. Harmon, CMI; Julio R. Villaseñor Jr.; Paul Boutin, CMI; Maribel Tossman, CMI; Lorena Ortiz Schneider for Ortiz Schneider Interpreting & Translation; Patricia Lyman; Dolores J. Machichi)
<p>"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."</p>	<p>The WCAB appreciates the time taken by numerous interpreters and interpreting agencies to participate in this process. As amended, Labor Code section 4903.05 requires that the declaration include the options that have been included on the lien form and the supplemental lien form. Labor Code section 4903.05(c)(1)(G) allows a lien claimant to declare that he or she 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." DWC rule 9795.1.6 addresses payment of fees to interpreters for medical treatment.</p>	3.2 – Several state-certified interpreters (Maria Palacio; David Shafer for DFS Interpreting; "Jack"; Sylvia R. Alonso; Sin Tsui; Teco Santi; Pilar Garcia and Carolina Dangond for Statewide Interpreters Corp.; Vincent Mejia; Cata Gomez; Tonantzin Bolaños; Victoria Torres; Bill Posada for California Interpreters Network; Ruben Cortez; SAI Professional Services; Liz West Interpreting Services; Cornelia M. Harmon, CMI; Julio R. Villaseñor Jr.; Paul Boutin, CMI; Maribel Tossman, CMI; Lorena Ortiz Schneider for Ortiz Schneider Interpreting & Translation; Patricia Lyman; Dolores J. Machichi)
<p>"I would like to propose that any time it is mentioned that a lien claimant serve supporting documents to the defense</p>	<p>The WCAB appreciates the commenter's thoughts and input. However, the comments address the statutory requirements of Labor</p>	4.1 – Ginger Volz, hearing representative from Black & Rose LLP

Comment	Response	Commenter
<p>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.</p> <p>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.”</p>	<p>Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)</p>	
<p>“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</p>	<p>The WCAB appreciates the commenter’s thoughts and input. However, the comments address the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with</p>	<p>4.2 – Ginger Volz, hearing representative from Black & Rose LLP</p>

Comment	Response	Commenter
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.”	implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)	
“This section about filing amended liens is confusing. It makes it sound like an amended lien can never be Filed.”	WCAB Rule 10770(c)(2) does provide that amended liens may not be filed. However, this is not new language, nor was it added as part of this rulemaking process. This is already in effect as WCAB Rule 10770(c)(2).	5 – Michelle Thomas, Senior Claims Representative at York Risk Services Group
“Implementation of SB 1160 by ... 10770 needs to be more patient-friendly and less hostile to injured workers’ medical and surgical needs.”	This comment addresses aspects of the legislation that are not the subject of this rulemaking.	6 – Robert L. Weinmann, M.D.
<p>“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.</p> <p>We are also unable to petition the courts to require defense to disclose the information since</p>	The WCAB appreciates the commenter’s suggestions and input. However, the comments address the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)	7 – Ulrick Fong for Rehab Solutions

Comment	Response	Commenter
<p>we're not a party to the case because we haven't filed a lien. Therein lies the paradox.</p> <p>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.</p> <p>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."</p>		
<p>"1. As health plans, it appears that our client's liens still do not require a filing fee and are not subject to independent bill review. Is that correct?</p> <p>2. Will the health plan have to provide the copies of provider bills as submitted to the health plan now?</p> <p>3. What FORM will be used for such health plan reimbursement liens? Please provide FORM identification number."</p>	<p>The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions about the phrase "original bill" at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm.</p>	7 – Barbra Harris, Equian
<p>"Please define "Original Bill."</p> <p>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</p>	<p>The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions including examples of documents that may be submitted as an "original bill" at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm.</p>	8 – David R. Kauss, Ph.D., Southern California Mental Health Associates

Comment	Response	Commenter
<p>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.</p> <p>Also, please define “original bill” for dates of service prior to the mandated use of HCFA 1500 Forms.”</p>		
<p>Request to clarify that Labor Code section 4906(g) requires “BOTH the name and an actual signature – valid e-signature or actual – and not just a stamp or generic machine-generated name of any attorney for a valid lien.”</p>	<p>This comment does not address the current proposed regulations.</p>	<p>9.1 – American Insurance Association</p>
<p>Suggestion “to add 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.”</p>	<p>This comment does not address the current rule-making.</p>	<p>9.2 – American Insurance Association</p>
<p>“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</p>	<p>The Division of Workers’ Compensation (DWC) has posted responses to frequently asked questions including examples of documents that may be submitted as an “original bill” at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm.</p>	<p>10.1 – AdvoCal for the California Society of Industrial Medicine and Surgery, the California Workers’ Compensation Interpreters Association, the California Society of Physical Medicine and Rehabilitation, the California</p>

Comment	Response	Commenter
<p>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?"</p>		<p>Neurology Society, and Maximum Medical, Inc.</p>
<p>"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. ... 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."</p>	<p>The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions including examples of documents that may be submitted as an "original bill" at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm.</p>	<p>10.2 – AdvoCal for the California Society of Industrial Medicine and Surgery, the California Workers' Compensation Interpreters Association, the California Society of Physical Medicine and Rehabilitation, the California Neurology Society, and Maximum Medical, Inc.</p>
<p>"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</p>	<p>The Division of Workers' Compensation (DWC) has posted responses to frequently asked questions about filing the January 1, 2017 lien form at http://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160-FAQs.htm.</p>	<p>10.3 – AdvoCal for the California Society of Industrial Medicine and Surgery, the California Workers' Compensation Interpreters Association, the</p>

Comment	Response	Commenter
<p>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 of determining the status of a claimant's case prior to providing interpreting services for a treatment visit.</p> <p>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."</p>	<p>AB1244/SB1160-FAQs.htm.</p>	<p>California Society of Physical Medicine and Rehabilitation, the California Neurology Society, and Maximum Medical, Inc.</p>
<p>"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.</p>	<p>The WCAB appreciates the commenter's suggestions and input. However, the comments address the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)</p>	<p>11 – Jaquelyn Haley, Workers' Compensation Supervisor</p>

Comment	Response	Commenter
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)."		
The commenter is concerned about lien claimants filing false declarations. The commenter also expresses concern that the declaration may be signed by a collection agent or other person unconnected to the lien claimant, and that the lien claimant will attempt to avoid dismissal by saying it should not be held accountable for the actions of that third party. The commenter proposes the following as section 10770.7: “(a) Any section 4903(b) lien that is subject to a filing fee pursuant to Labor Code section 4903.05 and that is filed on or after January 1, 2017 shall be deemed to be	<p>The WCAB appreciates the time taken by commenter to participate in this process. As the commenter notes, Labor Code section 4903.05 contains explicit requirements for a valid lien claimant declaration.</p> <p>With regard to the proposal to include a reference to sanctions within the rule, the current statutory and regulatory framework adequately addresses the consequences of filing false declarations. The WCAB intends to undertake a reorganization of its Rules of Practice and Procedure with a stated goal of eliminating duplicative rules. The proposed language would not be compatible with that project.</p>	12 – Zenith

Comment	Response	Commenter
<p>dismissed with prejudice by operation of law unless all of the following conditions are met:</p> <p>(1) the original bill is attached;</p> <p>(2) the 4903.05(c) Declaration indicates that one or more of the conditions in Labor Code subsections 4903.05(c)(1)(A) through (G) is applicable to the lien; and</p> <p>(3) The Declaration is signed under penalty of perjury by either the lien owner or its authorized representative.</p> <p>(b) Any 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 4903.05(c) Declaration on the form approved by the Appeals Board, and the following conditions are met:</p> <p>(1) The 4903.05(c) Declaration indicates that one or more of the conditions in Labor Code subsections 4903.05(c)(1)(A) through (G) is applicable to the lien; and</p> <p>(2) The Declaration is signed under penalty of perjury by either the lien owner or its authorized representative.</p> <p>(c) The filing of a false 4903.05(c) Declaration shall be grounds for dismissal of the</p>		

Comment	Response	Commenter
lien with prejudice after notice and may be a basis for sanctions pursuant to section 10561(b)(5)."		
"Lab. Code, § 4903.05(c)(1)(G) refers to certified interpreters, while Lab. Code, § 5811(b)(2) expands the definition to include qualified interpreters. This is resulting in a denial of lien payments. Many interpreters are qualified but not necessarily certified."	As amended, Labor Code section 4903.05 requires that the declaration include the options that have been included on the lien form and the supplemental lien form. Labor Code section 4903.05(c)(1)(G) allows a lien claimant to declare that he or she 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." DWC rule 9795.1.6 addresses payment of fees to interpreters for medical treatment.	13.1 – William F. Clark
"Interpreters are not usually paid until the case is "resolved." Proposal: add a regulation stating "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."	This proposal is outside the scope of this rulemaking.	13.2 – William F. Clark
"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	The proposed additional notice requirements are outside the scope of this rulemaking. As amended, Labor Code section 4903.05 requires that the declaration include the options that have been included on the lien form and the supplemental lien form. Labor Code section 4903.05(c)(1)(G) allows a lien claimant to declare that he or she is "a certified interpreter rendering	13.3 – William F. Clark

Comment	Response	Commenter
<p>delaying payment.</p> <p>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.”</p>	<p>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.” DWC rule 9795.1.6 addresses payment of fees to interpreters for medical treatment.</p>	
<p>“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.</p> <p>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.</p> <p>The unintended consequences of Labor Code Section 4903.05 requiring all historical original bills are:</p> <p>1) A major increase in the number of liens filed. Providers will file liens as quickly as possible.</p> <p>2) Insurance carriers and their</p>	<p>The WCAB appreciates the commenter’s thoughts and input. However, the comments address the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)</p>	14 – Matthew Sacks

Comment	Response	Commenter
representatives will have outdated and undervalued lien data when checking EAMS for potential lien exposure.”		
<p>“Good afternoon:</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>The WCAB appreciates the commenter’s thoughts and input. However, the comments address the statutory requirements of Labor Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)</p>	15 – Irma Gomez

Comment	Response	Commenter
<p>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.</p>		
<p>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.</p>		
<p>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...</p>		
<p>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</p>		

Comment	Response	Commenter
<p>previous changes in the law?</p> <p>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.</p> <p>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.”</p>		
<p>The commenter suggests that insurance carriers should be required to reimburse lien claimants for the cost of the lien filing fee when the lien claimant prevails at trial, in order to incentivize insurance carriers to resolve lien claims.</p>	<p>The WCAB appreciates the comment and suggestion. However, reimbursement of lien fees is governed by Labor Code section 4903.07, which explicitly limits the circumstances in which reimbursement can be ordered. The WCAB cannot depart from or alter the requirements of the statute. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)</p>	<p>16 – Cason White</p>
<p>The commenter suggests there is no need to amend Labor Code section 4903.05, but that if it is amended, a new (H)</p>	<p>The WCAB appreciates the commenter’s thoughts and input. However, the comments address the statutory requirements of Labor</p>	<p>17 – Raymond Chon</p>

Comment	Response	Commenter
option should be added which reads: "(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."	Code section 4903.05, not the content of the proposed regulations, and as such are more appropriately directed to the Legislature. The WCAB is charged with implementing and effectuating the purposes of the law, and cannot depart from or alter its requirements. (See generally <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976) 16 Cal.3d 392, 419–420.)	

Section Amended: 10770.7. Requirement for Liens Filed Before January 1, 2017

The WCAB has made a minor, non-substantive modification to rule 10770.7. In response to several commenters who had questions or concerns regarding the mechanics of filing documents with the WCAB, we added a cross-reference in the rule to Article 4 of the WCAB Rules of Practice and Procedure. That article addresses general filing requirements.

Local Mandates Determination

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

Consideration of Alternatives

The WCAB considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The WCAB has now determined that no alternatives proposed by the regulated public or otherwise considered by the WCAB would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.