

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**REGARDING THE CALIFORNIA LABOR CODE
TITLE 8, CALIFORNIA CODE OF REGULATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5 DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1.8.5 ELECTRONIC DOCUMENT FILING RULES**

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Acting Administrative director of the Division of Workers' Compensation (DWC) finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY

Basis for the Finding of Emergency

- On September 18, 2012, the Governor signed Senate Bill (SB) 863 (Chapter 363) which takes effect on January 1, 2013.
- SB 863 has created substantial changes to how liens are filed within the workers' compensation. Specifically, any liens filed pursuant to Labor Code section 4903(b) or claims of costs must be filed electronically.
- Also, a fee of \$150 will now be required prior to filing for most liens filed after Jan. 1, 2013, and a \$100 activation fee will be required for most liens filed before then, but activated for a lien conference after Jan. 1, 2013. This activation fee will be required to be paid at the time a lien claimant files a declaration of readiness or appears at a lien conference.
- There are also provisions for dismissal of liens by operation of law after Jan. 1, 2014 if no activation fee has been filed, as well as an 18-month statute of limitations for filing liens for services rendered after July 1, 2013 and a 3-year statute of limitations for services provided before then.
- Action is necessary in order to implement, on an emergency basis, the provisions of Labor Code sections 4903, 4903.05, 4903.06, and 4903.07. The regulations

are mandated by Labor Code section 4903.05(c)(5), which provides “The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the filing fee, including emergency regulations as necessary to implement this section,” and Labor Code section 4903.06 (a)(3) which provides “The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the lien activation fee and to implement this section, including emergency regulations, as necessary.”

- Because the statute requires the electronic lien filing payment be made for liens filed on or after Jan. 1, 2013, there is insufficient time to go through the regular rulemaking process.
- Without the implementation of emergency regulations, as of January 1, 2013, medical providers, interpreters, and other providers will refuse to treat or provide services to injured workers because they will have no way to ensure recovery for their fees causing harm to the public peace, health and safety, and general welfare.
- The emergency regulations will provide the procedure for filing liens and filing/activation fees electronically which will allow medical providers and others who provide services to injured workers to recover payment for their services, thus ensuring that injured workers will continue to have access to medical care and other services such as interpreters on and after January 1, 2013.

Background

- The DWC develops regulations to implement, interpret, and make specific the California Labor Code.
- SB 863 was signed into law by Governor Brown on September 18, 2012 to become effective January 1, 2013.
- On October 2, 2012, the DWC held a working group meeting open to the public to obtain input from the stakeholders.
- Draft regulations were posted on the DWC public forum from December 3 through December 7, 2012, to allow for informal public comment.
- A 2011 report prepared by the Commission on Health and Safety and Workers’ Compensation (CHSWC) indicates approximately 350,000 liens were filed in 2010 and over 450,000 were expected in 2011. Medical treatment liens account for more than 60% of the liens filed and 80% of the dollars in dispute.

- A single lien filing ordinarily includes all the claims by one lien claimant in one injured worker's case. For a medical lien, that means one medical provider files one Notice and Request for Allowance of Lien covering all of the billing disputes connected with the treatment of one worker arising out of one injury or several injuries.
- The typical workers' compensation lien is a direct claim against the defendant for a benefit which is not otherwise payable to the injured worker. The rationale is that the lien claimant has furnished medical treatment or other service that the employer was required to provide, so the lien claimant is entitled to payment from the employer. A medical provider must accept the payment allowed by workers' compensation and must not collect from the patient unless the claim turns out to be non-compensable. A lien is the medical provider's vehicle for contesting the employer's determination of the amount payable for medical goods or services. Unlike conventional liens, these are not obligations of the injured worker.
- The predominant type of liens in workers' compensation proceedings are liens for medical treatment. Other types of liens include medical-legal expenses, interpreters, copy services, and attorneys' fees.
- An injured worker may need to obtain medical treatment "on lien" when an employer fails or refuses to furnish treatment. Medical providers treating on lien may not get paid until the employer's liability is admitted or adjudicated, and then they take the risk that an employer may not be found liable and their bills are uncollectible.
- Since SB 863 was enacted in September, DWC has been developing a web-based payment process with a vendor that will accept the electronic payment for liens prior to allowing the lien to be electronically filed.
- The statute also mandates that the liens themselves be file electronically. Therefore it is also necessary that the formerly voluntary electronic filing methods be adopted as emergency regulations.
- Without these emergency regulations, there will be no regulations to implement the requirement to file lines electronically to pay the lien filing fees. If medical providers and other providers such as interpreters are unable to electronically pay and file their liens on or after January 1, 2013, it is likely that they will refuse to treat injured workers until they have a means to file their liens. Otherwise, they will not have a remedy to collect their fees.

- Therefore, employees who are injured after January 1, 2013 will be denied medical care and other services that are necessary to obtain medical treatment for workers' compensation injuries if these emergency regulations are not in effect by January 1, 2103. Additionally, medical and other providers who treat injured workers would not be able to protect their rights to be reimbursed for their services and may lose their rights to ever collect what they are legally entitled to recover.

AUTHORITY AND REFERENCE

The Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 111, 133, 138.2(b), 4903.05, 4903.06 and 5307.3 proposes to add Subchapter 1.8.5. (Articles 1 – 5) of Chapter 4.5, of Title 8 California Code of Regulations, amend section 10205, and 10205.12, and adopt sections 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, and 10208.

INFORMATIVE DIGEST

Summary of Existing Laws

Labor Code section 4903 et seq. of the Labor Code authorizes the Workers' Compensation Appeals Board (WCAB) to determine and allow specified expenses as liens against any sum to be paid as compensation. Labor Code section 138.2(b) authorizes the administrative director to provide the necessary infrastructure, which includes the Electronic Adjudication Management System (EAMS), for the district offices of the WCAB. In fiscal year 2004 to 2005, the Senate Bill 1113 (SB 1113, Stats. 2004, Ch. 208) authorized funds for the Electronic Adjudication Management System (EAMS). EAMS is a computer based system that improved the DWC case management process by creating an electronic filing system for the trial level workers' compensation courts. EAMS replaced the paper file system with electronic-based workers' compensation court technology and supporting infrastructure.

SB 863 added sections 4903.05 and 4903.06. Section 4903.05 describes the filing requirements for a lien, which previously contained in former Labor Code section 4903.1. A lien claimant must still file a lien with the WCAB in the form approved by the WCAB. Section 4903.05(b) requires that liens for medical treatment (under Labor Code section 4903(b)) must be filed electronically using the form approved by the WCAB. Lien claims that are exempted from this obligation include liens for burial expenses, child support and living expenses. Labor Code section 4903.05(b) also includes liens for claim for costs.

Labor Code section 4903.05(c) adds a filing fee for liens filed on or after Jan. 1, 2013. The fee applies to liens under Labor Code section 4903(b), which relates to medical treatment or medical legal expense, or for claims for costs. If a lien is not properly submitted with proof that the filing fee has been paid, it will be deemed invalid and will not preserve or extend the time limit for filing the lien.

A lien claimant is required to pay a \$150 filing fee to DWC before filing a lien. The claimant must include proof that the filing fee is paid. The fee will be collected through an electronic payment system that accepts major credit cards and other forms of electronic payment selected by the administrative director. The administrative director is authorized to contract with a service provider for the processing of electronic payments, but a processing fee must not be absorbed by DWC and must not add to the fee charged to the lien claimant. The filing fee must be deposited into the Workers' Compensation Administrative Revolving Fund. The administrative director must adopt reasonable rules and regulations regarding the procedure for the collection of the fees.

Certain providers are explicitly excluded from payment of the filing fee. They are: (1) a health-care service plan licensed per Health and Safety Code section 1349; (2) a group disability insurer under a policy issued in California per Insurance Code section 10270.5; (3) a self-insured employee welfare benefit plan issued in California as defined by Insurance Code section 10212; (4) a Taft-Hartley health and welfare fund; and (5) a publicly funded program providing medical benefits on a nonindustrial basis.

Labor Code section 4903.06 implements a new activation fee for liens filed before Jan. 1, 2013. The activation fee applies to medical treatment and medical-legal liens under Labor Code 4903(b) and liens for costs. A lien claimant may avoid paying an activation fee only if it provides proof of having paid a filing fee as required by former Labor Code section 4903.05. Otherwise, a lien claimant must file a lien activation fee of \$100 to the DWC on or before Jan. 1, 2014. The activation fee is to be collected electronically. A lien claimant must include a proof of payment of the filing fee or activation fee when it files a declaration of readiness to proceed.

All lien claimants that did not file the DOR and that remain a lien claimant at the time of the lien conference must submit proof of payment of the activation fee at the conference. If the fee has not been paid or no proof of payment is made, the lien shall be dismissed with prejudice. Liens filed before Jan. 1, 2013, for which a filing fee or activation fee has not been paid by Jan. 1, 2014, will be dismissed by operation of law. The same lien claimants who are exempted from the \$150 filing fee are exempt from the activation fee.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

- WCIRB Evaluation of the Cost Impact of Senate Bill 863 updated October 12, 2012.
- The California Commission on Health and Safety and Workers' Compensation Liens Report dated January 5, 2011.

SUMMARY OF PROPOSED REGULATIONS

The Administrative Director adopts and amends administrative regulations governing vouchers. These regulations implement, interpret, and make specific Labor Code sections 4903.05 and 4903.06 as follows:

1. Section 10205. Definitions

- This amended section adds definitions for “cost,” “electronic filing,” “initial lien,” “section 4903(b) lien,” and amends the definitions for [to] “file” and “party.”
- The definitions are added to ensure that the terms meaning, as used in the regulations, will be clear to the regulated public.

2. Section 10205.12 Form and Size Requirements for Filed Documents

- The cross reference in subdivision (b)(4) to the definition of “product deliver units” is corrected to reflect the new lettering (section 10205(dd)).

3. Section 10206. Electronic Document Filing; Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers; Incorporation.

- This section provides that electronic documents (E-forms) shall be filed upon a form approved by the appeals board and shall follow the procedures set forth in the Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers (EAMS E-Form Filing Reference Guide), dated January 1, 2013. The guide is incorporated by reference.
- The EAMS Reference Guide provides that filing electronically requires a login consisting of a user name and password. Upon completion of the required training, new participants to the e-form filing will receive a login which allows them electronic access to EAMS. E-forms are electronic forms that are filled out on the user's computer and filed over the Internet into EAMS. The guide provides the user with a key word and key phrase searchable resource to help

the user achieve as error free and efficient e-filing as possible. The topics include general guidelines, filing procedure, general topics (an alphabetical list of topics such as attachments, body part codes, change of address, document titles, medical records, proof of service, and trial exhibits), selected structured form specifics (how to file structured e-forms) , EAMS help desk and UDQ operator, tips and tricks, troubleshooting and an appendix.

4. Section 10206. 1. Electronic Document Filing; Electronic Adjudication Management System Business Rules for JET Filers; Incorporation.

- This section provides that JET filing shall follow the procedures set forth in the Electronic Adjudication Management System JET File Business Rules and Technical Specifications, Version 4.0, dated January 1, 2013. The document is incorporated by reference.
- The JET File system was created to electronically process forms and minimize or eliminate the need for manual filing. JET Filing reduces the overall volume of processed paper.
- JET filers have three ways to use JET: (1) purchase or rent software from an approved vendor that lets allows them to JET file directly; (2) use a third party filer to transmit on their behalf; or (3) build their own transmission process using the technical specifications. The purpose of the JET File Business Rules and Technical Specifications is to provide JET filing specifications required for both EAMS and submitters' systems. The document includes the JET File business rules and identifies the JET filing technical requirements. This document also contains detailed system design artifacts such as use cases and class diagrams. The document lists the JET file system requirements, the SFTP Bulk filing requirements and technical use cases, the EAMS JET file bulk business rules, xml layout specifications and schema definitions, error codes and messages, JET file system security, guidelines and standards, and appendices.

5. Section 10206.2. Electronic Filing Exemption

- This section provides an exemption from the electronic filing rules for any unrepresented injured employee, any unrepresented dependent of an injured employee, or any unrepresented uninsured employer.

6. Section 10206.3. Time of Filing of Documents

- This section sets forth the rules regarding when an electronically filed document is deemed to have been filed. An electronically transmitted document shall be

deemed to have been received by EAMS when the electronic transmission of the document into EAMS is complete. A document received electronically after 5:00 pm of a court day (i.e., Monday through Friday, except designated State holidays) shall be deemed filed as of the next court day.

- When an e-form is filed electronically, the party filing the document shall verify completion of filing pursuant to the procedures set forth in the EAMS E-Form Filing Reference Guide, Version 2.0.
- When a document is filed using JET filing, the party filing the document shall verify completion of filing pursuant to the EAMS JET File Business Rules and Technical Specifications, Version 4.0.

7. Section 10206.4. Uniform Assigned Names

- This section provides that uniform assigned names (UAN) shall be created and assigned for claims administrators, representatives and lien claimant organizations by the DWC Central Registration Unit. The Central Registration Unit shall maintain the website list of uniform names and addresses of claims administrators' offices, representatives' offices, and lien claimant organization.

8. Section 10206.5. Form and Size Requirements for Electronic Filed Documents.

- This section sets forth the standards for filing an electronic document:
 - (1) All electronically filed documents shall be submitted by using the appropriate e-form or XML file.
 - (2) Any document that is required to accompany an electronic form shall be filed as an attachment to the electronic form and shall be submitted in one of the following four file formats: "PDF/A1-a (Portable Document Format)," "DOC (.doc" Microsoft Word document)," "XLS" (.xls" Microsoft Excel worksheet sheet)," or "TIFF (.tif or .tiff" Tagged Image File Format)." Filing using the "PDF/A1-a" is preferred.
 - (3) With the exception of electronic forms and required attachments, no embedded data shall be allowed in electronically filed documents.
 - (4) The filing party shall take all reasonable steps to ensure that the filing does not contain computer code, including viruses that might be harmful to EAMS or to other users of EAMS. Any electronically submitted document that is determined

to contain a virus or other potentially harmful computer code may not be processed and may be deleted.

(5) If it is necessary to attach a document to an e-form, the filing party shall verify the readability of the scanned document before submitting it to EAMS.

- The section also provides that service of any document that has been filed electronically shall include a copy of the entire e-form, all attachments and EAMS cover sheet. The proof of service for any electronically filed document shall identify the serving office's EAMS administrator and provide that individual's contact information.

9. Section 10206.14. DWC E-Forms and DWC Unstructured Forms.

- This section provides that authorized e-form filers shall use the e-forms from the external user home page. E-forms filing may be obtained from the DWC website at <http://www.dir.ca.gov/dwc/forms.html#EAMSForms>.

10. Section 10206.15. DWC JET Forms.

- This section provides that authorized JET filers shall file forms using the EAMS JET File Business Rules and Technical Specifications, Version 4.0. JET filing forms may be obtained from the DWC website at <http://www.dir.ca.gov/dwc/forms.html>.

11. Section 10207. Initial Lien Filing Fees

- This section provides what type of liens must be filed with the appeals board in writing or electronically using a form approved by the appeals board. It also states which type of liens must pay the initial filing fee. The lien must be accompanied by a proof of service and any other documents required by the appeals board.
- Unless exempt pursuant to Labor Code section 4903.06(b), prior to or at the filing of an initial lien pursuant to Labor Code section 4903(b), the lien claimant shall submit a filing fee in the amount of one hundred fifty dollars (\$150) to the DWC, using a form approved by the appeals board. A filing fee is required for each case in which the lien is filed; however, where one or more liens or one or more costs filed as a lien is filed in more than one case involving the same injured worker and same service or services by the same lien claimant, only one filing fee needs to be paid.
- The filing fee shall be collected by the Administrative Director.

- E-Forms filers shall pay the initial lien filing fee following with the procedures set forth in the EAMS E-Form Filing Reference Guide.
- JET Filers shall pay the initial lien filing fee following the procedures set forth in the EAMS JET File Business Rules and Technical Specifications, Version 4.0.
- If the initial section 4903(b) lien filing fee has been previously paid, the lien claimant shall submit written documentation of confirmation of payment when filing the Declaration of Readiness to Proceed for a lien conference.
- When filing an initial lien, a lien claimant that claims that a filing fee is not required or that a lien filed under Labor Code section 4903(b) is exempt from the filing fee shall so indicate that status on the lien form.
- If no application exists for the employee at the time of the initial section 4903(b) lien filing, the lien claimant shall file any necessary application(s) and duty to investigate verification pursuant to section 10770.5. In such cases, the ADJ case number shall be assigned by the appeals board. The lien claimant will receive a Notice of Application assigning a case number. The lien claimant may thereafter file the initial lien claim or claim of cost filed as a lien accompanied with the filing fee required by Labor Code section 4903.05 or confirmation of payment.
- For an initial lien pursuant to Labor Code section 4903(b) that is not exempt pursuant to Labor Code section 4903.06(b) confirmation of payment shall be filed with the Declaration of Readiness to Proceed for a lien conference.
- The claims of two or more providers of goods or services shall not be merged into a single section 4903(b) lien.
- When a lien claimant files liens or claims of costs filed as a lien in more than one case at the same time, the filing fee or fees may be paid in a single transaction following the instructions set forth in the EAMS E-Form Filing Reference Guide or the EAMS JET File Business Rules and Technical Specifications, Version 4.0.
- A section 4903(b) lien or claims of costs filed as a lien submitted for filing on or after January 1, 2013 that does not comply with the requirements of this section shall be invalid, even if lodged with the appeals board, and shall not operate to preserve or toll any time limit for filing of the lien.
- Any section 4903(b) lien or claims of costs filed as a lien filed for goods or services that are not the proper subject of a lien may be dismissed upon request of a party by verified petition or on the appeals board's own motion. If the section

4903(b) lien or claim of costs filed as a lien is dismissed, the lien claimant will not be entitled to reimbursement of the filing fee.

- Unless exempt pursuant to Labor Code section 4903.06(b), no initial section 4903(b) lien or claim of costs filed as a lien shall be accepted for filing on or after the effective date of these regulations unless accompanied by full payment for the filing fee required by Labor Code section 4903.05. Until receipt of proper payment or confirmation of payment, the lien shall not be deemed to have been received or filed for any purpose.
- When the attorney for the employee or dependent or any assignee of the lien claimant files the initial medical costs, that filing shall be deemed to have been made by an agent for the medical provider and payment of the filing fee required by Labor Code section 4903.05 shall be required of the filing party as if the lien had been filed directly by the lien claimant.

12. Section 10208. Lien Activation Fees

- This section sets forth what liens are subject to the \$100 lien activation fees and how the payment is made. It also clarifies which lien claimants are exempt from the payment and which lien claimants are not required to pay the lien activation fee.
- Subdivision (b) clarifies that lien claimants of previously consolidated cases of liens or costs that were filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee in the sum of one hundred dollars (\$100.00) for each injured worker. Payment shall be made at or before the lien conference, but no later than January 1, 2014.
- Subdivision (c) provides that the lien activation fee shall be collected by the Administrative Director. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund and applied for the purposes of that fund.
- E-Forms filers shall pay the lien activation fee following the procedures set forth in the EAMS E-Form Filing Reference Guide, Version 1.0.
- JET filers shall pay the lien activation fee following the procedures set forth in the EAMS JET File Business Rules and Technical Specifications, Version 4.0.
- If the activation fee for a section 4903(b) lien filed prior to January 1, 2013 or the cost filed as a lien prior to January 1, 2013 has been previously paid, the lien

claimant shall submit confirmation of payment with the Declaration of Readiness to Proceed for a lien conference.

- All lien claimants that are required to pay an activation fee pursuant to this article that did not file the Declaration of Readiness to Proceed for a lien conference and remain a lien claimant of record at the time of a lien conference or consolidated lien conference shall submit confirmation of payment of the lien activation fee at the lien conference.

DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Physicians, clinics, hospitals, pharmacies and other providers of medical and ancillary services to injured workers and who have fee disputes with the workers' employers or insurers will be impacted by the statutory requirement to pay a filing fee or activation fee before they pursue a lien for the disputed amount.

The Department of Industrial Relations, Division of Workers' Compensation has made an initial determination that the adoption of these regulations may have significant, statewide adverse economic impact directly affecting business. The Division of Workers' compensation has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submission may include the following considerations: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to business; (ii) Consolidation or simplification or compliance and reporting requirements for businesses; (iii) The use of performance standards rather than prescriptive standards; (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POLICY STATEMENT OVERVIEW

The objective of the proposed emergency regulations is to implement the requirement that certain lien claimants must electronically file their liens and pay for either a lien filing fee or lien activation fee as mandated by Labor Code sections 4903.05 and 4903.06. A 2011 report prepared by the Commission on Health and Safety and Workers' Compensation indicates approximately 350,000 liens were filed in 2010 and over 450,000 were expected in 2011. Medical treatment liens account for more than 60% of the liens filed and 80% of the dollars in dispute. Each lien adds an average of \$400 to \$1000 of loss adjustment expense to a workers' compensation claim, according to estimates by Workers' Compensation Insurance Rating Bureau of California (WCIRB) and CHSWC, respectively. Collectively they add over \$256 million to \$640 million of frictional costs to the workers' compensation system. The reduction in liens, particularly

nuisance liens that are not worth the payment of a \$150 filing fee, is expected to save California employers and insurers from \$106 million to \$743 million annually (including settlement costs). The requirement that most liens must be filed electronically will also reduce system costs.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

NONE

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department of Industrial Relations, Division of Workers' Compensation has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: NONE
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: NONE
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE
- D. Other nondiscretionary cost or savings imposed on local agencies: NONE
- E. Cost or savings in federal funding to the state: NONE

**STATEMENT OF CONFIRMATION OF
MAILING OF FIVE-DAY EMERGENCY NOTICE
(Title 1, CCR section 50(a)(5)(A))**

The Division of Workers' Compensation sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).