



California Workers' Compensation Institute
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December 7, 2012

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

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation, Legal Unit
Post Office Box 420603
San Francisco, CA 94142

RE: Lien Filing Fees -- CCR Sections 10205 -- 10208

Dear Ms. Gray:

This commentary on the draft regulations for the Lien Filing Fees is presented on behalf of members of the California Workers' Compensation Institute. Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$36 B of annual payroll (20% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Farmers Insurance Group, Fireman's Fund Insurance Company, The Hartford, Insurance Company of the West, Liberty Mutual Group, Meadowbrook Insurance Group, Pacific Compensation Insurance Company, Preferred Employers Insurance Company, SeaBright Insurance Company, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City of Santa Ana, City of Santa Monica, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Foundation Health Plan, Inc., Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

Recommended changes are indicated by underscore and ~~strikeout~~.

Introduction

The Division has produced a set of straightforward regulations that elucidate the essential changes set forth in the statute which regard to the process for lien claimants to pay the fees set forth in the statute. The statute also establishes a clear statute of limitations, procedures for prosecuting liens, and limiting the evidentiary burden to relevant medical records. Regulations relating to these additional statutory provisions must come from the WCAB and our comments are, therefore, incomplete.

The Institute generally supports the comments submitted by the California Chamber of Commerce and the California Coalition on Workers' Compensation (CCWC); and by the American Insurance Association (AIA) on the draft regulations. In addition, the Institute offers the following recommendations.

Recommendation -- § 10205. Definitions

(q) "~~Initial~~ lien" means any Labor Code section 4903(b) lien filed in a case on or after the effective date of these regulations by a lien claimant who has not previously filed a lien in the same case.

§ 10207 -- ~~Initial~~ Lien Filing Fees

The reference to the "initial filing fee" is used throughout section 10207 in subdivisions (b), (c), (d), (e), (f), (g), (h), (m), and (n) and should be deleted.

Discussion

The qualifier "initial" should be eliminated from this section because it is misleading and unnecessary. "Initial" means the first or the original filing fee and that connotes a single payment and the notion idea that after an initial filing fee the lien claimant may file additional liens without paying a fee. The statute is clear that the lien filing fee applies to "any" and "all" liens filed after the effective date.

SB 863 SEC. 63. Section 4903.05 is added to the Labor Code, to read:

4903.05. (b) Any lien claim for expenses under subdivision (b) of Section 4903 or for claims of costs shall be filed with the appeals board electronically using the form approved by the appeals board. The lien shall be accompanied by a proof of service and any other documents that may be required by the appeals board.

The service requirements for Section 4603.2 are not modified by this section.

(c) All liens filed on or after January 1, 2013, for expenses under subdivision (b) of Section 4903 or for claims of costs shall be subject to a filing fee as provided by this subdivision.

(1) The lien claimant shall pay a filing fee of one hundred fifty dollars (\$150) to the Division of Workers' Compensation prior to filing a lien ...

Recommendation -- § 10207 -- Initial Lien Filing Fees

~~(e) 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.~~

Discussion

This subdivision should be deleted as it has no applicability to new liens filed after January 1, 2013 and the requirement is stated in section 10208(a)(1)(l) for proof of payment for the activation fee.

Recommendation

(aa) "Section 4903(b) lien" means the medical treatment costs incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with section 4600), consistent with Labor Code section 4903(b). A section 4903(b) lien includes, but is not limited to: ...

Add: Additional subdivisions to include copy service fees and home health care pursuant to Labor Code section 4600.

Recommendation -- § 10208. Lien Activation Fees

A lien activation fee is required for each lien filed prior to January 1, 2013, and for each cost filed as a lien prior to January 1, 2013, ~~; however, where one or more liens or one or more costs filed as lien is filed in one or more cases involving the same injured worker and same service or services by the same lien claimant, only one lien activation fee is required.~~

Discussion

While the AD is attempting to limit the payment of filing fees to costs involving the same injured worker and same service or services, multiple, duplicate liens would continue to clog the system. Without this clause the lien claimants will either pay a fee for every lien filed, as the statute dictates, or they will withdraw every duplicate lien to avoid paying unnecessary additional fees.

SEC. 64. Section 4903.06 is added to the Labor Code, to read:

4903.06. (a) Any lien filed pursuant to subdivision (b) of section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee unless the lien claimant provides proof of

having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.

(1) The lien claimant shall pay a lien activation fee of one hundred dollars (\$100) to the Division of Workers' Compensation on or before January 1, 2014 ...

Thank you for considering our testimony. Please contact me if further clarification is needed.

Sincerely,

Michael McClain
General Counsel

MMc/pm

cc: Destie Overpeck, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members
CWCI Return to Work Group