CHANGES TO CALIFORNIA WORKERS' COMPENSATION LIEN PROCEDURES
by Matthew Bowden

With the advent of SB863, there have been multiple changes to the manner in which a lien is adjudicated. This article will attempt to address the three main changes. I will discuss the changes to the statute of limitations to file a lien, the lien claim filing fees, as well as independent bill review.

Statute of Limitations

Under Labor Code §4903.5, a lien claimant for medical treatment has a certain time limit to file their lien, otherwise it is barred. The original statute before SB863 provided three timelines within which the lien claimant could file. Under SB863, one of these timelines has been changed.

The unchanged portions of Labor Code §4903 provide a deadline for a lien to be filed within five years of the original date of injury, or six months from the entering of a final judgment or award. The third prong originally read, "in effect one year from the last date of service". This third prong has been changed to, "after three years from the day the services were provided if the services were before July 1, 2013". Any services provided after July 1, 2013 must be filed no later than eighteen months from the date of service.

Old Liens

SB863 has made additional revisions to Labor Code section 4904(a) and Labor Code section 4903.1(b). These sections used to provide the defendant with the obligation to file a lien where they have knowledge of the alleged debt. This operation of law allowed lien claimants to argue against the application of the statute of limitations, when the provider had knowledge of the potential lien.

These statutes have been revised under SB863, which removes this affirmative duty to file the lien. As I will discuss further on, medical providers now have to go through the second review process followed by the independent bill review process. They may not rely on partial payments or failure to serve a Compromise and Release to relieve them of a failure to timely file a lien.

Filing Fees

In order to comply with SB863, the Department of Industrial Relations passed emergency regulations, which can be found at www.dir.ca.gov. These regulations provide that any lien filed pursuant to Labor Code section 4903(b), and filed prior to January 1, 2013, must be activated by the payment of a $100.00 filing fee. These same regulations go on to state that any lien filed after January 1, 2013 must be followed with a $150.00 filing fee. Compliance with the payment of this filing fee can be determined by visiting the Electronic Adjudication Management System "EAMS" website at https://EAMS.dwc.ca.gov.

A lien claimant must provide proof of payment of these lien activation fees at the time of a lien conference. Failure to provide proof of payment can result in dismissal of that lien.

There have been indications that workers' compensation judges have already begun to dismiss liens for this reason.

In the event that a lien claimant fails to pay the activation fee by January 1, 2014, that lien will automatically be dismissed by operation of law.

Second Review of Medical Treatment Bills

Under the emergency regulations, Labor Code section 9792.5 indicates that if the provider disputes the amount of payments made by the claims administrator on a bill for medical treatment services rendered on or after January 1, 2013, and submitted pursuant to Labor Code section 4603.2, or Labor Code section 4603.4, or billing for a medical-legal expenses incurred on or after January 1, 2013, submitted pursuant to Labor Code section 4622, the provider may request the claims administrator to conduct a second review of the billing.

This second review must be requested within 90 days of the date of service of the Explanation of Review, provided by the claims administrator, in conjunction with the payment, adjustment, or denial of the initially submitted bill, as long as a proof of service accompanies the Explanation of Review. This second review must also be requested within 90 days of the date of service of an order made by the Workers' Compensation Appeals Board that resolves any threshold issue precluding a provider's right to receive compensation for the submitted bills.

In a case where the dispute is only regarding the amounts paid, and if the second review is not requested within the 90-day time limit, the provider is

barred from seeking reimbursement from the claims administrator, or the injured worker.

A claims administrator has 14 days from the receipt of a request for a second review to respond with a final bill determination for all bills in dispute. Failure to respond within this time period will likely lead to liability for the full disputed amount, as well as a 15% penalty, under California Code of Regulations section 9792.5.5(f)(2).

Independent Bill Review

Under Labor Code section 9792.5.7, if a provider wishes to further contest the disputed amounts, after the receipt of a final determination from a second review, the provider shall request an independent bill review.

The independent bill review shall be conducted only to address disputes regarding the amount of payments owed, and shall be limited to the services billed by a single provider, involving one injured employee, one claims administrator, one date of service, and one billing code under the applicable fee schedule.

The request for an independent bill review must be made within 30 days of the final determination under a second review; the date of resolution to favor the provider of any issue of contested liability; the date of service of any order of the Workers' Compensation Appeals Board resolving in favor of the provider on any threshold issues precluding the provider from receiving compensation for the medical treatment.

The independent bill review request is limited to one provider, one injured employee, one claims administrator, one date of service, and one billing code under the applicable fee schedule. A provider may request to combine multiple dates of service if there are common questions of law or fact.(Labor Code section 9792.5.12)

Additionally, providers may request the combination of multiple billing codes in the same code section. The independent bill review applies to liens falling under the official medical fee schedule, as well as contracts between the parties. In a case where neither of these apply, there is a question as to whether an independent bill review would review these types of lien. At this time, this will default back to the Workers' Compensation Appeals Board judges.