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Options

# Implementing Lien Provisions in SB 1160 Not a Simple Task, Providers Say

By **Greg Jones** State: California Topic: Top - 927 views - Average time spent on item: 10 minutes  
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Implementing the seemingly straightforward lien provisions in Senate Bill 1160 is not as easy as it may first appear and could lead to more litigation if not done correctly, service providers say.



Steve Cattolica

While some are asking for more guidance on the types of documents that must be included with all liens filed since January, interpreters are saying they've been effectively cut off from filing liens under the new law.

**SB 1160**, by Sen. Tony Mendoza, D-Artesia, requires all liens filed after Jan. 1 to include an original bill as well as either a full statement or itemized voucher supporting the lien.

But there is no statutory or regulatory definition of what is considered an "original bill," "full statement" or "itemized voucher." And the terms used in the Labor Code are singular.

Steve Cattolica, director of government relations for the California Society of Industrial Medicine and Surgery, said the requirement is overly broad and uses ill-defined terminology.

"What looks like plain English, isn't," he said. "It's open to some interpretation."

For example, there is no way to ferret out from the statutory language what providers should do when the original bill covers multiple dates of service, he said. And, it's not clear whether an itemized original bill would pull double duty and satisfy the requirements to include a bill and an itemized voucher.

Furthermore, lien claimants can attach only one document to liens, Cattolica said. Presumably, that means a provider would have to pull together the required documents and save them in a single PDF. But there are no rules saying how to handle situations where a PDF is too large to attach and the lien can't be filed.

"It's just not procedurally fleshed out," Cattolica said.

Introducing new terminology and new requirements made the lien filing process more complicated, he said. And a lack of guidance on how to interpret the new requirements could lead to additional litigation and increase frictional costs.

In written testimony on rules that the Workers' Compensation Appeals Board proposed to implement provisions in SB 1160, Cattolica asked the board to work with the Division of Workers' Compensation to flesh out exactly what now is required when filing a lien.

Without better guidance, vagaries in the law could allow defendants to argue that liens were not properly filed, Cattolica said. And it would fall to judges throughout the state to determine on a case-by-case basis whether a lien claimant complied with the filing rules.

"It is unreasonable to expect that the diverse population of legitimate California lien claimants and employers, in the absence of appropriate and sufficient guidance, will be able to define and uniformly apply all of these new functional terms and data elements," Cattolica wrote. "The inevitable result will be controversy, unnecessary litigation and increased frictional costs."

DaisyBill pointed to another question about original bills in a post to its blog.

Although the DWC provides specific requirements regarding appropriate billing forms in its Medical Billing and Payment Guide, that applies only to medical treatment. There is no guidance on appropriate forms for medical-legal billing or invoices from copy services or interpreters, DaisyBill co-founder Catherine Montgomery writes.

The form prescribed in the DWC billing guide should be used for medical treatment liens. Because standard practice is to use the U.S. Centers for Medicare and Medicaid Services' health insurance claim form, CMS-1500, for medical-legal bills, that's also the bill providers should use for med-legal liens.

"The correct course of action for interpreters and copy services remains unclear," Montgomery said.

Interpreters, however, may have to overcome larger obstacles to file liens.

In addition to requiring an original bill and itemized statement, SB 1160 also requires lien claimants to declare under penalty of perjury that they satisfy one of seven criteria making them eligible to file a lien in the first place.

The declaration must be included with all liens filed since Jan. 1. For liens filed between Jan. 1, 2013, and Dec. 31, 2016, the declaration must be filed by July 1. Any lien not accompanied by the mandated declaration will be dismissed by operation of law.

Rules proposed by the WCAB would implement the automatic dismissal provision for pre-2017 liens.

Only two of the eligibility criteria apply to interpreters. One is irrelevant and the other is currently difficult to satisfy, according to Lorena Ortiz Schneider, owner of Ortiz Schneider Interpreting & Translation in Santa Barbara and a board member for the California Workers' Compensation Interpreters Association.

The first condition is that the lien is for services provided by a certified interpreter in a med-legal setting. The second is the catch-all category for cases in which the provider has documentation that the employer refused to authorize services or treatment.

Ortiz Schneider said interpreters are allowed to file petitions for costs, rather than liens, to collect on unpaid bills for services provided during a medical-legal exam, so that condition in SB 1160 is of little use.

And even if it were, it would benefit only interpreters serving people who speak the eight languages for which administrative hearing and medical interpreter certification is available. Anyone interpreting for a person who speaks one of the non-certified languages, even in a medical-legal setting, could not say he or she was certified in that language.

As a result, non-certified interpreters filing liens for med-legal, and all interpreters filing liens for service provided at routine office visits, will be forced to say they provided services that were denied by the employer.

But obtaining documentation showing that treatment was neglected or refused is difficult for interpreters, Ortiz Schneider said. Interpreters can't petition administrative law judges to obtain case records they need to file a lien until they're a party to the case. But they can't become a party to the case until they file a lien, she said.

"I risk being accused of fraud or perjury if I sign the declaration because I can't get records from a doctor's office," she said. "I can't get those unless I petition the court, and I can't petition the court until I'm a lien claimant."

It's not just interpreters who are struggling with the same catch-22. It's all non-physician service providers.

Comments submitted to the WCAB include a copy of a decision denying a petition from a physical therapy firm seeking to obtain medical records.

West Star Physical Therapy Network **petitioned the district office** in Santa Ana on Jan. 17 to get records it said were needed to file a valid lien under the requirements of SB 1160.

Workers' Compensation Judge Angel Barnes on Jan. 26 **denied the petition** because West Star has not filed a lien in the case.

Irma Gomez, a collection manager for West Star, said in her written comments the company has been unable to file liens in January because claims adjusters won't hand over case records.

The WCAB on Jan. 31 closed the comment period on its proposed rules. The board hasn't said yet whether it plans to revise the regulations or go forward with the rules as proposed.

Proposed rules, an initial statement of reasons and public comments are [here](#).

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