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Interpreters File Suit Against SB 1160 Declaration Provision

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Less than a week after the Workers' Compensation Appeals Board announced plans to enforce a statute dismissing old liens unaccompanied by a declaration of eligibility by July 1, a group of translators and interpreters has sued to challenge that statute.



Lorena Ortiz Schneider

The group includes the California Workers' Compensation Interpreters Association, Ortiz Schneider Interpreting and Translation, and Statewide Interpreters Corp. The [suit](#) was filed Saturday in the California Court of Appeal for the First Appellate District by the same Colorado firm that unsuccessfully challenged Senate Bill 863's lien activation fee provisions in the Angelotti Chiropractic case.

This time, attorneys will fight a provision of last year's Senate Bill 1160. Originally intended to improve the utilization review system, the bill added the so-called "declaration provision" in an amendment shortly before the end of the session, amid protest by providers and interpreters.

The provision requires stakeholders to submit a declaration of eligibility form with each lien. The form outlines seven acceptable premises for liens. Lien claimants must sign the form and tick a box to indicate their lien qualifies for payment.

All liens filed on or after Jan. 1 must be accompanied by the declaration. Liens filed between Jan. 1, 2013, and the end of 2016 will be dismissed if the declaration isn't submitted by July 1.

In the lawsuit, interpreters argue they would be required to perjure themselves by signing the declaration the way it is currently worded, but their liens are legitimate.

"While characterized by the state as a benign data-collection measure, in reality the declaration provision makes it impossible for a wide range of providers with legitimate lien claims expressly allowed by law to submit their claims without

the risk of being accused of filing a false declaration, because in many cases they cannot check any of the specified seven boxes on the declaration form," attorneys for the interpreters wrote.

Namely, the boxes exclude interpretation performed at medical treatment appointments. The boxes include interpretation performed at medical-legal appointments, but interpreters generally don't use liens to pursue payment for those services, interpreter Lorena Ortiz Schneider told WorkCompCentral. Ortiz Schneider is one of the plaintiffs in the lawsuit.

"The most troubling aspect of it is it doesn't allow us to file liens for the only reason we file liens: when we provide interpretation services at medical treatment appointments," Ortiz Schneider said. "It only allows for liens to be filed for medical-legal, and the problem with that is we don't use liens when we want to pursue payment for medical-legal. Those are considered costs. If I don't get paid by the carrier, then I don't file a lien, I petition the court."

Interpreters, providers and attorneys say they raised concerns about the language of SB 1160's lien provisions before its passage. Mona Nemat, an attorney with Brissman and Nemat in Corona, called the declaration requirement "not thought through." She said the issue of liens for medical treatment services being excluded from the declaration form's list of legitimate liens "was raised in numerous meetings with staffers before the bill went to the Assembly Insurance Committee."

But the bill's sponsor, Sen. Tony Mendoza, D-Artesia, said he never intended to exclude legitimate liens. He reiterated that intention when reached through a spokesman by email on Monday.

"I am currently reviewing the brief, but I remain committed to ensuring that all lawful and legitimate lien holders receive the payments they are owed," Mendoza said. He added that the issue was one of concern to him, and he would be looking into it.

The statement echoed earlier comments Mendoza made to the tune of ensuring all legal lienholders get paid. In August, he wrote, "It is not my intent to in any way abridge or alter the existing ability of lien claimants to file lawful and legitimate liens" [in a letter published in the Senate Journal](#). He also testified that month that the Department of Industrial Relations would have some wiggle room when it came to enforcing the dismissal date for old liens.

"DIR will not be pushing this date really hard if it's going to lead to some unlawful taking of their income or whatever liens they might have," he said then. "We'll be working with them to make sure that doesn't happen."

On Feb. 28, WCAB gave notice that it adopted rules to implement the SB 1160 provision to dismiss old liens that don't include an attached declaration of eligibility. Any lien filed before Jan. 1, 2017, that was subject to a filing fee must include the "Supplemental Lien Form and 4903.05(c) Declaration" on or before July 1, the rules state. The rules go into effect March 26.

Steve Cattolica, director of government relations for the California Society of Industrial Medicine and Surgery, [said last week](#) that he hoped WCAB and the Division of Workers' Compensation could collaborate to address some of the concerns stakeholders had brought up about liens in the rule-making process.

WCAB, though, said in its rule-making materials that statutory concerns were "more appropriately directed to the Legislature."

Cattolica said last week that he understood SB 1160's statutory language, which he said he did not consider "well thought out," limits WCAB somewhat. But he hoped the board would take into account that Mendoza had wanted to give it some leeway to allow stakeholders to collect upon all legitimate liens.

"Whether the WCAB was empowered to change anything or not, at least based on what we heard, the author's intent was not to allow this to happen," Cattolica said.

Cattolica's organization, CSIMS, had [co-signed a letter](#) to Gov. Jerry Brown in September opposing SB 1160's lien provisions.

"SB 1160 requires the holders of more than 1.2 million current liens with a total value of about \$11 billion to prepare and file declarations of eligibility before July 1, 2017; otherwise the liens will be extinguished by operation of law," the letter read. "This unreasonably short deadline ... could lead to the unwarranted extinction of billions of dollars worth of liens held by

providers who already (1) provided valuable and medically necessary goods and services, and (2) paid either a \$100 lien activation fee or a \$150 lien filing fee to preserve their liens."

Ortiz Schneider said she did not know the value of the outstanding liens of her organization. But it would affect her cash flow "considerably," she said.

Her issues with the lien system for interpretation services in workers' compensation run deep, she said. In the criminal courts, interpreters are paid whether the client they worked for wins or not. In workers' compensation, that is not the case. Interpreters who help out during medical treatment appointments are paid only if their client wins his workers' compensation case.

"I think this should be taken out of the lien bucket altogether, and payments should be dispensed as they are in other departments of the government," Ortiz Schneider said. "The DMV hires interpreters, the Social Security Administration hires interpreters, and they pay them for their services. They don't have to go around and around and around with adjusting agencies and fight for payment. They get hired by these government departments, and they get paid."

The lawsuit challenges the lien system only to the extent of arguing that SB 1160's declaration provision is unconstitutional. The suit argues that the provision violates due process and the interpreters' right to petition the court.

But the Denver law firm that filed the lawsuit, Bartlit Beck Heran Palenchar & Scott, [filed another challenge back in February](#) against SB 1160. That lawsuit challenges provisions of SB 1160 and Assembly Bill 1244 requiring the DWC to suspend providers for past convictions, stay liens if a charges are filed against a provider and hold a special lien proceeding if a provider is convicted, during which the burden of proof is on the provider to demonstrate that his or her liens were not the result of fraud.

WorkCompCentral Deputy Editor Greg Jones contributed to this report.