

LIEN SCENE

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BOEHM & ASSOCIATES

HEALTHCARE RECOVERY SPECIALISTS

BOEHM LODGES OBJECTION TO PROPOSED LEGISLATIVE AMENDMENT THAT WOULD EXPAND THE STATUTE OF LIMITATIONS FOR FILING LIENS

Boehm monitors all pending legislation that, if enacted into law, would impact our client's rights. Recently, California State Senator Benoit introduced Senate Bill 403. That bill would amend Labor Code §4903.5 to put additional restrictions on the time limit within which a medical provider could file a lien in a workers' compensation case. Under the proposal, providers would only have a year from the date an employer or workers' compensation carrier mails an explanation of benefits or an objection to a bill. One serious flaw in the bill is that it would apply retroactively, regardless of the date of injury. This means that rights could be lost the minute the law were to go into effect.

Below is a copy of the letter of objection that we sent to Senator Benoit detailing our concerns. We will keep you apprised of the results of our efforts.

March 25, 2009

The Honorable John J. Benoit
California State Senator
State Capitol, Room 4066
Sacramento, CA 95814

Dear Senator Benoit,

We write to express our opposition to **Senate Bill 403**, which proposes to put additional restrictions on the limit of time within which a medical provider can file a lien in a workers' compensation case.

Who We Are

Boehm & Associates represents the medical cost recovery interests of hundreds of hospitals, employee benefit plans, union trust funds, insurance companies, U.C. Medical Centers, county hospitals, and federal and state agencies including the Department of Defense, the Veterans Administration and Medi-Cal (California Department of Health Services). Our clients routinely advance payment for medical bills or provide treatment when an employer denies an injured worker's claim. In this way, the injured worker is not deprived of necessary medical treatment pending outcome of the workers' compensation dispute.

Our Concerns

SB 403 will have unintended consequences that will impose a substantial burden on the Workers' Compensation Appeals Board (WCAB). The proposed bill will also deprive medical providers of their due process rights. It appears that the goal of SB 403 is to eliminate stale medical treatment liens from surfacing after an employee's workers' compensation case is resolved. We can certainly understand the desire to curb the delayed filing of liens. The bill, however, would have the opposite result: medical providers would file more liens than they currently do.

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(Letter to Senator Benoit, continued)

Under the proposed legislation, medical providers who treat injured workers must file liens within "one year from the date the health care provider...was sent an explanation of benefits or explanation of review paying or objecting to the bill in whole or in part." If a medical provider fails to file a lien within the year, rights to compensation would be lost. If enacted as drafted, our clients would be forced to protect their right to bill payment by prophylactically filing liens in every case where the employer or workers' compensation carrier fails to issue full payment within the statutorily allowed 45-working days. Labor Code §4603.2(b).

The majority of workers' compensation claims do not involve case filings before the WCAB. An injured worker normally receives treatment and indemnity payments without any disputes that require litigation. If SB 403 were enacted, medical providers would not only file a lien, but an actual WCAB case--even where the worker has not--to protect itself against the proposed statute of limitations. Such a proliferation of case filings would further burden the already overburdened WCAB district offices.

Where workers' compensation liability is denied, providers will be tempted to file collection actions directly against employee/patients for the value of services rendered. Labor Code §3751(b) prohibits such collection actions where there is **"actual knowledge that a claim is pending...unless the medical provider has received...notice that liability for the injury has been rejected...."** (Emphasis added.) The injured worker will be required to pay the bill and then claim such out-of-pocket expense in the contested case. Where more costly in-patient hospital care is involved, most industrially-injured employees will be bankrupted by this process, losing homes and even ability to pay rent during the pendency of claims. This is a predictable consequence of the proposed bill that the workers' compensation system was intended to prevent.

The retroactivity clause in subsection (1) would, moreover, deprive medical providers of due process rights. If enacted as proposed, providers who received "explanations of benefits" one year or more prior to the date the bill goes into effect, but who had not yet filed a lien, would, at the stroke of a pen, lose their right to recover.

CONCLUSION

The overall workers' compensation scheme would be enormously disrupted by the proposed extension of the statute of limitations for lien filings. The administrative cost of the WCAB system would increase substantially. The statute would be open to legal challenge on due process and state constitutional grounds.

We would like to participate in any public hearings on this matter and, accordingly, we request that you notify us if and when any are scheduled. If you would like to discuss this further, please call me at (510) 865-0544.

Very truly yours,

Nancy Roberts
General Counsel
Boehm & Associates

Submitted by Boehm General Counsel Nancy Roberts