AB 1244 and SB 1160 passed to Combat Workers' Compensation Fraud and Reform Lien Filing

California is taking another major step to combat fraud and abuse in worke

compensation. The first step was SB 863, which took effect on January 1, 2013 and tried to reduce costs by reducing the volu lien claims and lien claim litigation in the workers' compensation system, including the reestablishment of lien filing fees to pre frivolous lien filings, and restricting the ability of third parties to collect on assigned lien claims. Based on problems that SB 86 not resolve, the California Legislature decided to pursue further reform to close gaps in "work comp" abusive lien practices.

Agencies concerned with lien based medical providers charged with or convicted of crimes

One of the major issues is whether violators of workers' comp laws should be entitled to enforce their right to payments on lie The Department of Industrial Relations (DIR) and its Division of Workers' Compensation (DWC) announced recently that, fron 2011 through 2015, $600 million in liens were filed for treatment of injured employees' covered by workers' compensation insurance by providers who had been convicted of crimes or were under criminal indictment. According to the DWC, 17% of a liens filed between 2011 and 2015 were filed by providers with fraud indictments or convictions.

In response to these statistics, the Legislature introduced two new bills, AB 1244 and SB 1160, to the governor to sign into law 1244 is designed to combat workers' compensation fraud by creating a suspension process for medical providers found to ha committed a felony or misdemeanor involving fraud or abuse of the Medi-Cal program, Medicare or the workers' compensatio system itself. Currently, there is no suspension process for medical providers in the workers' compensation system beyond removal from the qualified medical examiner list. Proponents of the bill cite to examples where medical bills and workers' compensation liens are still being pursued by doctors convicted of defrauding Medi-Cal and Medicare.

AB 1244 requires suspension of providers convicted of fraud

AB 1244 follows the lead of Medi-Cal and requires the suspension of a medical provider if the medical provider is convicted o felony, a misdemeanor connected to fraud, a misdemeanor connected to patient or privilege abuse, or the medical provider's license is suspended or revoked. The bill provides a hearing process where a medical provider can contest the applicability of suspension – such as mistaken identity or a later plea deal that reduces a felony to a non-eligible misdemeanor. If the medica provider does not request a hearing, the suspension would take effect within 30 days of notice. Similar to Medi-Cal, AB 1244 requires that a suspended medical provider be excluded from the system and denies further payment for services. In the case Medi-Cal, however, existing law allows for a suspension of any and all payments in the case of a medical provider being charg with fraudulent activity. AB 1244 instead suspends the provider and denies further payment after conviction and the completio the suspension process, unless the suspension is for non-fraud related reasons or payment was already provided.

Finally, AB 1244 requires the Department of Health Care Services (DHCS) to communicate with DIR when a medical provider added to the Medi-Cal Suspended or Ineligible Provider List. Depending on the reasons for a medical provider being added to

Medi-Cal list, this may trigger a suspension process by the DWC as well. Opponents of the bill argue that prohibiting providers being paid after conviction of fraud is excessively broad and ignores a scenario in which a provider convicted of fraudulent act possesses legitimate liens or medical bills in the system.

SB 1160 stays provider liens upon filing of criminal charges

The second bill, SB 1160, would automatically stay any physician or provider lien upon the filing of criminal charges against th for specified offenses involving medical fraud. If the medical provider is cleared of all charges, his or her liens would be adjudi in the same way as other liens without prejudice. Similar anti-fraud provisions are utilized by the Medi-Cal and Medicare syste an effort to control fraud and abuse.

SB 1160 also explicitly prohibits any assigning or factoring of a lien on or after January 1, 2017, unless the medical provider is longer in business in the capacity in which they filed a lien. For liens assigned between 2013 and 2016, SB 1160 codifies the recent appellate court decision, Chorn v. Workers Comp. Appeals Bd. (2016) 245 Cal. App. 4th 1370, which found that restric on lien assignments were constitutional and that the effect of Labor Code Section 4903.8 (i.e., SB 863) is to prohibit the Work Compensation Appeals Board from ordering or awarding lien payments to anyone other than the medical provider who incurre expense. Proponents argue that the bill effectively combats scenarios by which lien assignments are used to drive fraud. Opponents of the bill argue that the automatic stay provisions would be subject to legal challenge based on due process issue and would unfairly punish providers who are fighting criminal charges for otherwise valid liens.

Both bills passed with little opposition and their signature into law by Governor Brown is expected in the near future. Healthca providers who take care of patients under workers' compensation insurance, as well as companies that work with providers to factor medical receivables, bill, finance, or manage the provision of medical services in work comp should prepare for continu fraud prevention efforts, as well as further regulations to implement the new laws.

For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.