State: Calif.
Eligibility Declaration Not Required for Liens Filed Before 2013: Top [2016-12-19]

The requirement for lien claimants to declare under penalty of perjury that they are eligible to file a lien will not apply to liens submitted prior to 2013, the Division of Workers’ Compensation confirmed Friday.

In fact, the requirement to submit the declaration applies only to liens that are subject to the $150 filing fee created in 2012 by Senate Bill 863. It does not apply to liens filed before 2013, and for which lien claimants had to pay a $100 “activation fee.”

“The declaration required with the passage of SB 1160, which is now part of Labor Code Section 4903.05, is only required for those liens subject to the filing fee, not the activation fee,” DWC spokeswoman Erika Monterroza said in an email.

Senate Bill 1160, by Sen. Tony Mendoza, D-Artesia, amended Labor Code Section 4903.05 to require lien claimants to declare that a payment dispute is not eligible for independent bill review. The new Labor Code section also requires a lien claimant to state that he or she satisfies one of seven conditions for the lien to be valid. Conditions listed in the bill include being the workers’ treating physician providing care through a medical provider network, being an agreed or qualified medical evaluator and having documentation that medical treatment was neglected or unreasonably refused to the worker.

For liens filed after Jan. 1, the bill requires that the declaration be filed at the same time as the lien, if the lien is subject to the $150 filing fee.

An earlier version of the bill stated that the declaration would also have to be submitted by July 1, 2017, for “all liens filed prior to Jan. 1, 2017.”

However, when the bill was amended Aug. 29 to add new sections prohibiting utilization review on certain treatment requests in the first 30 days following an accident, the declaration requirements for existing liens were also tweaked. The version of the bill Gov. Jerry Brown signed requires a declaration for existing liens that were subject to a filing fee be filed by July 1, 2017.
The difference between the filing fee and the activation fee may appear trivial. But the two terms are defined in different sections of the Labor Code, albeit adjacent sections. And there is a clear distinction between the two in that the filing fee applies to liens submitted after Jan. 1, 2013, and the activation fee applies to liens submitted before the start of 2013.

When the bill was being debated in the Legislature, organizations including the California Society of Industrial Medicine and Surgery were opposed to the provision requiring providers to find documentation to substantiate and preserve older liens. Under the terms of the bill, liens will be dismissed by operation of law if the declaration is not filed.

CSIMS said in an email message to its members that the assumption while the bill was up for debate was that the declaration was required for all liens, regardless of when they were filed.

The revelation that it applies only to those liens filed since 2013 should come as good news to some providers, said Steve Cattolica, director of government relations for CSIMS.

“Old liens are going to end up being hard to declare because it’s harder to get the documentation,” he said Friday. “If my stuff is old, all of a sudden I’m in a tizzy wondering how many of these liens I activated were a waste of time because I can’t sign the declaration under penalty of perjury.”

Providers, knowing they don’t have to try to track down old medical records, can focus on finding documentation to substantiate declarations only for the liens they may have filed since 2013, he said.

Mona Nemat, managing partner at Brissman & Nemat, said she thinks a lot of people missed the change in the final version of SB 1160. After reviewing the bill, she said it was her opinion that the measure applied only to post-2013 liens.

“The problem is, we were all pretty comfortable saying, ‘Yeah, it only applies to liens filed on Jan. 1, 2013, or later,’ but if wrong, there’s a death knell in this statute,” she said.

Like Cattolica, she said there should be some comfort for lien holders in knowing they have to focus only on liens filed over the past three years.

Both Nemat and Cattolica credit DaisyBill with pointing out that eligibility declaration requirements are applicable only to liens that were subject to the filing fee.

Catherine Montgomery, who co-founded DaisyBill with Sarah Moray, said they noticed that SB 1160 does not apply to all liens while preparing for a webinar to teach providers how to deal with the new requirements. She said it made sense to her, because some providers wouldn’t be able to satisfy the requirements in the bill for pre-2013 liens.

“We didn’t even question it,” Montgomery said. “We thought they were clever to have made that distinction.”

Some of the criteria in the bill, such as requiring documentation that treatment was neglected or refused, didn’t exist until SB 863 became law, she said.

Montgomery said in a Newsline that the Division of Workers’ Compensation released in January, when it stopped collecting activation fees, makes a clear distinction between the two types of fees.

The division stopped collecting activation fees at midnight on Dec. 31, 2015, after which all “unactivated” liens were dismissed by operation of law. A total of 461,650 pre-2013 liens were activated, the DWC announced.

Montgomery also pointed out that rules proposed by the Workers’ Compensation Appeals Board to implement SB 1160 also acknowledge the difference between the types of fees.
The WCAB’s proposed rules state that any lien “that is subject to a filing fee pursuant to (Labor Code) Section 4903.05 and that is filed before Jan. 1, 2017, shall be dismissed” unless the declaration is filed by July 1.

The filing fee is defined in section 4903.05. The activation fee is defined in section 4903.06.

The WCAB is holding a hearing on the proposed rules at 10 a.m. Jan. 4 in San Francisco.