

# Dialogue

## California Liens - Déjà Vus

The filing of liens and their impact on the cost of the P&Cs' Workers' Compensation insurance product are not new phenomena, dating back to the early 1990s, when there was excessive use of medical-legal examination services associated with cumulative trauma or gradual onset medical conditions.



The California Department of Industrial Relations (“DIR”) released a document titled “Issues and Impact of Lien Filing in California Workers’ Compensation System” dated August 19, 2016, which stated that there are approximately 580,000 liens totaling \$4 billion in the system. While legislators and regulators have attempted to reduce the filing of liens for medical services through initiatives such as the Independent Medical Review (IMR) and Independent Bill Review (IBR) processes, filing of new liens have almost doubled to 363,000 in 2015 compared to 2014, according to the Workers’ Compensation Insurance Rating Bureau (“WCIRB”)<sup>1</sup>.

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“Data is Power” - have P&Cs taken full advantage of claims’ transactional data to manage liens?

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<sup>1</sup> WCIRB Report on the State of the California Workers’ Compensation Insurance System (Rel. August 2, 2016)

While many speculate about causes for the increased numbers of liens filed, including fraud, there are no published figures that can substantiate the following questions:

1. How many liens are the result of an outright denial of work relatedness, generally associated with either a cumulative or gradual onset medical condition?
2. How many liens are the result of a denial of one or more medical conditions which may have been caused by a work-related incident?
3. How many liens are associated with denial of medical services?
4. How many liens are associated with MPNs?
5. How many liens are associated with opportunistic versus professional fraud?

Most liens are resolved through settlements, which average between 20 cents and 70 cents for each \$1 dollar of the lien amount. Based on the liens in the system, this equates to a settlement cost of between \$800 million and \$2.8 billion. As well as the cost of settling liens, P&Cs including self-insured employers will spend approximately an additional \$580 million in handling these liens, reported as Loss Adjustment Expenses.

A document titled “Liens Report”<sup>2</sup> stated that around \$1,000 per lien is spent on preparing documentation, negotiating and participating in hearings. It went on to state, “*The cost for a lien claimant to file and pursue a lien is not similar to the cost for a claims administrator to adjust and defend against the lien. Many liens are filed and handled by non-attorney collection representatives who invest much less time and effort into each dispute than the defendant’s adjusters and attorneys invest.*”

Another article titled “The Rest of the Story: In Defense of Liens and Good Faith Negotiation”<sup>3</sup>, may provide a partial answer for the high number of filed liens and the current practices followed by providers. It stated the following:

1. “... some payors have adopted a policy of refusing to discuss negotiating the provider’s liens until the provider of the services demonstrates it has filed a lien with the WCAB and paid the applicable lien filing or activation fee required ...”. If this is true, then a percentage of the P&Cs’ lien handling costs as well as the number of filed liens are caused by their own actions and decisions.
2. “*Make sure your attorney is aggressive*”. The idiom “fight fire with fire” probably best describes providers’ responses to this P&Cs’ approach.

Advertising material by attorney’s offering lien settlement services to P&Cs and self-insured employers commonly contain statements such as:

- “*The firm understands that victory cannot be achieved without diligent preparation and aggressive representation. We provide legal services designed to streamline medical billing, collections and liens. The result is a proven method that streamlines problems associated with medical billing, collections and liens.*”
- “... will analyze, resolve and create litigation strategies for California workers’ compensation liens with a focus on a superior end result” and “*We will work with our partners on identifying lien providers interested in bulk resolutions. This approach has been proven to save time and money as multiple liens and claims are simultaneously addressed.*”

With this aggressive approach by P&Cs to liens, providers may be left with no option but to sell their overdue or bad debt accounts receivables, commonly called “debt factoring” to protect their cash flow. This practice is not unique to workers’ compensation lien claimants and is a business strategy often recommended to small businesses.

The outcome from liens is best summed up in the document titled “Liens Report” with this statement, “***As a symptom, the billions of dollars in dispute reflect both obligations that should have been paid but which may eventually have to be compromised in order to obtain any payment, and claims that should not be paid but which may eventually have to be compromised in order to obtain closure***”. **This conundrum faced by legislators and regulators entails remaining**

<sup>2</sup> California Commission on Health and Safety and Workers’ Compensation, “Liens Report”, January 5, 2011

<sup>3</sup> InsuranceThoughtLeadership, “The Rest of the Story: In Defense Of Liens and Good Faith Negotiation”, dated April 24, 2013, Timothy Rose

## fair to those deserving payment, yet weeding out fraudsters in the system.

As an example of providers' practices, the DIR document highlighted Reshealth Medical Group APC. This Group ranked twelfth among lien filers in calendar years 2013 through 2015, with 4,696 medical liens filed for services totaling \$21 million. Reshealth appointed Javlin Three LLC to handle its liens claims, which is one of a number of companies within Javlin Capital (<http://javlincapital.com>). Javlin Capital has a number of interests including healthcare finance, stating, "Javlin invests in healthcare claims that have an extended payment cycle due to complex adjudication processes or litigations. These claims are typically tied to a workers' compensation injury ...." It goes on to list the medical services typically involved, which are MRI, Pharmaceuticals, DME, Diagnostics, Shockwave, Interpreting, Psychiatric, Surgery and PTP.

According to public records, Reshealth Medical Group APC, NPI 1548682545 specialities include Electrodiagnostic Medicine, Pulmonary Disease and Internal Medicine. The Medical Director is Dr. Zain Vally-Mahomed ("Zain"), NPI 1902945926. Zain has a current California license and Hawaii license to practice, a lapsed New Mexico medical license and an expired pharmacy license to dispense controlled substances<sup>4</sup>. He is listed in a number of California P&Cs' MPNs as well as health insurance plans (i.e. Group Health). In cases where he is not listed, the medical groups which he is associated with are often listed in the MPNs. According to the Department of Consumer Affairs in California, the Department of Commercial & Consumer Affairs in Hawaii and the New Mexico Medical Board, Zain has an unblemished record.

"The power of data" phrase used in the DIR's document describes a better understanding of issues surrounding liens, including the detection of fraud, as a result of their collection of additional claims data. It has been suggested that lien fraud is perpetrated by a small number of applicant attorneys in collusion with medical providers who use decoys such as cappers, runners or steerers to encourage individuals to file workers' compensation claims.

P&Cs and self-insured employers can assist in reducing the number of liens filed including administration and settlement

costs by collecting and consolidating claims' transactional data in their claims management systems. Collecting data on individuals and companies (i.e. entities) associated with transactional data and identifying associations can all be achieved at no additional cost when a hybrid model combining features from the disciplines of Customer Relationship Management and Supply Relationship Management are incorporated into their systems. Through a link feature, the frequency of entities appearing in combinations on claims, the medical conditions generally reported along with the medical services provided, disputed amounts and reasons for the disputes all become available with the simple push of a button.

While the most recent SB1160 (Senator Tony Mendoza, D-Artesia) and AB1244 (Assemblyman Adam Gray, D-Merced) bills may help in reducing lien filings as well as costs, it is still the responsibility of P&Cs and self-insured employers to implement procedures and operations including computer systems which take maximum advantage of the bills' initiatives.

Reviewing the latest figures in the WCIRB's report of the state of the California Workers' Compensation Insurance System<sup>5</sup>, the total administration cost for providing the P&Cs' workers' compensation insurance product has increased by 2 cents from 47 cents per \$1 of premium in 2014 to 49 cents per \$1 of premium in 2015.



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<sup>4</sup> NPI details along with state medical licenses were obtained from records available from numerous sources. It is the reader's responsibility to verify. CA licence# 107041, HI# 15396, NM Pharmacy#00212948, NM Medical#20070566.

<sup>5</sup> WCIRB Report on the State of the California Workers' Compensation Insurance System (Rel. August 2, 2016). WCIRB Report on the State of the California Workers' Compensation Insurance System (Rel. July 29, 2015).