

Non-IBR Medical-Legal Disputes

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Disclaimer

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Overview

- ▶ After passage of SB 863, no participant in the California Workers' Compensation system should look at billing practices and liens the same way.
- ▶ LC 4903.06(a) tells us that any expenses filed as liens filed before 1/1/2013 remain liens and are handled as they have always been handled, subject to the requirement to pay a lien activation fee before 1/1/16 (or the lien is dismissed by operation of law), and must wait until the case-in-chief is finished before their disputes can be heard (8 CCR 10451.1(e)).

Overview (Cont.)

- ▶ Whether a provider should file a lien, pursue IBR (or do both), or whether a provider should file a petition for non-IBR medical-legal dispute resolution, depends on many factors, including:
 - The nature of the charges;
 - Who incurred them;
 - Whether there is some type of liability dispute;
 - Whether there has been appropriate objection to the charges; and
 - Whether a fee schedule exists.

Liability Disputes

- ▶ A liability dispute exists when defendant has contested liability for a provider's charges for any reason other than the reasonable amount payable for services rendered.
- ▶ Injury AOE/COE and body part disputes are NOT threshold issues for purposes of medical-legal charges, but ARE threshold issues for purposes of medical treatment charges.
- ▶ For the purposes of this seminar, treatment disputes will NOT be addressed.

Points to Ponder

- ▶ I recommend parties adjudicate threshold issues as quickly as possible (i.e., Statute of Limitations; jurisdiction, employment, etc.).
- ▶ Purely factual or purely legal disputes may not require medical evidence.
- ▶ There is no requirement to send a Request For Authorization form for diagnostic testing needed in conjunction with a medical-legal evaluation, and requests for such testing are not subject to UR or IMR.

Points to Ponder (Cont.)

- ▶ Make sure that justification for all diagnostic testing requested or performed is clearly set forth in the medical-legal report, and discuss the results within the report.
- ▶ If a fee schedule applies to the charges, payment should be in accordance with it (IBR rules apply).
- ▶ All objections to medical-legal charges require a timely & detailed Explanation of Review (EOR) that complies with LC 4603.3 and 8 CCR 9794(c)(1)-(6).

Independent Bill Review vs. Non-IBR Medical-Legal Disputes vs. Lien

- ▶ Disputes over the amount to be paid under a fee schedule must go through Second Bill Review & Independent Bill Review process (SBR & IBR).
- ▶ If the dispute is not about just the amount to be paid under a fee schedule or if there is no fee schedule for the goods/services in issue, the disputes are considered non-IBR disputes.
- ▶ Only non-IBR medical-legal disputes may be pursued through the procedures set forth in LC 9794 and 8 CCR 10451.1, and med-legal providers do not have to file a lien or wait until the case is finished to pursue their claim.
 - This will be discussed in detail later.

IBR vs. Lien Filing vs. Non-IBR

- ▶ When should a medical-legal provider in a billing dispute with a claims administrator file an application for IBR, file a lien with the WCAB, or file a Petition for Non-IBR Medical-Legal Dispute?
 - If the dispute is solely over the amount to be paid under a fee schedule or contract, go through the SBR & IBR process.
 - If the dispute is over the amount to be paid and there is no applicable fee schedule or contract, or if the dispute is whether the report constitutes valid med-legal, go through the Non-IBR Med-Legal Dispute process &/or file a lien.
 - However, tThere is no requirement for a medical-legal provider going through the Non-IBR Med-Legal Dispute process to file a lien per 8 CCR 10451(c)(3)(D).
 - If a medical-legal provider elects to file a lien, it must pay the lien filing fee (\$150.00).

IBR vs. Lien Filing vs. Non-IBR (Cont.)

- ▶ If the provider prevails in the IBR forum, the fee (\$195.00) is recoverable.
- ▶ If determined by the AD/Maximus to be ineligible for IBR, the provider is entitled to a partial refund (\$145.50).
- ▶ Lien filing fees are recoverable if the provider meets the conditions of LC 4903.07 (i.e., makes timely & complete settlement demand prior to filing the lien, defendant failing to timely accept & a final award in provider's favor in an amount equal to or greater than the settlement demand).

Good Faith Negotiations Required

- ▶ Regardless of the legal avenues available to resolve disputes, both medical providers and claims administrators are required to engage in good faith negotiations to expeditiously resolve disputes without pre-conditions (i.e. proof of lien filing or payment of lien filing fee).
- ▶ However, timelines for engaging in the appropriate formal payment dispute procedures must be kept, or it may be fatal to a claim for or denial of payment and may lead to sanctions, fees and costs.

Points to Ponder

- ▶ The time to request IBR is extended until resolution of the underlying liability issue.
- ▶ A provider has 30 days from the date of resolution of the contested issue or the date of service of a WCAB order finding in favor of compensation to make the request for IBR.
- ▶ There is no tolling of the statute of limitations for filing a lien if there is a liability dispute or threshold issue requiring resolution.

Medical-Legal Disputes

- ▶ Certain disputes relating to medical-legal charges are handled very differently than medical treatment disputes.
- ▶ You REALLY need to know what constitutes a valid medical-legal expense and by whom they may be incurred.
- ▶ Please refer to my article, entitled, "*Thoughts from the Bench on the Medical-Legal Dispute Process*" which was published in the Workers' Compensation Quarterly (Published by the State Bar of CA Workers' Compensation Section in 2016).
 - [Provided in Seminar Materials.]

Medical-Legal Disputes (Cont.)

- ▶ LC 4620 & 8 CCR 9793 defines medical-legal expenses as:
 - "...any costs and expenses incurred by or on behalf of any party, the administrative director, or the board, which expenses may include x-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees... for the purposes of proving or disproving a contested claim."

Medical-Legal Disputes (Cont.)

- ▶ A “contested claim” includes:
 - Where liability for claimed benefit has been rejected;
 - Where claim has become presumptively compensable per LC 5402;
 - Where there has been failure to respond to demand for payment of compensation after expiration of statutory time periods; or
 - Where a disputed medical fact exists on an accepted claim.

Medical–Legal Disputes (Cont.)

- ▶ 8 CCR 9793 defines a “disputed medical fact” as an issue in dispute, including objections to a PTP determination concerning:
 - The employee’s medical condition;
 - The cause of the employee’s medical condition;
 - For DOI before 1/1/13, a dispute over a UR decision regarding treatment communicated to physician on or before 6/30/13;
 - The existence, nature, duration or extent of TD or PD caused by the employee’s medical condition; or
 - Medical eligibility for rehabilitation services.

Medical-Legal Disputes (Cont.)

- ▶ Med-legal can't be incurred before existence of contested claim.
- ▶ Unless claim already rejected by employer, no comprehensive med-legal evaluations (except per LC 4061(c) & 4062 and as requested by an employer per LC 4060) may be performed during first 60 days after notice of claim has been filed.
- ▶ There is no liability for diagnostic tests unless justified within report.

Medical-Legal Disputes (Cont.)

- ▶ All med-legal reports must comply with LC 4628, 139.2 and 8 CCR 10606 and must contain all disclosures & declarations.
- ▶ Form & substance count. Reports must constitute substantial medical evidence.
- ▶ Med-legal reports may be performed by a QME, an AME, or by the PTP (8 CCR 9793(c)).
- ▶ If performed by PTP, the doctor must have actually treated the injured worker.

Medical-Legal Disputes (Cont.)

- ▶ The report must be obtained at the request of a party (or parties), the AD, or the WCAB for the purpose of proving or disproving a contested claim and addresses the disputed medical fact(s) specified by the requestor.
- ▶ The report must be capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim.

Medical-Legal Disputes (Cont.)

- ▶ LC 4622 & 8 CCR 9793(l) require all med-legal reports be transmitted to the claims administrator with an itemized billing & any verification required under 8 CCR 9795(c).
- ▶ Per LC 4622(a), all med-legal expenses must be paid or objected to within 60 days of receipt of the report & billing.
- ▶ ALL objections (whether \$\$, legal, medical or factual) must be set forth in the original EOR (explanation of review) [LC 4622(a)]. There are specific requirements for the EOR.

Medical–Legal Disputes (Cont.)

- ▶ With very few exceptions, if an objection is not contained in the EOR, it is deemed waived [8 CCR 10451.1; LC 4622; 8 CCR 9794].
- ▶ Since claims administrators have 60 days to pay or object to med-legal charges, they should carefully review the reports or refer them to legal counsel for all bases to dispute the charges other than just what is payable under a fee schedule.

Medical-Legal Disputes (Cont.)

- ▶ Types of disputes that can arise with medical-legal charges:
 - The amount charged (resolved via IBR, unless no fee schedule exists for the goods/services).
 - Threshold issue that would entirely defeat a medical-legal expense (i.e., employment, SOL, coverage, and jurisdiction). “Threshold issue” shall not include whether the employee sustained industrial injury or injury to a particular part of body.
 - Whether the expense was actually incurred for the purpose of proving/disproving a contested claim or disputed medical fact.

Medical-Legal Disputes (Cont.)

- ▶ Types of medical-legal disputes (cont.):
 - Whether the claimed expense was reasonably, actually and necessarily incurred.
 - Whether there has been waiver of any objection to the amount of the bill.
 - Whether the provider has waived any claim to further payment.
 - Whether an interpreter at a med-legal exam didn't meet the criteria established by the LC or Rules.
 - If defendant contends an interpreter was not reasonably required at med-legal exam.

Medical-Legal Disputes (Cont.)

- ▶ Med-legal expenses filed as liens before 1/1/13 remain liens and are handled as they have always been handled (LC 4903.06(a)).
- ▶ Med-legal providers who filed liens prior to 1/1/13 and have paid their activation fee, may have to wait until the case-in-chief is finished before the dispute can be heard [8 CCR 10451.1(e)].
- ▶ After 1/1/13, med-legal providers are not required to file a lien, but if they do decide to file a lien, they must pay the lien filing fee.

Medical-Legal Disputes (Cont.)

- ▶ If your med-legal dispute is just the amount to be paid under fee schedule, all disputes are required to go through Second Bill Review & Independent Bill Review per LC 9794.
- ▶ If the dispute is not about just the amount to be paid per fee schedule, or if there is no fee schedule for the goods/services, those disputes are considered non-IBR disputes and are required to go through the non-IBR medical-legal dispute procedures per LC 9794 and 8 CCR 10451.1.

Medical-Legal Disputes (Cont.)

- ▶ SBR & IBR procedures:
 - 1. Provider sends report & itemized billing to CA.
 - 2. Pay undisputed & objected to disputed charges within 60 days of receipt or must pay charges with 10% penalty & 7% interest (LC 4622).
 - 3. All objections must be on EOR that must be served within 60-day period after receipt of bill.
 - 4. Provider has 90 days from date of service of EOR to object and request 2nd review.
 - 5. Defendant must respond with final written determination within 14 days of request for 2nd review, including whether additional payment will be made.

Medical–Legal Disputes (Cont.)

▶ SBR & IBR Procedures (Cont.):

- 6. Provider has 30 days after receipt of 2nd review to contest amount paid, request IBR & pay \$195.00 IBR fee.
- 7. IBR fee is ordered to be reimbursed if additional amounts are payable after IBR. If no additional amount found payable, the fee is not reimbursed.
- 8. If defendant doesn't comply with time deadlines, it is deemed a waiver and they must pay bill in full with 10% penalty and 7% interest.
- 9. If provider fails to comply with time deadlines for initial objection or 2nd review, it is deemed a waiver and neither EE or ER is liable for any further payment.

Medical-Legal Disputes (Cont.)

- ▶ Non-IBR Medical-Legal Dispute Procedure:
 - ▶ 1. Provider sends itemized, compliant bill with all information justifying the bill.
 - ▶ 2. Defendant has 60 days from date of receipt to pay undisputed amounts and object to disputed charges/services or must pay charges with 10% penalty & 7% interest.
 - ▶ 3. ALL OBJECTIONS must be on initial fully compliant EOR, served within 60 day period.
 - ▶ 4. Provider has 90 days from date of service of EOR to object. [Note: There is no requirement to request 2nd review if it is a non-IBR dispute, but if in doubt, do both.]

Medical-Legal Disputes (Cont.)

- ▶ Non-IBR Med-Legal Disputes (cont.):
 - ▶ 5. If provider timely objects to denial of charges, DEFENDANT is required to file a Petition for Determination of Non-IBR Medical-Legal Dispute and a DOR within 60 days of service of the provider's objection.
 - ▶ 6. Failure by defendant to file the petition and DOR after provider's timely objection is construed as waiver of all objections relating to provider's billing other than amount to be paid per fee schedule.

Medical–Legal Disputes (Cont.)

- ▶ Non-IBR Med-Legal Disputes (cont.):
- ▶ 7. If defense doesn't file petition & DOR within 60 days, then the provider **may** file the petition. Provider not required to file DOR, but they may.
- ▶ NOTE: When provider sends notice of objection, they should file Notice of Representation or Notice of Self Representation with the District Office so they can be added to OAR and receive service of any notices of hearing that may issue in response to the filing of a DOR and receive pertinent orders/dispositions from the court.

Medical-Legal Disputes (Cont.)

- ▶ Failure to follow these procedures can be serious and costly to both defendant and to the medical-legal provider.
- ▶ Sanctions, attorney's fees and costs for bad faith actions or tactics may be imposed.
- ▶ Construed as “bad faith” include:
 - Failing to timely pay uncontested med-legal bill;
 - Failing to make good faith effort to timely comply with med-legal timelines or procedures;
 - Contesting liability for med-legal bill on a dispute over injury or injury to a particular body part.
 - Provider inappropriately asserts defendant failed to comply with requirements, timelines & procedures.

Medical–Legal Disputes (Cont.)

- ▶ These sanctions, fees & costs are in addition to any penalties and interest that may apply.
- ▶ Rule 10451.1 mandates that sanctions shall be no less than \$500.00.
- ▶ A Judge can defer hearing and determination of non-IBR med–legal disputes only if there is a threshold issue per 8 CCR 10451.1(c)(1)(a) [i.e., Statute of Limitations, coverage, employment, & jurisdiction].

Medical-Legal Disputes (Cont.)

- ▶ I recommend adjudication of medical-legal issues before the case is submitted so that the record can be further developed, if necessary, to accomplish due process and substantial justice.
 - Whether report actually meets the definition of a med-legal report.
 - Whether report is admissible or should be stricken.
 - If there's a problem QME, the Medical Unit should be made aware.

Petitions and Answers

- ▶ What's important to know about WCAB Rule 10450:
 - ANY request for action by WCAB, other than Application for Adjudication, Answer, or DOR, must be made by petition.
 - Caption of each petition must contain case title, ADJ #, & indicate type of relief sought.
 - Unless otherwise provided by statute/rule, an answer may be filed w/in 10 days after petition is filed.
 - Unless otherwise provided by statute/rule, time limit for filing petition/answer is extended per 10507/10508 (5/10/20 days + extension for weekend & court holiday).

Petitions and Answers (Cont.)

- ▶ What's important to know about 10450, cont.:
 - Don't attach previously-filed documents to petition/answer – they may be discarded.
 - Petitions/answers must be verified – failure constitutes valid ground for dismissal/denial/rejection.
 - Petitions/answers must be served on all parties & others whose rights/liabilities are specifically questioned by petition/answer – failure to file POS constitutes valid ground for dismissal/denial/rejection.

Petitions and Answers (Cont.)

- ▶ What's important to know about 10450, cont.:
 - Don't forget document cover and separator sheets with correct document title.
 - Except per 10840, 10865, 10953 & 10959 (recon/removal/disqualification/answers thereto; arbitration recon; Audit Appeal; AD MPN Determination Appeal), **petitions must be filed:**
 - If there's case opening doc on file, petition must be filed w/District Office having venue (unless e-filed);
 - If no case opening document on file, an Application must be filed w/petition & venue designated/determined per LC 5501.5 & 10409 and unless e-filed, both must be filed only in District Office where venue is being asserted.

THE END

