

LEGISLATIVE ROUNDUP

*John P. Kamin, Esq. & Alec Bradford Esq.
Law Offices of Bradford & Barthel*



Alec Bradford, Esq.
Bradford & Barthel, LLP
404 Camino Del Rio South, #510
San Diego, CA 92108
Phone: (619) 641-7942
abradford@bradfordbarthel.com



John P. Kamin, Esq.
Bradford & Barthel, LLP
18801 Ventura Blvd., Ste 200
Tarzana, California 91356
Phone: (818) 654-0411
jkamin@bradfordbarthel.com



www.bradfordbarthel.com

2

WHAT WE'LL COVER

- Bills approved by the governor.
- SB 863 update.
- Formulary update.
- Bills that were vetoed by the governor, but will probably pop up again in future legislative sessions.



AGENDA



www.bradfordbarthel.com

3

BILLS APPROVED BY THE GOVERNOR

- Senate Bill 1160: The big bill you've heard of.
- Assembly Bill 2503: RFAs to the adjuster.
- Assembly Bill 1244: Suspension of physicians.
- Senate Bill 482: CURES database requirements.
- Assembly Bill 2883: Exemptions.
- Assembly Bill 2710: CIGA assessments.



www.bradfordbarthel.com

4

SB 1160: The big bill of 2016

Most popular pieces of this bill are:

- Automatically stays any lien once that provider has been charged with fraud.
- Requires lien claimants to file a variety of declarations. (Ex: Provider declares they are the PTP.)
- Bars UR during the first 30 days, effective 1/1/18.



www.bradfordbarthel.com

5

SB 1160: Stays

As noted in the prior slide, this bill automatically stays any lien once that provider has been charged with fraud. The DWC created some very basic rules and regulations providing exact definitions of what particular fraud charges will result in a stay. More detailed rules and regulations are on the way!



www.bradfordbarthel.com

6

SB 1160: Plays well with others

SB 1160 goes hand in hand with two other bills, which we'll cover more below.

Its companions are Assembly Bill 2503 (RFAs go to the adjuster), and Assembly Bill 1244 (Suspension of physicians convicted of fraud).



www.bradfordbarthel.com

7

SB 1160: Lien declarations

Creates a number of declarations for lien claimants to file.

- These will be required for all liens filed on/after 1/1/17.
- Liens filed prior to that date have up until 7/1/17 to file them.
- Failure to file a declaration = dismissal.
- Sets the fraudsters up for perjury charges if they lie on the declaration.



www.bradfordbarthel.com

8

SB 1160: Lien declaration types

Lien claimants must declare:

- That the dispute not subject to IBR/IMR.
- This is significant because how many lien claimants do we know who simply ignore IBR or refuse to go by it? (Many don't want to pay the IBR fee.)



www.bradfordbarthel.com

9

SB 1160: Lien declaration types

Lien claimants also must declare one of the following:

- They are a treater via the MPN, OR
- They are the AME or QME, OR
- They provided authorized treatment, OR
- They made a diligent search and determined there's no MPN, OR
- They documented that the defense neglected or unreasonably refused care, OR
- The treatment was needed b/c of an emergency, OR
- The LC is a certified interpreter during a med-legal, OR
- The LC is a copy service providing med-legal services, OR
- The LC has an expense allowed as a lien under DWC rules.



www.bradfordbarthel.com

10

SB 1160: Why liens hate declarations

Lien claimants hate these declarations because:

- Many existing liens will miss that 7/1/17 deadline to file declarations, resulting in dismissals.
- It makes them state something under penalty of perjury, and put their name on it.
- It creates a Catch 22, which we'll describe below.



www.bradfordbarthel.com

11

SB 1160: The Catch 22

Example: If you're a nonphysician lien claimant, you have to make a declaration based on some kind of evidence:

- How can you make a declaration under penalty of perjury when you have no legal access to medical records? For instance, how can you prove that medical treatment has been neglected or unreasonably refused without medical records?
- Liens still have to abide by the statute of limitations.
- Therefore, some liens will find themselves up against the SOL, with no evidence, and they'll file a declaration based on no evidence. This sets them up for perjury!



www.bradfordbarthel.com

12

SB 1160: Declaration traps

Could see false declarations on the following topics:

- A diligent MPN search.
- Whether a MPN exists.
- Being the PTP.
- Provision of med-legal services.
- Authorization of treatment.
- “Emergency” treatment.
- Defense’s denials or “neglect.”



www.bradfordbarthel.com

13

SB 1160: What lien claimants are saying about it.

- CSIMS calls it “SB 863 lite”, accuses the DIR of “trying to extinguish as many liens as possible.”
- One lien rep told me she is going back to the defense because of the Catch 22 mentioned above. In short, many lien claimants will not have the evidence to back up that declaration, and defendants can hammer them. She got the idea from a lien claimant manager, who views the declarations as problematic.



www.bradfordbarthel.com

14

SB 1160: Assignments invalidated

For liens filed on/after 1/1/17, this bill would also invalidate any assignment of a lien made in violation of LC 4903.8.

- Reminder: LC 4903.8 is the latest anti-assignment statute from SB 863, and bars specific types of assignments after 1/1/13.
- The one type of assignment that is still allowed: “The person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.”



www.bradfordbarthel.com

15

SB 1160: UR changes

- Bars UR during the first 30 days of a work injury for most treatments provided by MPN doctors, as of 1/1/18.
- Exceptions: surgery, hospitalization, psyche treatment, DME, home health care, MRIs, and CT scans. These are all still subject to UR.



www.bradfordbarthel.com

16

SB 1160: LC 5710 fees



Allows the Administrative Director to:

- “Determine the range of reasonable fees to be paid.”
- Must come up with a “range” for LC 5710 fees on or before July 1, 2018.
- Expect a fight over these regulations during the comment period.



www.bradfordbarthel.com

17

SB 1160: Other stuff

- Requires the DWC to create rules and regs for identity and credentials of interpreters.
- Allows DWC to make new additional requirements to treaters' reports.
- Increases fines from \$5k to \$10k for adjusters who fail to comply with data reporting requirements, and increases penalties for repeat offenders. (Creates an annual “compliance list” as well.)



www.bradfordbarthel.com

18

SB 1160: Other stuff

- Allows the AD to update the MTUS by order, which would not be subject to the Administrative Procedure Act.
- These orders would be published on the DWC's website.



www.bradfordbarthel.com

19

SB 1160: Conclusion

- Declaration v. Dismissal: Creates declarations that “traps” unsavvy lien claimants, effective in 2017.
- Automatically stays any lien once that provider has been charged with fraud.
- Bars UR during the first 30 days for basic care, effective 1/1/18.
- LC 5710 fee schedule on the way?
- New interpreter requirements.
- Adjusters: Comply with data reporting!



www.bradfordbarthel.com

20

SB 1160's buddies

- Assembly Bill 2503 and Assembly Bill 1244 supplement SB 1160.
- AB 1244: Suspends physicians from practicing in work comp once convicted of a felony.
- AB 2503: Says that RFAs are to go directly to the adjuster. Takes effect on 1/1/17.



www.bradfordbarthel.com

21

AB 1244: Fraudsters

Assembly Bill 1244 calls for:

- The DWC to flag doctors convicted of felonies.
- Requires DWC to suspend felonious doctors from practicing with notices of suspension.
- Calls for suspension of providers convicted of Medicare/Medicaid fraud.
- Once flagged by the DWC – the Administrative Director must notify various state boards.



www.bradfordbarthel.com

22

AB 1244: Fraudsters



Assembly Bill 1244 calls for “special lien proceedings,” which means:

- DWC must notify the Chief Judge about the offender’s actions (felony or misdemeanor), and enact special lien proceedings for their bills.
- Regs will sort out the details, but this suggests a misdemeanor is good enough.
- “Special lien proceedings” means carriers enjoy a presumption that the lien is “connected to” criminal/fraudulent activity. Lien claimants can rebut it by a preponderance (51%) of the evidence.



www.bradfordbarthel.com

23

AB 2503: RFAs go where?

Assembly Bill 2503 calls for:

- RFAs to go directly to the claims adjuster.
- An orthopedist group lobbied for this bill, citing confusion about where to send documents that need to go to UR.
- This resolves that problem by sending them directly to the adjuster.
- Takes effect 1/1/17.



www.bradfordbarthel.com

24

Senate Bill 482: CURES database

- This bill requires doctors to check the CURES database before prescribing drugs on Schedules II, III, and IV.
- What drugs are on these schedules? OxyContin, Percocet, Dilaudid, Fentanyl, Klonopin, Valium, Ativan, and Soma.
- Pharmacists and veterinarians are exempt from this bill.



www.bradfordbarthel.com

25

Senate Bill 482: CURES database

What is the CURES database?

- It's a California database that tracks dispensing data.
- It's limited to licensed doctors, licensed pharmacists, law enforcement, and regulators.



www.bradfordbarthel.com

26

Senate Bill 482: CURES database

What if the doctor dispenses these drugs without checking the CURES database?

- The doctors can be reported to the Medical Board of California.
- Problem: Bill doesn't say who is to report the doctor to the board.



www.bradfordbarthel.com

27

Senate Bill 482: CURES database

Why pass this bill?

- To target doctors who recklessly prescribe drugs that are serious enough to be on Schedules II, III, and IV.
- Problem: Without monitoring provisions, the most reckless physicians are likely to continue ignoring CURES and will keep prescribing.



www.bradfordbarthel.com

28

Assembly Bill 2883: Directors and officers

AB 2883 says:

- Directors and officers must own 15% of a corporation's stock before they are exempted from coverage.
- General partners (partnerships) and managers of LLCs are also exempted from coverage, but must specify in writing that they are waiving said coverage.



www.bradfordbarthel.com

29

Assembly Bill 2883: Directors and officers

Why pass this bill:

- To prevent “creative” employers who try to avoid coverage for employees who should be covered. In the past, some employers waived coverage for employees, without telling the employee.
- Real life example: A restaurant reportedly named a kitchen employee the “vice president of dishwashing” to keep premiums low. (Source: Association of California Insurance Companies)



www.bradfordbarthel.com

30

Assembly Bill 2710: CIGA assessments

AB 2710 says:

- Carriers must bill employers for assessments that are paid to CIGA the year after the assessment was paid to CIGA.
- This prevents carriers from charging employers for CIGA assessments that happened years ago.
- Overcharge an employer higher than the assessment? The extra \$\$\$ must go to CIGA.



www.bradfordbarthel.com

31

Recreational marijuana



Made legal in the Nov. 8 election.

- CA law bars employers from having to reimburse injured workers for marijuana.
- Employers' HR departments are bringing this up in their annual meetings.
- CWCI says: While we still have the intoxication defense, it can be difficult to prove.



www.bradfordbarthel.com

32

Recreational marijuana



Intoxication defense problems:

- Defense has the burden of proof in CA.
- Marijuana stays in the blood stream for much longer than alcohol.
- Because of this fact, no objective tools to prove intoxication at a specific time, i.e., at the time of injury.
- This makes it very difficult to prove that marijuana was the proximate cause of the accident. Make sure you have strong witnesses!



www.bradfordbarthel.com

33

SB 863 update



WCIRB estimates:

- \$1.4 billion in savings a year on SB 863.
- Last year's prediction was for \$500 million savings a year.
- Where's the savings coming from?
 - \$400 million from RBRVS adjustments to OMFS.
 - \$400 million in decreasing medical severity.

(Sources: WorkCompCentral, WCIRB)



www.bradfordbarthel.com

34

SB 863 update

WCIRB tells us about liens:

- Lien filings are down again. They peaked at 108,000 in the 1Q 2016, and are down to 76,500 in the 3Q 2016.
- After 2012 – med-legal and interpreter liens have significantly dropped.
- 85% of liens are medical providers now.

(Sources: WorkCompCentral, WCIRB)



www.bradfordbarthel.com

35

SB 863 update

WCIRB tells us:

- Initially thought that IMR would reduce TD duration. That is mistaken – IMR does not appear to be affecting the duration of TD.
- Indemnity claims:
 - Increased by 2.2% in 2013-14
 - Decreased by 0.2% in 2014-15
 - Increased by 0.5% during the last six months of 2015.

(Sources: WorkCompCentral, WCIRB)



www.bradfordbarthel.com

36

SB 863 update: Fee schedules

SB 863 called for three new fee schedules:

- Home care fee schedule = PROPOSED.
- Interpreter fee schedule = PROPOSED.
- Copy service fee schedule = APPROVED.



37

SB 863 update: Home care FS

Home care fee schedule: Still under construction

- Latest proposal came out in May 2016.
- DWC can either push it into final rulemaking, or make more changes and make it subject to more comments.
- Based on Medi-Cal and federal OWCP fee schedules.



www.bradfordbarthel.com

38

SB 863 update: Home care FS

The latest proposal . . .

- Increased reimbursement rates for providers by 5.8%. (Rates for skilled providers are based on a formula.)
- Removed the utilization of CMS' OASIS system to determine applicant's need for home health care. OneCall objected to the removal of this, noting that the OASIS system requires an initial assessment by a RN, which is pretty standard.



www.bradfordbarthel.com

39

SB 863 update: Home care FS

The latest proposal . . .

- Specifies that home health care providers do not become the employees of the carrier or TPA. This prevents the applicant's sibling/spouse from providing care, getting injured, and filing a new claim against the carrier administering the claim of the applicant who needs home health care.
- Does not include a provision paying providers for travel time. (CAA objected to this.)



www.bradfordbarthel.com

40

SB 863 update: Home care FS

The latest proposal . . .

- States that unskilled HHC providers cannot get paid less than minimum wage.
- When state and local minimum wages contradict one another, the regs suggest going with the higher of the two minimum wages.



www.bradfordbarthel.com

41

SB 863 update: Interpreter FS

Interpreter fee schedule: Still under construction

- Latest proposal came out in 2015, which was strongly opposed by interpreters. Defendants also wanted changes to it as well.
- DWC needs to issue a new, revised version, which will be subject to comment.
- When the new proposal drops, be prepared for lots of fighting.



www.bradfordbarthel.com

42

SB 863 update: Copy service FS

Copy service fee schedule: Approved and active!

- Applies to DOS on/after 7/1/15.
- “Think \$180” for most services: flat fee of \$180 covers records of 500 pages or less.
- Every page exceeding the 500 = \$0.10 a page.



www.bradfordbarthel.com

43

SB 863 update: Copy service FS

Copy service fee schedule: Approved and active!

- Bills must include
 1. professional photocopier numbers,
 2. claim numbers,
 3. billing codes, and
 4. provider's tax number.



www.bradfordbarthel.com

44

SB 863 update: Copy service FS

Copy service fee schedule: Approved and active!

- Extra copy = \$5, if requested w/in 30 days of original subpoena. If requested more than 30 days, additional set = \$30.
- DWC transcripts of 33 pages and less = \$100. More than 33 pages = an additional \$3 a page.
- Absent showing of “good cause”, payers are not liable for records previously obtained by subpoena or authorization by the same party and served from the same source.



www.bradfordbarthel.com

45

Formulary update



In 2015, CA lawmakers passed a law requiring the implementation of a formulary by July 1, 2017:

- DWC is going with the ACOEM formulary.
- “Preferred drugs” won’t require UR.
 - Ibuprofen
- “Non-preferred drugs” will require UR.
 - Ex: Narcotic painkillers



www.bradfordbarthel.com

46

Formulary update

What about combinations of preferred and non-preferred drugs?

- Some of those will be dispensed on a “first fill basis.”
 - Ex: Combination of hydrocodone and acetaminophen.
- “First fill prescriptions”: Filled within the first 7 days after an injury, and limited to a 4-day supply.



www.bradfordbarthel.com

47

Reminder/Warning

- Every bill we have discussed so far have become law.
- Of the regulations we discussed, the:
 - Formulary, home care fee sked, and interpreter fee sked are still just proposals and are not law.
 - Copy service fee schedule is finalized and is the law.
- Every bill after this point in the presentation are bills that “did not make it,” and are not law.



www.bradfordbarthel.com

48

BILLS NOT APPROVED BY THE GOVERNOR IN 2016

These bills were proposed, but were either vetoed or killed:

- Senate Bill 897: Salary continuation benefits.
- Assembly Bill 2086: Neuropsyches as QMEs.
- Assembly Bill 1643: “Breast PD” bill.

Why go over these bills?

- Someone will try to introduce new versions of these in the future.



www.bradfordbarthel.com

49

SB 897: Vetoed!



Senate Bill 897 proposed:

- Allowing first responders who suffer a “catastrophic injury” (amputations, shootings, stabbings, severe injuries) to collect up to two years of salary continuation pay instead of TD.
- Currently, these first responders can only collect up to one year of salary continuation pay.
- Salary continuation pay = 67% of preinjury wages.
- Expect something similar next year.



www.bradfordbarthel.com

50

AB 2086: Vetoed!

Assembly Bill 2086 proposed:

- Giving neuropsychologists their own QME designation within the DWC Medical Unit.
- The DWC eliminated this in 2015.



51

AB 1643: Vetoed!

Assembly Bill 2086:

- Lawmakers tried to pass a similar bill in 2015, which was also vetoed.
- The 2016 version tried to say that only neuropsyches who have been used as AMEs five times could act as neuropsych QMEs, but that was not enough to avoid a veto.
- Expect a similar bill in 2017!



www.bradfordbarthel.com

52

AB 1643: Vetoed!



Assembly Bill 1643:

- Would have increased the maximum PD rating for a mastectomy from 5% PD to 16% PD.
- Reasoning: A man's prostate is worth 16% PD. CAAA wants a woman's breast to be worth the same amount of PD as a man's prostate.
- Bill would have also barred apportionment to pregnancy, menopause, carpal tunnel syndrome, or osteoporosis.



www.bradfordbarthel.com

53

AB 1643: Vetoed!



Assembly Bill 1643:

- A similar bill was proposed in 2015, and also vetoed.
- Expect a similar bill in 2017, that seeks to bar apportionment to pregnancy, menopause, carpal tunnel syndrome, or osteoporosis.



www.bradfordbarthel.com

54

Note regarding future bills

On the Nov. 8 election, Californians approved Proposition 54.

- This GOP-backed proposition requires bills to be in print 72 hours before final floor votes in either house.
- How does this affect comp? Our last few big bills (SB 899, SB 863, and SB 1160) were hotly negotiated down to the wire and included last-minute changes. This proposition would have most likely prevented some/many of those changes.



www.bradfordbarthel.com

55

Thank you for your time!

Alec Bradford, Esq.
 Bradford & Barthel, LLP
 404 Camino Del Rio South, #510
 San Diego, CA 92108
 Phone: (619) 641-7942
abradford@bradfordbarthel.com



John P. Kamin, Esq.
 Bradford & Barthel, LLP
 18801 Ventura Blvd., Ste 200
 Tarzana, California 91356
 Phone: (818) 654-0411
jkamin@bradfordbarthel.com



Blog: <http://bradfordbarthel.blogspot.com>

www.bradfordbarthel.com

56