

**Senate Bill No. 1105**

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Passed the Senate August 31, 2012

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*Secretary of the Senate*

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Passed the Assembly August 30, 2012

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 4903.1 of the Labor Code, relating to workers' compensation.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1105, Lieu. Workers' compensation: liens.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing workers' compensation law authorizes the Workers' Compensation Appeals Board to determine and allow specified expenses as liens against any sum to be paid as compensation. Existing law requires, before issuing an award or approval of any compromise of claim, the determination of whether any benefits have been paid or services provided by specified entities.

This bill would require the appeals board to allow a lien for loss-of-time benefits paid by a self-insured employee welfare benefit plan, as defined.

This bill would incorporate additional changes in Section 4903.1 of the Labor Code proposed by SB 863 that would become operative only if SB 863 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 4903.1 of the Labor Code is amended to read:

4903.1. (a) The appeals board, arbitrator, or settlement conference referee, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to subdivision (b) or (c), whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss-of-income policy, a self-insured employee welfare benefit plan, or a hospital service contract, and its award or approval shall

provide for reimbursement for benefits paid or services provided under these plans as follows:

(1) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his or her need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employee's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(2) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract. For purposes of this paragraph, benefits paid or services provided by a self-insured employee welfare benefit plan shall be determined notwithstanding the official medical fee schedule adopted pursuant to Section 5307.1.

(3) (A) When the referee issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for loss-of-time benefits paid by a self-insured employee welfare benefit plan. Such lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. No lien shall be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits.

(B) For purposes of this paragraph, "self-insured employee welfare benefit plan" means any plan, fund, or program that is established or maintained by an employer or by an employee

organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, other than through the purchase of insurance, either of the following:

(i) Medical, surgical, or hospital care or benefits.

(ii) Monetary or other benefits in the event of sickness, accident, disability, death, or unemployment.

(4) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(b) When a compromise of claim or an award is submitted to the appeals board, arbitrator, or settlement conference referee for approval, the parties shall file with the appeals board, arbitrator, or settlement conference referee any liens served on the parties.

(c) Any lien claimant under Section 4903 or this section shall file its lien with the appeals board in writing upon a form approved by the appeals board. The lien shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service upon the injured worker, or if deceased, upon the worker's dependents, the employer, the insurer, and the respective attorneys or other agents of record.

(d) The appeals board shall file liens required by subdivision (c) immediately upon receipt. Numbers shall be assigned pursuant to subdivision (c) of Section 5500.

(e) The changes made to this section by Senate Bill 457 of the 2011–12 Regular Session do not modify in any way the rights or obligations of the following:

(1) Any health care provider to file and prosecute a lien pursuant to subdivision (b) of Section 4903.

(2) A payor to conduct utilization review pursuant to Section 4610.

(3) Any party in complying with the requirements under Section 4903.

SEC. 1.5. Section 4903.1 of the Labor Code is amended to read:

4903.1. (a) The appeals board or arbitrator, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to Section 4903.05, whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss-of-income policy or a self-insured employee welfare benefit plan, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows:

(1) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his or her need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employee's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy or a self-insured employee welfare benefit plan, subject to the provisions described in subdivision (b).

(2) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy or a self-insured employee welfare benefit plan, subject to the provisions of subdivision (b). For purposes of this paragraph, benefits paid or services provided by a self-insured employee welfare benefit plan shall be determined notwithstanding the official medical fee schedule adopted pursuant to Section 5307.1.

(3) (A) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for loss-of-time benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for

which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits.

(B) For purposes of this paragraph, "self-insured employee welfare benefit plan" means any plan, fund, or program that is established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, other than through the purchase of insurance, either of the following:

(i) Medical, surgical, or hospital care or benefits.

(ii) Monetary or other benefits in the event of sickness, accident, disability, death, or unemployment.

(4) If the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the appeals board shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(b) Notwithstanding subdivision (a), payment or reimbursement shall not be allowed, whether payable by the employer or payable as a lien against the employee's recovery, for any expense incurred as provided by Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, nor shall the employee have any liability for the expense, if at the time the expense was incurred the provider either knew or in the exercise of reasonable diligence should have known that the condition being treated was caused by the employee's present or prior employment, unless at the time the expense was incurred at least one of the following conditions was met:

(1) The expense was incurred for services authorized by the employer.

(2) The expense was incurred for services furnished while the employer failed or refused to furnish treatment as required by subdivision (c) of Section 5402.

(3) The expense was necessarily incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

(c) The changes made to this section by Senate Bill 457 of the 2011–12 Regular Session do not modify in any way the rights or obligations of the following:

(1) Any health care provider to file and prosecute a lien pursuant to subdivision (b) of Section 4903.

(2) A payer to conduct utilization review pursuant to Section 4610.

(3) Any party in complying with the requirements under Section 4903.

SEC. 2. Section 1.5 of this bill incorporates all of the substantive amendments to Section 4903.1 of the Labor Code proposed by both this bill and Senate Bill 863. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 4903.1 of the Labor Code, and (3) this bill is enacted after Senate Bill 863, in which case Section 1 of this bill shall not become operative.

Approved \_\_\_\_\_, 2012

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*Governor*