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 Rule 10770 Letter LC4609 Demand Letter
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Two Labor Codes that Bill Review Companies and PPO Networks Hope Medical Providers will Never Understand; Labor Code § 4609 and Labor Code § 4611 Active for 12 Years.

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 November 24, 2012

This article is not an attempt to address all the provisions of Labor Code § 4609 and Labor Code § 4611 but only those provisions that still after 12 years from the date of its enactment have escaped the understanding of medical providers, attorneys and judges in the reduction of medical providers medical bills through the sale of contract discounts.

Summary of the provisions of Labor Code § 4609 and Labor Code § 4611 that will be discussed in this article are as follows:

- **Labor Code § 4609**
 "...Demonstration by payor of entitlement to pay contracted rate."
- **Labor Code § 4609 (a)** "...any payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed by the contracting agent to the provider in advance and shall actively encourage employees to use the network, unless the health care provider agrees to provide discounts without that active encouragement."
- **Labor Code § 4609 (b) (2)**
 Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted

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providers when obtaining medical care that entitles a payor to claim a contracted rate.

- **Labor Code § 4609 (b) (2)**
 "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."
- **Labor Code § 4609 (b) (2)**
 "...For purposes of this paragraph, a payor is deemed to have actively encouraged employees to use the list of contracted providers if the employer provides information directly to employees during the period the employer has medical control advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to employees; or in advance of a workplace injury, or upon notice of an injury or claim by an employee..."
- **Labor Code § 4609 (b) (2)**
 "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."
- **Labor Code § 4609 (c) (2)**
 Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph

(3) of subdivision (d), shall do all of the following:

- **Labor Code § 4609 (c) (2) (A)**
 Describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b), and demonstrates compliance with paragraph (1).
- **Labor Code § 4609 (b) (2)**
 "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."
- **Labor Code § 4609 (c) (2) (B)**
 Identifies the contracting agent with whom the payor has a written agreement whereby the payor is not required to actively encourage employees to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).
- **Labor Code § 4609 (a)**
 Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

○ **Labor Code § 4609 (a) (1)** Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

○ **Labor Code § 4609 (b) (2)** Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate.

• **Note:** Automatic "**RENEWAL**" Clause: Provision in an agreement under which it is renewed for another term after the expiry of the current term unless one of the involved parties gives a notice of its discontinuation.

• **Note: renewal n.** keeping an existing arrangement in force for an additional period of time, such as a lease, a promissory note, insurance policy or any other contract

• **Labor Code § 4609 (b) (2)** "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."

• **Labor Code § 4611** Rights and obligation of provider upon sale, lease of transfer of health provider's contract to payor (a) When a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the

provider shall be governed by the underlying contract between the health care provider and the contracting agent."

In asserting **Labor Code § 4609** and **Labor Code § 4611** the Lien Claimant must assert and clearing explain the violations of **Labor Code § 4609** that prevent the parties from taking a PPO discount as **Labor Code § 4609** states that failure to comply with the requirements of **Labor Code § 4609** results in the payor being prohibited from taking a PPO discount, **Labor Code § 4609** "...Demonstration by payor of entitlement to pay contracted rate."

Labor Code § 4609 (a) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

Labor Code § 4609 (a) (1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

Labor Code § 4609 (b) (2) Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of

contracted providers when obtaining medical care that entitles a payor to claim a contracted rate.

Labor Code § 4609 requires action and compliance from two parties the "Payor(s)" and the "Contracting Agent" with two different operative dates in addition **Labor Code § 4611** prohibits the transfer of contracts by expanding the original contract to include bill review companies. The Network (Network Leasing Company) who by contract made, the Bill Review Company a payor and Bill Review Company by contract made the Insurance (Employer) a payor. Therefore, by the requirements of **Labor Code § 4609** the Network must comply with all requirement that are required of Network Leasing Entity and Bill Review Company and Employer / Insurance Company must comply with all the requirements of **Labor Code § 4609** regarding "payors".

Labor Code §(d)(3)(A)

For the purposes of subdivision (b), "payor" means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a self-insured employer, a third-party administrator or trust, or any other third party that is responsible to pay health care services provided to employees for work-related injuries, or an agent of an entity included in this definition.

Labor Code § (d) For the purposes of this section, the following terms have the following meanings:

(1) "Contracting agent" means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a health care service plan, including a specialized health care service plan, a preferred provider organization, or a self-insured employer, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying a provider or provider panel to provide health care services to

Two Operative Dates of Labor Code § 4609:

○ **Labor Code § 4609 (c)** Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:..."

○ **Labor Code § 4609 (b)** Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a

their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:..."

- Operative Date of **Labor Code § 4611** January 01, 2003: **Labor Code § 4611**. Rights and obligation of provider upon sale, lease of transfer of health provider's contract to payor (a) When a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

• **REQUIREMENTS OF "PAYORS" UNDER LABOR CODE § 4609**

Labor Code § 4609 (c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

Labor Code § 4609 (b) (2)(A) Describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b), and demonstrates compliance with paragraph (1).

Labor Code § 4609 (b) (2) "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."

REQUIREMENTS OF

LABOR CODE § 4609

Labor Code § 4609 (b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:..." The contract that the Defense states applies to the sale of the contract in this case is renewed¹ every two years therefore **Labor Code § 4609 (b)** applies to the transactions in this case and there must be a showing that **Labor Code § 4609 (b)** has been complied with, of which Lien Claimant asserts the Defense did not comply with and are thereby prohibited from taking a PPO discount in this case.

Labor Code § 4609 (b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing¹ a provider contract, do all of the following:
(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting

agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate.

Labor Code § 4609 (b) (2) "...However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph...."

IMPROPER SELLING, LEASING, OR TRANSFERRING OF A HEALTH CARE PROVIDER'S CONTRACT IN THIS CASE

Labor Code § 4609 (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract..."

A Bill Review Company cannot sell, lease, or transfer the Medical Provider contract with Network to the Employer / Insurance Company, there is no evidence that the Medical Provider has signed any agreement that allows a "Payor" to transfer or sell the contract making a another entity a payor and which is also prohibited by **Labor Code § 4611** which states as follows: "**Labor Code § 4611** Rights and obligation of provider upon sale, lease of transfer of health provider's contract to payor (a) When a contracting agent sells, leases, or transfers a health provider's contract to a

payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent."

In response to the above fact situation the California Legislature enacted **Labor Code § 4609 (Senate Bill 559 (2000))** and **Labor Code § 4611 (AB 179 (2003))**, to specifically address the issues of PPO discounts in an industrial injury case, prevent the purchase of PPO contract discounts. The reason as stated in **First Senate Committee Analyses SB 559 (Brulte)** Hearing Date: April 21, 1999 "CCA believes that this bill levels the playing field by giving providers the right to approve or reject the sale of their names without the fear of contract termination or non-renewal."

The Defense not only bears the initial burden to show that it has complied with **Labor Code § 4609** as stated in **Labor Code § 4609** "...Demonstration by payor of entitlement to pay contracted rate." The Defendants have also failed to do sustained their burden of proof to show that the fee schedule is unreasonable in accordance with **Lab. Code, §§ 5705, 3202.5; Zenith Insurance Co. v. Workers' Camp. Appeals Bd (Capi)** (2006) 138 Cal.App.4th 373 [71 Cal.Comp.Cases 374]; **Tapia v. Skill Masters Staffing** (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc).

Under the SB 863 amendments to **Labor Code § 4610** the employer is no longer required in every

case to conduct a Utilization Review when a request for authorization is made thereby diminishing the principles set forth in the Supreme Court Decision of “Sandhagen”

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The Supreme Court Decision of “Sandhagen” established the mandatory utilization review every time there was a request for authorization and subsequent interpretation established that the failure to perform that utilization review by the employer established the medial necessity for that treatment requested by default. **State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd.** (Sandhagen) (2008) 44 Cal. 4th 230, 233-234 (*State Comp.*), the Supreme Court clarified that when an employer is faced with deciding whether to approve or deny the treatment recommendation of an injured worker’s physician, it **must** conduct utilization review pursuant to **Labor Code section 4610** .

However now under SB 863 the three added sections to **Labor Code §4610** has modified the principles set forth in “Sandhagen” stating that the employer is not required to conduct utilization review every time there is a request for authorization: **(New under SB 863) Labor Code §4610 (g) (7) Utilization review of a treatment recommendation shall not be required while the employer is disputing liability for injury or treatment of the condition**

for which treatment is recommended pursuant to Section 4062.

(New under SB 863) Labor Code §4610 (g) (8) If utilization review is deferred pursuant to paragraph (7), and it is finally determined that the employer is liable for treatment of the condition for which treatment is recommended, the time for the employer to conduct retrospective utilization review in accordance with paragraph (1) shall begin on the date the determination of the employer’s liability becomes final, and the time for the employer to conduct prospective utilization review shall commence from the date of the employer’s receipt of a treatment recommendation after the determination of the employer’s liability.

(New under SB 863) Labor Code §4610 (g) (6) A utilization review decision to modify, delay, or deny a treatment recommendation shall remain effective for 12 months from the date of the decision without further action by the employer with regard to any further recommendation by the same physician for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision.

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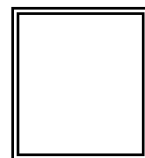
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