

Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON INSURANCE

Lisa Calderon, Chair

AB 1398 (Valencia) – As Introduced February 21, 2025

SUBJECT: Workers' compensation

SUMMARY: This bill clarifies that existing laws concerning referrals for workers' compensation-related services to an entity in which the referrer holds a financial interest, do not preclude the applicability of any other law that may apply to the transaction. The bill also clarifies that a disclosure of financial interest made pursuant to existing law when providing such a referral must be made to a third-party payer or other entity to whom a claim for payment is presented for the services furnished pursuant to a referral.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. (California Constitution Article XIV, Section 4)
- 2) Establishes DWC within the Department of Industrial Relations (DIR) and charges it with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor (Lab.) Code Sections 3200 et. seq.)
- 3) Requires all interested parties in a workers' compensation claim to disclose any financial interest in any entity providing services pertaining to the claim. (Lab. Code Section 139.32(b))
- 4) Except as otherwise permitted by law, prohibits an interested party other than a claims administrator or network service provider from referring a person for services provided by another entity, or using services provided by another entity, if the other entity will be paid for those services through the workers' compensation system and the interested party has a financial interest in the other entity. (Lab. Code Section 139.32(c))
- 5) Prohibits an insurer, self-insurer, or other payer from knowingly paying a charge or lien for any services resulting from a referral for services or use of services in violation of these provisions. (Lab. Code Section 139.32(f))
- 6) Prohibits an entity from presenting a claim for payment to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited by these provisions. (Lab. Code Section 139.32(e))
- 7) Provides that a violation of these provisions is a misdemeanor, and subject to civil penalties up to \$15,000 for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. (Lab. Code Section 139.32(g)(1))
- 8) Prohibits a person from concealing, or knowingly failing to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance

benefit or payment, or the amount of any benefit or payment to which the person is entitled, and prohibits knowingly assisting or conspiring with a person to violate this provision. (Penal Code Section 550(b)(3))

- 9) Provides that a violation of 8, above, is punishable by imprisonment for two, three, or five years, as specified, or by a fine not exceeding \$50,000 or double amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than \$10,000, or by both that imprisonment and fine. (Penal Code Section 550(c)(3))
- 10) For purposes of 1-7, above, defines “financial interest in another entity” to mean either of the following:
 - a) Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services; or
 - b) An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals. (Lab. Code Section 139.32(a)(1))
- 11) For purposes of 1-7, above, defines “interested party” to mean an injured employee; the employer of an injured employee, and, if the employer is insured, its insurer; the claims administrator, an attorney or law firm that is representing or advising an employee regarding a claim for compensation; a representative or agent of an interested party; or a provider of medical services or products. (Lab. Code Section 139.32(a)(2))
- 12) For purposes of 1-7, above, defines “services” to include, but not be limited to: a determination regarding an employee’s eligibility for compensation; services to review the itemization of medical services set forth on a medical bill pertaining to a workers’ compensation claim; copy and document reproduction services; interpreter services; medical services, including the provision of any medical products; transportation services; and services in connection with utilization review. (Lab. Code Section 139.32(a)(3))

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *Purpose:* According to the author, “Hard working Californians pay into workers’ compensation to ensure that benefits are available to the millions of workers if they are injured on the job. Illegal kickback schemes benefit a select few who not only breach their required ethical duties, but also take advantage of a loophole in the law to escape stricter criminal penalties and avoid steeper consequences. AB 1398 is common sense legislation that provides prosecutors the tools to properly choose how to handle those cases involving those who prey on injured workers and ensures greater accountability for the criminal acts.”

This bill is author sponsored.

- 2) *Workers' compensation and illegal referrals*: At its core, the workers' compensation system relies on a so-called "grand bargain." If a worker is injured on the job, the employer must pay for the worker's medical treatment, including monetary benefits if the injury is permanent. In exchange for receiving the guarantee of such treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. All employers are required to secure the payment of workers' compensation either by receiving approval from DIR to self-insure in accordance with substantial requirements, or by obtaining workers' compensation insurance coverage from an authorized insurer. The Labor Code explicitly asserts that it is the policy of the state to "vigorously enforce" this law.

Though the concept of workers' compensation is simple, the reality of the system is rather complex. Receiving treatment or benefits requires a worker to report the injury to the employer, to file claim forms detailing the injury with the employer, and to receive an initial evaluation by a medical provider within a network specified by the employer or their insurer, all while the employer submits a report of the injury to the insurer. A claims administrator with the insurer then determines whether to approve or deny the claim, and, if approved, treatment can be provided. If disputes arise as to the details concerning the injury, the medical necessity of aspects of the treatment plan, or the billing of insurers by medical providers, separate formal dispute resolution processes involving qualified medical evaluators, workers' compensation administrative law judges, the Workers' Compensation Appeals Board, independent medical review organizations, and independent bill review organizations may be undertaken.

Given the complexity of the system, any single workers' compensation claim can, from initial filing to completion of treatment, require a shocking number of different parties and professionals. Navigating the process alone can require an injured worker or employer, depending on their circumstances, to work with interpreters, document preparers, attorneys, and medical providers, who themselves must work with an even more sprawling network including, e.g., durable medical equipment providers and pharmacies.

Unfortunately, the vast network of interests involved in the workers' compensation process has given rise to elaborate fraud schemes dependent on illegal referrals, also known as "kick-back schemes." In these schemes, those providing services pertaining to a workers' compensation claim will refer the injured worker or employer to another service provider in which they have a financial interest (e.g. via financial compensation for the referral or due to shared ownership), without disclosing that relationship, and, as a result of the referral, the referee will receive payment via the workers' compensation system for the services provided.

The case of *People v. Luna* (2023) [89 Cal. Comp. Cases 22], discussed in detail below, provides a clear example of such a scheme:

Luna has been practicing workers' compensation law in California for half a century. [...] Luna opened a side business called Adelante Interpreters in 2011. Although Luna controlled and ran the business, he did not mention that on the incorporation papers. Instead, he listed his daughters as its acting officers. When Luna's legal clients needed interpreter services in connection with their workers' compensation claims, he invariably enlisted Adelante for those services. Adelante then made insurance claims for the cost of those services. All told, it received payments totaling over \$100,000 from 22 different insurance carriers between 2016 and 2020.

These schemes can be even more complex and costly. One such case, *People v. Woods* (2025) [Super. Ct. No. 17CF1373], involved arrangements between an attorney, a document preparation firm, a subpoena services firm, an advertising/workers' compensation client identification firm, and a network of physicians, all of whom were, in various ways, providing one another with compensation in exchange for providing workers' compensation services, which were then paid for by workers' compensation insurers. This scheme, orchestrated by the attorney, Jon Woods, was responsible for \$26,860,000 in fraudulent workers' compensation liens.

- 3) *Overlapping fraud statutes and People v. Luna*: Labor Code Section 139.32 specifies several conditions and prohibitions pertaining to referrals for service made in relation to a workers' compensation claim for which the referrer has a financial interest in the referee. These include required disclosure by all interested parties of any financial interest in any entity providing services (Lab. Code Section 139.32(b)), and a prohibition on referring a person for services provided by another entity if that entity will be paid through the workers' compensation system and the referrer has a financial interest in the referee (Lab. Code Section 139.32(c)). These provisions are punishable as misdemeanors and subject to civil penalties up to \$15,000 for each offense.

Section 550 of the Penal Code details several prohibitions pertaining to insured property and insurers, violations of which are punishable as felonies, with the possibility of imprisonment and fines up to \$50,000. Specifically, Penal Code Section 550(b)(3) prohibits a person from concealing, or knowingly failing to disclose the occurrence of, "an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled." While far more general than Labor Code Section 139.32(c) and predicated on *intent* to conceal, this provision would nonetheless similarly prohibit referrals for service where the referrer has a financial interest in the referee and the referee will be paid through workers' compensation insurance.

The relationship between these statutes came into question in *People v. Luna* (2023) [89 Cal. Comp. Cases 22]. For the referral scheme discussed in Comment 2, above, the district attorney sought to charge Moses Luna with 22 counts of felony insurance fraud pursuant to Penal Code Section 550(b)(3). In this case, the trial court held, and the appellate court upheld, that the felony charges must be dismissed due to the existence of Labor Code Section 139.32(c), which more specifically addresses the same activity, and punishes it as a misdemeanor. The court relied on the so-called *Williamson* rule, "which precludes criminal prosecution under a general statute if there is a more specific statute that applies to the defendant's conduct." (*In re Williamson* (1954) 43 Cal.2d 651)

As a result of this decision, prosecutors have struggled to bring felony charges for illegal referrals under Penal Code Section 550(b)(3). The implications of this preemption are not limited to the lesser penalties provided under Labor Code Section 139.32. Rather, because Penal Code Section 550(b)(3) permits trying the fraudulent activity as a felony, it is subject to the four-year statute of limitations for felony fraud in California. In contrast, Labor Code Section 139.32 is subject to a one-year statute of limitations.

A coalition of business and insurance interests in support of the bill, including the California Chamber of Commerce (CalChamber), the California Coalition on Workers' Compensation

(CCWC), the California Farm Bureau, and the American Property Casualty Insurance Association (APCIA), describe the issue as follows:

Labor Code Section 139.32(c) includes specific language prohibiting these referrals in the workers' compensation system. Prosecutors who investigate and charge these crimes routinely choose Penal Code Section 550(b)(3) because it is a felony code section with a four-year statute of limitations. By ruling that Labor Code Section 139.32 preempted Penal Code Section 550(b)(3), the court limited prosecutors to the misdemeanor section's one-year statute of limitations. A one-year statute of limitations would deal a fatal blow to nearly every medical billing fraud investigation in California because these are large scale and complex cases that take over a year to investigate. The Orange County District Attorney's office reports that all the 18 major fraud cases they investigated during the last ten years took well over a year to investigate.

In its ruling, the Appellate Court called on the Legislature to address the issue and rectify the court's interpretation stating: *"if this is not the case, the Legislature can easily say so by amending the statute to clarify that a violation of its provisions does not preclude the applicability of any other provision of law."* The court stated: *"The Legislature has utilized this procedure in response to past judicial decisions, and there is no reason it cannot do so in response to this case, if need be."*

This bill would provide precisely that clarification which the decision in *People v. Luna* recommends the Legislature undertake should it intend for such illegal referral schemes to be prosecutable under either Labor Code Section 139.2(c) or Penal Code Section 550(b)(3) at the discretion of the prosecutor. In practice, by amending Labor Code Section 139.2(c) to include that "this section does not preclude the applicability of any other law that applies or may apply to a transaction," the bill would return prosecution of illegal workers' compensation referral schemes to its pre-*Luna* status quo. This would permit prosecutors to enforce workers' compensation referral financial interest laws as either a misdemeanor or a felony, depending on severity and intent, and would allow for use of the four-year statute of limitations provided under Penal Code Section 550(b)(3).

Staff notes that, as the *Luna* decision points out, prior to that case, "Section 139.32 [had] not been cited in any reported cases since it was enacted in 2012." Considering the significant overlap between Section 139.32 and Penal Code Section 550(b)(3) and the apparent preference for prosecuting these cases under Penal Code Section 550(b)(3), it is unclear what function Section 139.32, which is more specific, is presently serving. It is true that the two statutes differ in whether they involve intent to defraud, but considering the alleged necessity of the extended statute of limitations for virtually any complex illegal referral case, an alternative approach may be to amend Section 139.32, which is specifically crafted to address illegal referrals in workers' compensation cases, to extend the pertinent statute of limitations and increase penalties. That said, the availability of both Section 139.32 and Penal Code Section 550(b)(3) does, in theory, allow for differential prosecution of simple, incidental or smaller-stakes illegal referrals, and more complex, intentional fraud schemes. As such, the approach taken by this bill may indeed be preferable.

The court also held in *Luna* that the district attorney could not bring charges for failure to disclose the financial interest under Labor Code Section 139.32(b), which requires all interested parties, as defined, to "disclose any financial interest in any entity providing

services,” because that statute is unconstitutionally vague. Specifically, the provision does not specify how, when, or to whom the disclosure must be made. This bill seeks to resolve that vagueness by specifying that the disclosure shall be made to a third-party payer or other entity to whom a claim for payment is presented for services furnished pursuant to a referral. Additionally, as discussed below, the author intends to amend the bill to address the “how” and the “when” of the disclosure by clarifying that the disclosure shall be made in writing at the time the claim for payment is presented.

- 4) *Author’s amendments:* The author has provided the following amendments in order to clarify that the required financial interest disclosure required be made in writing and at the time the claim for payment is presented for services furnished pursuant to the referral.

On page 3, in line 24, after “(b)” insert: (1)

On page 3, between lines 27 and 28, insert:

(2) The disclosure pursuant to this subdivision shall be made in writing, at the time the claim for payment is presented for services furnished pursuant to a referral.

- 5) *Pending and prior legislation:*

SB 536 (Archuleta, 2025) would require an insurer to notify the Employment Development Department (EDD) of suspected fraud when the fraudulent activity relates to workers’ compensation premium fraud, and would require EDD to release payroll summary totals to an insurer upon request. This bill is currently awaiting hearing in the Senate Committee on Labor, Public Employment, and Retirement.

AB 2046 (Daly, Ch. 709, Stats. 2018) requires data sharing between governmental agencies involved in combatting workers’ compensation fraud, and grants the Fraud Assessment Commission (FAC) discretion to augment an assessment to fund the workers’ compensation fraud program with unused funds from previous assessments.

SB 1160 (Mendoza, Ch. 868, Stats. 2016) among other things, prohibits medical providers who have been convicted or indicted for workers’ compensation fraud from pursuing liens.

SB 863 (De León, Ch. 363, Stats. 2012) enacted major reforms to the workers’ compensation system, including establishing the independent medical review (IMR) procedure for evaluating disputes pertaining to medically necessary treatment, and authorizing appeal of IMR findings in the event there was fraud or a conflict of interest on the part of the IMR.

SB 1218 (Robbins & Presley, Ch. 116, Stats. 1991) made several changes to laws concerning workers’ compensation fraud reporting and prosecution, and established the FAC to identify, investigate, and prosecute fraudulent activity and to assess insurers to support efforts to combat fraud.

REGISTERED SUPPORT / OPPOSITION:

Support

American Property Casualty Insurance Association
California Association of Winegrape Growers

California Chamber of Commerce
California Coalition on Workers Compensation
California Farm Bureau
California Hotel & Lodging Association

Opposition

None on file.

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