Health care providers may be able to place a lien on a patient’s tort recovery from the entity that caused the patient’s injuries. The amount of the lien may be regulated by statute. State law will also prescribe substantive and procedural requirements, and a provider’s failure to comply may invalidate the lien. In some cases, a provider’s claim will not fall within the scope of the state lien statute.

The lien amount may be reduced if the patient can show unreasonableness. Other courts, however, have held that liens for full “chargemaster” prices did not violate state UDAP laws or were otherwise not unreasonable. Other issues likely to arise are the scope of the trial court’s power to apportion the recovery, or limit further collection action by the health care creditor, and whether the provider’s share of a common fund should be reduced by the pro-rated share of attorney fees and other costs.

State law may require the hospital to bill the patient’s health insurance for the patient’s care. In this situation, a hospital usually could not refuse to bill the insurance company and instead seek payment of the bills from that patient’s tort settlement.

Footnotes


925 [868] See 770 Ill. Comp. Stat. § 23/10(a) (limiting the total amount of all provider liens to 40% of the patient’s recovery); HealthOne, Inc. v. Columbia Wesley Med. Ctr., 93 F. Supp. 2d 1152 (D. Kan. 2000) (Kansas hospital lien act allows lien for up to $5000; any additional amounts are subject to “equitable distribution” of settlement amount); Cullimore v. St. Anthony Med. Ctr., Inc., 718 N.E.2d 1221 (Ind. Ct. App. 1999) (Indiana hospital lien statute provides that if recovery not sufficient to pay all liens, amount will be proportioned pro rata, leaving enough for patient to get 20%; court held that underlying debt is not extinguished and hospital may sue patient for the balance); Rabun v. St. Francis Med. Ctr., Inc., 206 So. 3d 323 (La. Ct. App. 2016) (Louisiana’s Balance Billing Act prohibits a contracted health care provider from billing patient more than the contracted rate, therefore a lien could not exceed the contracted rate); King Cty. Rehab, L.L.C. v. Clackamas Cty., 164 P.3d 1190 (Or. Ct. App. 2007) (long term care provider’s lien limited to cost of care under statute and did not extend to attorney fees for collection); Daughters of Charity Health Servs. v. Linnstaedter, 226 S.W.3d 409 (Tex. 2007) (worker’s compensation insurer reimbursed hospital; labor code
barred hospital from filing property code lien against tort recovery from at-fault driver). See also Shelter Mut. Ins. Co. v. Kennedy, 60 S.W.3d 458 (Ark. 2001) (insurance company not entitled to subrogation when accident victim not made whole by tort settlement; victim had continuing medical problems and would require future treatment).

926 [869] E.g., In re Pratt, 251 B.R. 441 (B.A.P. 10th Cir. 2000) (table; text available at 2000 WL 1590555) (lien filed by physician for certain itemized amounts “up to the final balance” was good only as to the itemized amounts); Berrey v. Plaintiff Inv. Funding, L.L.C., 96 F. Supp. 3d 936, 945 (D. Ariz. 2015) (“The Arizona Supreme Court has held that the provisions of Arizona’s lien statutes must be strictly construed”); In re Norton, 248 B.R. 131 (Bankr. W.D. Wis. 2000) (financial responsibility form, which required patient to pay provider out of proceeds of any settlement, was merely a promise to pay, not an explicit assignment, and thus did not create lien); In re Woodward, 234 B.R. 519 (Bankr. N.D. Okla. 1999) (hospital liens not perfected at time of bankruptcy filing; detailed discussion of Oklahoma procedural requirements for hospital liens); Ex parte Infinity S. Ins. Co., 737 So. 2d 463 (Ala. 1999) (failure to strictly comply with statute invalidated hospital lien, but hospital was free to sue patient); Premier Physicians Grp., P.L.L.C. v. Navarro, 377 P.3d 988, 992–993 (Ariz. 2016) (affirming trial court’s finding that non-hospital medical provider’s claim failed where provider failed to record lien before services were provided or within thirty days after); San Bernardino v. Calderon, 56 Cal. Rptr. 3d 333 (Cal. Ct. App. 2007) (hospital’s lien did not become effective until it gave notice as required under statute); Mares v. Baughman, 112 Cal. Rptr. 2d 264 (Cal. Ct. App. 2001) (California statute allowing county that provided medical services a lien against “judgments” does not authorize a lien on a settlement); Kennestone Hosp., Inc. v. Travelers Home & Marine Ins., 768 S.E.2d 519 (Ga. Ct. App. 2015) (lien invalidated because hospital failed to provide required notice to auto insurer and driver alleged to be liable as required by statute); Wilson v. F.B. McAfroo & Co., 800 N.E.2d 177 (Ill. App. Ct. 2003) (physician’s lien not assignable; statutory creation, unknown to common law, must be narrowly construed); Anderson v. Dep’t of Mental Health & Developmental Disabilities, 711 N.E.2d 1170 (Ill. App. Ct. 1999) (no lien for Department of Mental Health, when it failed to prove causal connection between treatment it gave and injuries for which patient sued tortfeasor); Via Christi Reg’l Med. Ctr., Inc. v. Reed, 314 P.3d 852 (Kan. 2013) (strict compliance with Kansas hospital lien statute necessary for effective and enforceable lien); Sam v. Direct Gen. Ins. Co., 951 So. 2d 482 (La. Ct. App. 2007) (providers who failed to comply with procedural requirements of Louisiana lien statute were not entitled to a share of the tort recovery); Neb. Health Sys. v. Bear (In re Marshall), 634 N.W.2d 300 (Neb. Ct. App. 2001) (“substantial compliance” required; not shown when hospital failed to provide required notices to tortfeasor and court, so lien never perfected). Cf. Ill. Neurospine Inst., P.C. v. Butler, 2015 WL 6953932 (Ill. App. Ct. 2015) (reversing summary judgment for provider on breach of contract and lien claims, given that contract stated provider would first bill insurer yet failed to do so). But see In re Brown, 2007 WL 2029498 (Bankr. D. Kan. July 10, 2007) (hospital’s lien attached to settlement funds, notwithstanding the failure of the lien statements to name (and the failure to serve) all of the parties identified); Andrews v. Samaritan Health Sys., 36 P.3d 57 (Ariz. Ct. App. 2001) (untimely recording did not invalidate lien); Wainscott v. Centura Health Corp., 351 P.3d 513 (Colo. App. 2014) (substantial compliance is sufficient for lien); Wolf v. Toolie, 19 N.E.3d 1154 (Ill. App. Ct. 2014) (allowing lien for hospital that did not strictly comply with lien procedures); Stephens v. Parkview Hosp., Inc., 745 N.E.2d 262 (Ind. Ct. App. 2001) (hospital lien valid even though required notice sent to wrong attorney; victim’s attorney had actual notice, so no prejudice); Baker v. Iowa Methodist Med. Ctr., 542 N.W.2d 847 (Iowa 1996) (hospital’s failure to comply with notice requirement did not hamper ability to enforce lien); St. Francis Hosp. v. Vaughn, 971 P.2d 401 (Okla. Civ. App. 1998) (hospital lien was timely and valid when attorney received notice of lien after insurance company mailed settlement check but before attorney received and deposited check).

927 [870] In re Pratt, 251 B.R. 441 (B.A.P. 10th Cir. 2000) (table; text available at 2000 WL 1590555) (Oklahoma physicians’ lien statute strictly construed; does not allow medical corporation to file physician’s lien); Nazario v. Prof’l Account Servs., Inc., 2017 WL 1179917, at *4 (M.D. Fla. Mar. 30, 2017) (allowing plaintiff’s claim challenging defendant’s authority to file hospital lien under Florida law and county ordinance to proceed even though filing of a hospital lien may not be considered debt collection activity); Berrey v. Plaintiff Inv. Funding, L.L.C., 96 F. Supp. 3d 936 (D. Ariz. 2015) (lender that specialized in advancing funds for medical expenses of personal injury victims was not entitled in lien under Arizona law); Weston Reid, L.L.C. v. Am. Ins. Grp., Inc., 94 Cal. Rptr. 3d 748 (Cal. Ct. App. 2009) (hospital lien statute did not apply to proceeds from patient’s own insurance for uninsured motorist coverage; only allows lien encumbering third-party coverage); In re Estate of Reed, 201 P.3d 1264 (Colo. App. 2008) (provider obtained lien against parents, but lien did not encumber child’s estate, in this case child’s tort recovery); St. Anthony’s Med. Ctr. v. Metze, 23 S.W.3d 692 (Mo. Ct. App. 2000) (Missouri hospital lien statute did not allow lien against proceeds of wrongful death action, which benefited the survivors, not the estate); Quality Chiropractic, P.C. v. Farmers Ins. Co., 51 P.3d 1172 (N.M. Ct. App. 2002) (New Mexico statute allows lien by hospital but not individual providers, so court refuses to enforce “irrevocable lien and assignment” signed by patient as condition of receiving treatment);
Dallas Cty. Hosp. Dist. v. Wiley \textit{ex rel.} Wiley, 2002 WL 1286515 (Tex. App. June 12, 2002) (hospital lien statute does not apply to proceeds of “an insurance policy in favor of the injured individual or the injured individual’s beneficiary”; no lien against proceeds of action against minor patient’s father’s uninsured motorist insurance carrier, but \textit{quantum meruit} claim allowed to go forward).


929 [872] See §9.1.3 [1], \textit{supra} (discussion of discriminatory pricing and difference between chargemaster prices versus prices paid by most insurers).


statutory lien was not subject to reduction for prorated share of patients’ attorney fees pursuant to common fund
provides that if recovery not sufficient to pay all liens, amount will be proportioned pro rata, leaving enough for patient
to get 20%; court held that underlying debt is not extinguished and hospital may sue patient for the balance); Marquez
hospital’s lien); Wyant v. Kenda, 102 P.3d 1260 (Mont. 2004) (under Montana law, health care lien may not be
reduced by amount of attorney fees; note however that attorney’s lien takes priority over health care lien); Marquez
Martinez & Hart v. Univ. Hosp., 934 P.2d 270 (N.M. 1997) (public hospital’s lien would not be reduced by its share of
costs; court noted that result might be different for private hospital); Martino v. Dyer, 2000 WL 1727778 (Tenn. Ct.
App. Nov. 22, 2000) (when personal injury judgment sufficient to pay both hospital and attorney, hospital liens should
not be reduced by its share of attorney fees; statute giving priority to attorney’s lien applied only when proceeds
insufficient to go around).

932 Jackson v. Prof'l Radiology Inc., 864 F.3d 463 (6th Cir. 2017) (hospital violated Ohio law by refusing to bill insurance
company and seeking payment from patient’s tort settlement; however, claim against hospital’s debt collector was
dismissed); Raymond v. Avectus Healthcare Sols., L.L.C., 859 F.3d 381 (6th Cir. 2017) (hospital and debt collector
violated Ohio law by refusing to bill insurance company and seeking payment from patient’s tort settlement; court did
not address whether bill collector should be covered by the statute); Vallare v. Ville Platte Med. Ctr., L.L.C., 214 So.
3d 45, 51 (La. Ct. App. 2017) (where hospital filed lien instead of billing insurer, court found that patient’s cause of
action involved a contract or quasi-contractual obligation to bill insurance). But see Barry v. St. Mary’s Hosp. Decatur,

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