

Navigating the Maze of Hospital and Provider Lien Resolution

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Introduction

Navigating the complexities of hospital and provider liens presents a significant challenge for personal injury attorneys. These liens trigger ethical obligations, require the resolution of unreasonable charges, and require the knowledge of the intricacies of local lien laws. Unreasonable medical charges, particularly hospital bills, have become a significant issue in the resolution of personal injury cases. These charges often bear no relation to the hospital's internal costs. Injured plaintiffs in third-party liability cases unfairly bear the brunt of these inflated charges. Thankfully, the law in most states supports injury victims in challenging excessive charges. The key thing to realize is that if you negotiate from full billed charges down then you have already lost the fight against hospital and provider lien holders. Full billed charges are “pie in the sky numbers” which aren’t grounded in reality so using them as a starting point for negotiations instead of a “reasonable value” is a mistake.

In general, hospital reimbursement claims can be highly problematic for several key reasons:

1. As discussed above, charges can be incredibly inflated and greatly in excess of what insurer contractual rates are or even legitimate cost of care.
2. Hospitals may only have a debt or can only claim a lien if statutorily authorized.
3. If they have a statutory lien right, they may refuse to reduce their claims like other liens holders.

4. Hospitals can and will refuse to bill insurance and instead try to claim a lien against the settlement, which means you are forced to deal with them directly.
5. Balance billing can be a problem where an insurer does pay but then the hospital tries to collect the difference between what was paid and their usual & customary rate.

The following section explores in an overview fashion the issues at play in resolution of these liens.

Understanding the Hospital/Provider Claims

Is the claim a lien or debt? As a starting point, it is important to distinguish a lien versus a debt when it comes to strategies around hospital/provider lien resolution. A lien is a legal claim on settlement proceeds, created by statute, ordinance, or contractual agreement. In contrast, a debt arises when a patient receives care that remains unpaid. When you are dealing with a debt, the question for the personal injury victim as a starting point is whether they want to resolve the debt from their settlement proceeds. In most instances it does make sense to encourage resolution so as to avoid having debt collection pursued in the future. Assuming the client does want to resolve the debt, employing reasonableness of charges arguments together with equitable distribution/pro-rata arguments are appropriate resolution strategies.

By contrast, when dealing with a lien, it is a legal claim against the personal injury recovery, borne out of statutes and ordinances. These liens are subject to state-specific statutes, with variations in treatment, rights, obligations, and penalties under state law. It is crucial for attorneys to be familiar with their state's lien statutes and related case law to effectively negotiate and resolve these liens. If there is a lien, just like in other sections of this guide, the

starting point is reviewing the statute or contract creating the lien. Thereafter, deploying strategies around reasonable value (as discussed below) coupled with a pro-rata/equitable distribution argument similar to Medicaid liens discussed infra. The techniques will vary though from state to state based upon applicable law.

Given the foregoing, it is important to understand the basics of the wide variation from state to state when it comes to treatment of hospital liens and to review your own state law to use the appropriate resolution strategies. There are forty states that have codified hospital liens across the country. The majority use reasonable charges as a starting point for the lien but they are all different. For instance, California's consumer-friendly laws codify limitations on recovery rights whereas Ohio and Pennsylvania have no statewide lien statute but do have common law reasonableness protections. Similarly, Florida's hospital liens, my home state, are governed by county ordinance, adding another layer of complexity with variations by county within the same state. Generally, though, most states either have some statutory law or common law which limits a lien to the reasonable charges.

The Resolution Process: Best Practices and Strategy

Best practices for negotiations related to resolving hospital charges is to open a dialogue with the healthcare organization at the earliest stage of litigation so that you can maximize leverage. Attempts to settle the hospital's claim after you reach a settlement in principle with the defense may make negotiating with the hospital more difficult since you have lost leverage. In terms of leverage, understanding the nuances of state-specific hospital lien laws becomes crucial. In certain jurisdictions, hospitals need to "perfect" the lien by filing a notice with the local court. Unless the hospital meets the requirements stipulated by the state's hospital lien statutes, it

cannot enforce a perfected lien. But let's not forget an essential caveat here: a non-enforceable lien does not absolve the client from their responsibility for the bill. It merely implies that the hospital cannot claim a lien against the client's settlement proceeds, instead it would be a debt.

From a strategic standpoint in negotiating these types of liens, the challenge revolves around the reasonableness arguments related to charges. The problem is that “reasonable charges” aren’t singularly defined. It can vary from a percentage above the cost of care to being defined in no-fault insurance statutes or by third-party administrators (TPAs) as a certain percentage above Medicare rates. The criterion is typically set by benchmarking the charges to those offered to patients with insurers like Medicare, Tricare, Blue Cross, or others. Even charges rendered to uninsured patients are considered in this context. At least one court has defined reasonableness based on the presentation of evidence related to things such as relevant market price for hospital services, usual and customary rates received for the services and the internal cost structure of the facility. The best practice to determine a reasonable charge is to consider the actual cost of care coupled with a reasonable amount of profit.

Best practices are to use a reasonable reimbursement rate analysis backed by internal cost data from all hospitals, nationwide, which allows you to estimate cost of care and thereby, estimate reasonable value. Ideally, you should employ professionals who are well-versed in medical billing, coding, and the law on reasonable value to help achieve the best possible outcome. The adoption of this approach will help to ensure that the charges are fair and justifiable for the injury victim.

In terms of a generalized process map, the following is an outline of the steps for resolving these types of reimbursement claims by a hospital (process would be similar for a provider):

- 1) Identify and verify the existence of any hospital lien claims versus just a debt.
- 2) Once identified, check to see if the hospital has properly “perfected” the lien under appropriate state law. Also, determine under your state law the legal limitations on a hospital’s right to reimbursement.
- 3) Confirm whether the hospital has already received any payments from insurance and whether there is a balance.
- 4) Dispute any attempts to balance bill if payments were received from insurance.
- 5) Engage in negotiations using the following as a guide to different available arguments

(Note: Not all will apply, assess your case and use appropriate arguments):

- a. Challenge any unrelated charges in the hospital billing. Scrutinize the hospital bills for any unrelated or excessive charges.
- b. Use reasonableness arguments for the charges. Compare the hospital's charges with the usual rates accepted by health insurance carriers for similar services. This data can be a powerful tool in negotiations to lower the lien amount. Be aware of legal precedents in your jurisdiction that limit recovery to the reasonable value of medical services, regardless of the billed amount.
- c. Make any arguments available under state statutes for limitations on reimbursement. Apply any statutory caps on recovery that might exist in your jurisdiction. Some states limit hospital liens to a percentage of the total settlement after attorney fees and other costs.

- d. Argue equitable doctrines like common fund or made whole, if available under state law. Raise arguments related to client hardship, limited insurance policy limits, and comparative fault to negotiate further reductions in the lien.
 - e. Use pro rata share types of arguments in cases with multiple lienholders, argue for a pro rata distribution of a set amount of the settlement pool of funds.
- 6) Finalize resolution by obtaining a complete release of the lien from the hospital.

Conclusion

Resolving hospital liens requires a multifaceted approach, combining local knowledge of the law with negotiation skills. The challenge of hospital/provider lien resolution is not insurmountable. It is a maze, yes, but with the right strategy, leverage and understanding of the healthcare system's billing practices, trial lawyers can navigate it effectively. By assessing the reasonableness of charges, challenging balance billing practices, and leveraging statutory and equitable arguments, attorneys can effectively reduce the impact of hospital liens on their clients' recoveries. This ensures that injured parties receive fair compensation, while hospitals are appropriately compensated for the medical services they provide.