

NEW COLORADO LAW REQUIRING STRICT HEALTH-CARE PROVIDER LIEN DISCLOSURES SHIELDS LEIN ASSIGNMENTS FROM DISCOVERY AND AS EVIDENCE

Recently, the Colorado Legislature passed House Bill 21-1300, which establishes requirements for the creation and assignment of a health-care provider lien for persons injured by the negligence or wrongful acts of another. Note, the terms of this bill are not limited to car accidents. The bill was created to encourage health-care providers to promptly treat people who are not insured and who have been injured because of someone else's negligence, and to protect that person from unreasonable health-care service charges and surcharges associated with health-care provider liens. HB 21-1300, C.R.S. 38-27.5-101(1)(d) (emphasis supplied).

The bill shields from discovery or admissibility into evidence a health-care provider lien assignment, the amount paid for the assignment, the fact of the assignment, and the terms of the assignment. Regardless of the purpose, such information is not discoverable or admissible as evidence in any civil action the injured person asserts against third parties or pursuant to an uninsured or underinsured motorist insurance policy. While the health-care provider may negotiate an assignment with a medical lien company that reflects a significant reduction of the amount of the lien, the bill allows an injured person, treated on a health-care provider lien basis, to seek to recover the full amount of the health-care provider's usual and customary billed charges for the services received. The assignment provisions of the statute permit a health-care provider to be paid prior to resolution of an injured person's claim or lawsuit while authorizing the participation of medical lien companies as middlemen profiting from the treatment rendered to tort victims.

The bill also establishes disclosure requirements that must be provided to the injured person before the lien can be created and considered valid. The disclosure requirements include the following: types of payment options, prohibition of assignment of the lien to collection or debt agencies, and any common ownership between the lien assignee and legal counsel for the injured person. If any knowing violation of this bill occurs, the injured party may seek a ruling from the court concerning what portions of the lien, if any, the provider or assignee may not recover from the injured person due to a wholly or partially invalid lien. The bill does not expressly prohibit the injured party from asserting claims for medical services provided if the lien is invalidated

in whole or in part but such a prohibition should be raised as necessary. Allowing recovery under such circumstances would create a windfall for the injured person who effectively received free medical care but nonetheless seeks money damages for the cost of that medical care.

Despite the limitations placed upon health-care provider liens and assignments of such liens, a person or entity who the injured party asserts a claim against lacks standing to challenge a health-care provider's or its assignee's compliance with the bill. However, the bill states a holder of a lien, i.e. a health-care provider or assignee, cannot be a real party in interest with respect to an injured person's claim for injuries caused by a third party. This effectively bars a health-care provider who holds a lien or an assignee of the lien from playing any active role in an injured person's claim against the third party.

Although a defendant or insurer defending an injury claim involving a health-care provider lien has limited options, the opportunities to question the amount of the lien should not be overlooked. House Bill 21-1300 provides that if an injured person obtains health insurance *even after a health-care provider lien is created*, the provider may bill future charges to the injured person's health insurer *at the discretion of the injured person*. Because of the possible differences between the "usual and customary billed charges" and the negotiated health insurance reimbursement rate for the provider's services, this could prove a fruitful topic for discovery as it suggests the possible failure to mitigate damages by the injured person. Additionally, the bill requires a health-care provider to provide, upon request by the injured party or his or her attorney, an itemized statement of all charges billed for treatment. Discovery presented to the injured party should include a request for such itemized statements in order to evaluate all claimed injuries and damages and potentially challenge the scope of charges subject to the lien.

It will be interesting to see how this bill plays out in cases where a medical lien is present, and what it all means exactly for parties involved in these types of actions. House Bill 21-1300 took effect on September 7, 2021.

If you would like further details about this Bill and its implications, please contact [Stephanie A. Montague](#) or [Daniel Furman](#).