



Legal Update on PIP and Hospital Lien Laws

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PIP Balance billing

- 627.736 (5) If an insurer limits payment as authorized, the provider may not bill or attempt to collect **from the insured** any amount in excess of such limits, except for amounts that are not covered by the insured's PIP coverage due to the coinsurance amount or maximum policy limits.

PIP Balance Billing

- PIP Fee Schedule applies only to PIP payors.
- Balance billing is only against the insured.
- Applies only to amounts not covered by the insured's PIP coverage due to coinsurance or maximum policy limits.

PIP Balance Billing

- Example:
- Inpatient Services = \$100k
- Paid at 200% of Medicare or \$40,000.
- PIP pays \$5,000 max benefits.
- Bill Secondary or File Lien for \$95,000
- Bill the Pt \$95,000 because benefits were maxed.

PIP Balance Billing

- Example:
- ER Services = \$8,000.
- Paid at 75% or \$6,000.
- 80% paid by PIP and 20% paid by Pt.
- PIP pays \$4,800 ($\$6,000 \times 80\%$).
- Bill Secondary or File Lien for \$3,200 ($\$8,000$ less $\$4,800$)
- Or bill pt for \$1,200 ($\$6,000 \times 20\%$)

Supreme Court Considering Whether Liens are Constitutional

- Mercury v. Shands – The First District Court of Appeals ruled on July 21, 2009 that the Alachua County Lien Law is unconstitutional. Article III, section 11(a)(9), of the Florida Constitution provides that “there shall be no special law or general law of local application pertaining to...creation, enforcement, extension or impairments of liens based on private contracts..” Such as the contract between Shands and the patient.
- 1st DCA said If the legislature wishes to grant such lien rights, it should do so by general law which is applicable to all hospitals, not just a select few.

Liens

- Apply to tort cases:
 - Automobile
 - Slip and Fall
 - Product liability
 - Wrongful Death filed by the Estate on behalf of the deceased.
- *If no lien then use the AOB or contractual lien.
- **Exception: Marion County limited to accident cases only.

Liens

- Late filing does not void the lien.
- Dade County vs. Pavon, 3rd DCA 1972 – Hospital lien attaches to proceeds of all claims accruing to the patient from the moment the patient entered the hospital.
- Public Health Trust of Dade vs. Carroll, 4th DCA 1987 – Tardy filing of hospital lien does not invalidate lien, but only results in the hospital being an unsecured creditor until such time as the lien is filed.

Coordination of Benefits

- Glover v. Philip Morris USA, 2005 WL 1761655 (M.D. Fla 2005) -
- The Medicare Secondary Payer statute ("MSP"), which was enacted to reduce federal health care costs, makes Medicare the secondary payer for medical services provided to Medicare beneficiaries whenever payment is available from another primary payer. This means that if payment for covered services has been or is reasonably expected to be made by someone else, Medicare does not have to pay.

Coordination of Benefits

- The Public Health Trust of Dade County Florida v. Dade County School Board, 693 So.2d 562 (Fla. 3d DCA 1996) -
- In Evanston Hospital v. Hauck, Evanston Hospital accepted reimbursement from Medicaid. After accepting reimbursement from Medicaid, Mr. Hauck received a \$9.6 million dollar verdict. Evanston Hospital filed suit against the state Medicaid agency seeking to refund the Medicaid payment that it accepted as "payment in full" so that it could seek directly from Mr. Hauck its complete hospital charges.
- The Court said - Evanston Hospital was not "forced" to abandon its right to sue Hauck; the hospital could have simply forsaken Medicaid and taken its chances that Hauck would somehow come up with the money to pay the bills himself. By opting for reimbursement from Medicaid, Evanston Hospital bought certainty. It purchased a guarantee of partial payment in lieu of possibly full payment or possibly no payment at all. Evanston Hospital wants out of its agreement with Medicaid now only because its gamble, in retrospect, was unwise.

Equitable Distribution?

- Dade County v Bodie, 3rd DCA 1970 – A hospital's lien for services rendered is effective for its full amount against the proceeds of a patient's judgment against, or settlement with, a tort-feasor. The statute contains no provision for such a lien to be reduced or pared down by a court in its discretion.
- Dade County v Perez, 3rd DCA 1970 – A lien is not restricted to some portion of recovery which the parties or the court might choose to designate as being compensation for the medical expenses.
- **Exception: Lake, Sarasota

Attorney's Fees

- The Public Health Trust of Dade County v. O'Neal, 3rd DCA 1977 – Hospital is entitled to recover the full amount of its lien, and the lien should not have been reduced by the patient's attorney's fees.
- Crowder v. Dade County, 3rd DCA 1982 – The lien may not be impaired or diminished by the amount of patient's attorney's fees; the lien is intended to be effective for its full amount.
- **Exception: Lake, Pinellas, Sarasota, Volusia.

Baker County Medical Services vs. Aetna and Humana

- 1st DCA February 24, 2010 ****Not Final****
- In determining the proper reimbursement under subsection 641.513(5)(b), the trier of fact may consider the amount billed by the provider. However, because the bill by the provider may not be reflective of the charge that is usual and customary for the service at issue, to determine the “usual and customary provider charges for similar services,” the trier of fact should consider all relevant factors, specifically including, but not limited to, the amount of payment that the provider is receiving from different sources for rendering those similar services – except for Medicare and Medicaid.