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Resolving health-care liens could be made easier with full disclosure

A plaintiff's attorney's representation of his or her client doesn't cease upon a recovery. The representation includes post-recovery negotiations with health-care lien holders to maximize a client's net distribution.

Seemingly every week, a plaintiff's attorney will receive a phone call from a client stressed by the sight of incoming medical bills and collection letters. Often to the delight of a plaintiff's attorney and his or her clients, a health-care insurer's lien letter will seek a lien amount less than the provided services. The lien amount generally is still a negotiable number and, ultimately, may be less.

In general, the Illinois' Health Care Services Lien Act provides a statutory right to "health-care professionals" (e.g., licensed doctors) or "health-care providers" (e.g., licensed hospitals) to assert a lien for treatment rendered to an injured person (except for services rendered under the provisions of the Workers' Compensation Act) for all claims and causes of action for an amount for "reasonable charges" up to the date of payment of damages to the injured person.

Under the act, the total amount of all liens shall not exceed 40% of the settlement or judgment secured for the plaintiff for his or her claim or lawsuit. However, Section (c) of the act, in addition to providing various limitations on a lien holder's reimbursement in instances where a lien could expend a plaintiff's recovery, provides that a lien holder has the statutory right to waive or reduce the lien.

There has never been a plaintiff who is displeased to learn that a lien, whether it be a 5(b) lien in a construction case or a health-care lien as discussed here, has been waived or significantly reduced.

When negotiating health-care liens, plaintiffs' attorneys are not privy to the secret negotiated rates for medical services between hospitals and insurers. It certainly would be advantageous for plaintiffs' attorneys to have some knowledge of these negotiated rates when advocating on behalf of their clients to minimize liens.

As an analogy, a car buyer would have a significant negotiation advantage at a dealership if he or she knew the exact price the dealer purchased the car for from a car wholesaler or manufacturer. Hospitals and insurers typically treat specific prices for medical services as secrets, whereas contracts between the insurers and hospitals are generally bound by confidentiality agreements.

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On Nov. 15, the current administration in the White House released a plan that would force hospitals and insurers to disclose their negotiated rates or risk incurring fines. The plan, which is expected to be implemented in 2021, will require hospitals to post their standard charges for services, including the negotiated rates with insurers and the discounted price a hospital is willing to accept directly from a patient if paid in cash.

One of the purported purposes of the plan is to force companies to disclose rates so that patients can seek lower-priced providers or alternatives; with a goal of health-care providers lowering their rates to remain competitive with providers with lower rates that could be more enticing to patients.

The plan is strongly opposed by the health-care industry, which has publicly announced that it will seek legal action to oppose its implementation.

In addition, the plan has been denounced by many as simply a Trump administration campaign tactic as nationwide polls demonstrate that health-care costs are a leading issue among voters in the upcoming 2020 presidential election.

The widespread, nationwide impact of this plan, and thus its implications in tort litigation, is currently unknown.

Setting aside this specific plan, plaintiffs' attorneys should have greater transparency into these secret negotiated rates so that hospitals and insurers cannot overly profit from an injured person simply because a plaintiff received a recovery from an at-fault insured in third-party litigation.