

LIEN REVISIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Hospital Lien Law.

Highlighted Provisions:

This bill:

- ▶ amends provisions of health care claims practices;
- ▶ prohibits a hospital from filing a lien for the balance of the charges if the patient is covered by an individual or group health insurance policy;
- ▶ prohibits a hospital from filing a lien if a patient is covered by Medicare and the hospital does not reasonably expect payment by a liable third party;
- ▶ prohibits a hospital from filing a lien if a patient is covered by Medicaid and the hospital has not established the probable existence of third-party liability;
- ▶ requires a hospital to pay a share of a patient's attorney fees for lien payment recovered by the patient's attorney; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 31A-26-301.5, as last amended by Laws of Utah 2001, Chapter 240

29 REPEALS AND REENACTS:

30 38-7-1, as last amended by Laws of Utah 1996, Chapter 167



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 31A-26-301.5 is amended to read:

34 **31A-26-301.5. Health care claims practices.**

35 (1) Except as provided in Section 31A-8-407, an insured retains ultimate responsibility
36 for paying for health care services the insured receives. If a service is covered by one or more
37 individual or group health insurance policies, all insurers covering the insured have the
38 responsibility to pay valid health care claims in a timely manner according to the terms and
39 limits specified in the policies.

40 (2) (a) Except as provided in Section 31A-22-610.1, a health care provider may bill and
41 collect for any deductible, copayment, or uncovered service.

42 (b) A health care provider may bill an insured for services covered by health insurance
43 policies or may otherwise notify the insured of the expenses covered by the policies. However,
44 a provider may not make any report to a credit bureau, use the services of a collection agency,
45 or use methods other than routine billing or notification, including filing a hospital lien under
46 Section 38-7-1, until the later of:

47 (i) the expiration of the time afforded to an insurer under Section 31A-26-301.6 to
48 determine its obligation to pay or deny the claim without penalty; or

49 (ii) in the case of medicare beneficiaries or retirees 65 years of age or older, 60 days
50 from the date medicare determines its liability for the claim.

51 (c) Beginning October 31, 1992, all insurers covering the insured shall notify the
52 insured of payment and the amount of payment made to the provider.

53 (3) The commissioner shall ~~make~~ adopt rules consistent with this chapter governing
54 disclosure to the insured of customary charges by health care providers on the explanation of
55 benefits as part of the claims payment process. ~~[These]~~ The rules adopted by the commissioner
56 shall be limited to the form and content of the disclosures on the explanation of benefits, and
57 shall include:

58 (a) a requirement that the method of determination of any specifically referenced

59 customary charges and the range of the customary charges be disclosed; and

60 (b) a prohibition against an implication that the provider is charging excessively if the
61 provider is:

62 (i) a participating provider; and

63 (ii) prohibited from balance billing.

64 Section 2. Section **38-7-1** is repealed and reenacted to read:

65 **38-7-1. Lien of hospital on judgment, settlement, or compromise in certain**
66 **accident cases authorized.**

67 (1) As used in this section, "balance of the charges" means the difference between a
68 contracted rate with an insurer and the usual, reasonable, and customary hospital charges for
69 treatment, care, and maintenance of a patient.

70 (2) ~~H→~~ **Except as provided in Subsection (5)(a), [Hf] if ←H** a patient is injured in an
70a accident that is not covered by workers' compensation, a
71 hospital may file a lien in accordance with Subsection 31A-26-301.5(2)(b):

72 (a) (i) upon damages recovered by the patient from a judgment or settlement; and

73 (ii) to recover usual, reasonable, and customary hospital charges ~~H→~~ **not paid in**
73a **accordance with Subsection 31A-22-307 ←H** arising out of the
74 accident for treatment, care, and maintenance of the patient up to the date of ~~H→~~ **[payment of the**
75 **damages] judgment or settlement ←H** ; or

76 (b) (i) upon damages arising out of the accident recovered by the patient's family or
77 personal representative from a judgment or settlement; and

78 (ii) to recover usual, reasonable, and customary hospital charges ~~H→~~ **not paid in**
78a **accordance with Subsection 31A-22-307 ←H** for treatment, care,
79 and maintenance of the patient up to the date of ~~H→~~ **[payment of the damages] judgment or**
79a **settlement ←H** .

80 (3) A hospital may not assert a lien under Subsection (2) if the judgment or settlement
81 is less than \$100.

82 (4) Notwithstanding Subsection (2), a hospital may not file a lien for the balance of the
83 charges if the patient has health insurance coverage that prohibits the hospital from billing the
84 patient for the balance of the charges.

85 ~~H→~~ **[(5) Notwithstanding Subsection (2), a hospital that is a Medicare provider may not file**
86 **a lien if at the time that the hospital submits a patient's claim with Medicare on behalf of the**
87 **patient:**

88 ~~——~~ **(a) the patient is covered by Medicare; and**

89 ~~——~~ **(b) the hospital has not established the probable existence of third-party liability and**

90 ~~payment through a judgment or settlement.~~

91 ~~—— (6) Notwithstanding Subsection (2), a hospital that is a Medicaid provider may not file~~
92 ~~a lien if at the time that the hospital submits a patient's claim with Medicaid on behalf of the~~
93 ~~patient:~~

94 ~~—— (a) the patient is covered by Medicaid; and~~

95 ~~—— (b) the hospital has not established the probable existence of third-party liability and~~
96 ~~payment through a judgment or settlement.]~~

96a1 (5)(a) Subject to Subsection (5)(b), a hospital shall

96a timely bill Medicare or Medicaid before asserting a hospital lien if the hospital:

96b (i) is a Medicare or Medicaid provider; and

96c (ii) provides services to a Medicare or Medicaid eligible individual.

96d (b) A hospital is not subject to the provisions of Subsection (5)(a) if the hospital, within
96e a Medicare or Medicaid billing time frame, is able to establish:

96f (i) the probable existence of third party liability; and

96g (ii) prospective or actual payment from a third party that constitutes whole or partial
96h payment for the hospital's usual, reasonable, and customary charges.

96i (6) A hospital may assert a lien in an amount of up to 90% of the difference between the
96j hospital's usual, reasonable, and customary charges and the amount previously paid by health
96k insurance, Medicare, or Medicaid if:

96l (i) a hospital has billed and accepted payment from a payer described in Subsection (4)
96m or (5); and

96n (ii) the patient obtains a recovery from a third party that constitutes whole or partial
96o payment of medical expenses caused by the third party. ←H

97 (7) If a patient incurs attorney fees in obtaining a judgment or settlement against a third
98 party, the hospital's hospital lien recovery shall be reduced 33.3% together with a proportionate
99 share of the patient's litigation costs associated with the recovery.

Legislative Review Note
as of 1-22-09 12:02 PM

Office of Legislative Research and General Counsel

H.B. 135 - Lien Revisions

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
