

HOUSE BILL 317

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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Christine Chandler and Katy M. Duhigg

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LIENS; IMPOSING RESTRICTIONS ON LIENS IMPOSED BY A SERVICE PROVIDER; AMENDING SECTIONS OF CHAPTER 48, ARTICLE 8 NMSA 1978; AMENDING A SECTION OF THE MOTOR VEHICLE CODE REGARDING RIGHTS OF SUBROGATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 48-8-1 NMSA 1978 (being Laws 1961, Chapter 227, Section 1) is amended to read:

.224386.2AIC February 13, 2023 (9:46am)

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"48-8-1. LIENS UPON PERSONAL INJURY DAMAGES RECOVERED BY PATIENTS--CREATION--EXCEPTION.--

A. Every [hospital] service provider located within the state that furnishes emergency, medical or any other service to any patient injured by reason of an accident not covered by the state [workmen's] workers' compensation laws is entitled to assert a lien upon that part of the judgment, settlement or compromise going, or belonging to such patient, less the amount paid for [attorneys'] attorney fees, court costs and other necessary expenses [~~necessary thereto~~] in obtaining the judgment, settlement or compromise, based upon injuries suffered by the patient or a claim maintained by the heirs or personal representatives of the HCPAC→**injured party**←HCPAC HCPAC→**patient**←HCPAC in the case of the patient's death. Every service provider asserting a lien shall be liable for a share of any attorney fees and costs incurred in securing the judgment, settlement or compromise equal to the proportion of any attorney fees and costs paid by the patient pursuant to the common fund doctrine.

B. A [hospital] service provider lien may be filed upon damages recovered, or to be recovered, either as a result of a judgment, or upon a contract of settlement or compromise, for the amount of the reasonable, usual and necessary [hospital] service provider charges for treatment, care and maintenance of the HCPAC→**injured party**←HCPAC

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HCPAC→patient←HCPAC [in] by the [hospital] service provider  
and to the date of payment of the damages.

C. As used in Chapter 48, Article 8 NMSA 1978,  
"service provider" means a person that provides care to an  
individual injured by reason of an accident to recover from  
injuries or damages resulting from that accident."

SECTION 2. Section 48-8-2 NMSA 1978 (being Laws 1961,  
Chapter 227, Section 2) is amended to read:

"48-8-2. FILING AND NOTICE OF [HOSPITAL] SERVICE PROVIDER  
LIENS.--No [hospital] service provider lien is effective upon  
damages recovered for personal injuries unless:

A. a written notice is filed in the office of the  
county clerk of the county in which the [hospital] service  
provider asserting the lien is located containing the following  
information:

(1) an itemized statement of all claims  
certified as correct by an agent of [~~such hospital~~] the service  
provider;

(2) the date of the [accident] loss;

(3) the name and location of the [hospital]  
service provider; and

(4) the name of the person, firm or  
corporation alleged to be liable to the HCPAC→injured  
party←HCPAC HCPAC→patient←HCPAC for the injuries received;

[and]

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B. the [hospital] service provider sends by certified mail, with return receipt requested, prior to the payment of any money to the HCPAC→injured←HCPAC [person] HCPAC→party←HCPAC HCPAC→patient←HCPAC , or [his] the HCPAC→injured party's←HCPAC HCPAC→patient's←HCPAC attorneys or legal representative as compensation for the HCPAC→[patient's]←HCPAC HCPAC→patient's←HCPAC HCPAC→injured party's←HCPAC injuries, a copy of the written notice, together with a statement of the date of filing, to the person, firm or corporation alleged to be liable to the HCPAC→injured party←HCPAC HCPAC→patient←HCPAC for the injuries sustained. The person, firm or corporation alleged to be liable to the HCPAC→injured←HCPAC [person] HCPAC→party←HCPAC HCPAC→patient←HCPAC shall, upon request of the [hospital] service provider, disclose the name of the insurance carrier that has insured the person, firm or corporation against liability; and

C. the [hospital] service provider mails a copy of the written notice by certified mail with return receipt requested to the home office of any insurance carrier that has insured the person, firm or corporation against liability, if the name and address [is] are known."

SECTION 3. Section 48-8-3 NMSA 1978 (being Laws 1961, Chapter 227, Section 3) is amended to read:

"48-8-3. PERSONS LIABLE FOR PAYMENT OF LIEN--LIMITATION .224386.2AIC February 13, 2023 (9:46am)

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OF ACTIONS.--

A. Any person, firm or corporation, including an insurance carrier, making any payment to a patient or to [his] the patient's HCPAC→attorney←HCPAC HCPAC→attorneys←HCPAC , heirs or legal representative as compensation for the injury sustained, after the filing and receipt of written notice of the lien [~~as aforesaid~~] and without paying the [~~hospital~~] service provider asserting the lien the amount of its lien or that portion of the lien [which] that can be satisfied out of the money due under any final judgment or contract of compromise or settlement, less payment of the amount of any prior liens, shall be liable to the [~~hospital~~] service provider for the amount that the [~~hospital~~] service provider was entitled to receive.

B. Liability of the person, firm or corporation for the satisfaction of the [~~hospital~~] service provider lien shall continue for a period of one year after the date of any payment of any money to the patient [his] or the patient's heirs or legal representatives as damages or under a contract of compromise or settlement. Any [~~hospital~~] service provider may enforce its lien by a suit at law against the person, firm or corporation making the payment. [~~In the event of a suit to enforce a lien, the hospital may recover a reasonable attorney's fee and the costs of filing and recording the lien.~~] If the patient, or the patient's heirs or legal representatives

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seeking damages under a contract of compromise or settlement, exercise a hold harmless agreement with the person, firm or corporation making payment of money to the patient or the patient's heirs or legal representatives, any enforcement of a lien by a suit at law shall be brought or maintained against the party or parties receiving payment of money."

SECTION 4. Section 48-8-4 NMSA 1978 (being Laws 1961, Chapter 227, Section 4, as amended) is amended to read:

"48-8-4. COUNTY CLERK TO MAINTAIN ~~[HOSPITAL]~~ SERVICE PROVIDER LIEN RECORDS.--Every county clerk shall maintain a proper index of all ~~[hospital]~~ service provider liens under the name of the injured person."

SECTION 5. Section 48-8-5 NMSA 1978 (being Laws 1961, Chapter 227, Section 5) is amended to read:

"48-8-5. RELEASE OF LIEN.--The ~~[hospital]~~ service provider shall, upon receipt of payment of the lien or the part recoverable under the lien, execute and file, at the expense of the ~~[hospital]~~ service provider, a release of lien."

SECTION 6. Section 48-8-7 NMSA 1978 (being Laws 1961, Chapter 227, Section 7) is amended to read:

"48-8-7. SERVICE PROVIDER'S INTEREST IN SETTLEMENT LIMITED TO LIEN RIGHTS.--Nothing in ~~[this act]~~ Sections 48-8-1 through 48-8-7 NMSA 1978 shall be construed to permit any ~~[hospital]~~ service provider to be a party to or to have any interest in the amount or manner of any settlement of any claim

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on which a lien has been filed other than the lien rights as provided in [~~this act~~] those sections."

SECTION 7. Section 66-5-301 NMSA 1978 (being Laws 1978, Chapter 35, Section 325, as amended) is amended to read:

"66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN MOTORISTS--REJECTION OF COVERAGE BY THE INSURED--SUBROGATION RIGHTS.--

A. No motor vehicle or automobile liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person and for injury to or destruction of property of others arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in New Mexico with respect to any motor vehicle registered or principally garaged in New Mexico unless coverage is provided therein or supplemental thereto in minimum limits for bodily injury or death and for injury to or destruction of property as set forth in Section 66-5-215 NMSA 1978 and such higher limits as may be desired by the insured, but up to the limits of liability specified in bodily injury and property damage liability provisions of the insured's policy, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, and for injury to or destruction of property resulting therefrom,

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according to the rules and regulations promulgated by, and under provisions filed with and approved by, the superintendent of insurance.

B. The uninsured motorist coverage described in Subsection A of this section shall include underinsured motorist coverage for persons protected by an insured's policy. For the purposes of this subsection, "underinsured motorist" means an operator of a motor vehicle with respect to the ownership, maintenance or use of which the sum of the limits of liability under all bodily injury liability insurance applicable at the time of the accident is less than the limits of liability under the insured's uninsured motorist coverage. No motor vehicle or automobile liability policy sold in New Mexico shall be required to include underinsured motorist coverage until January 1, 1980.

C. The uninsured motorist coverage shall provide an exclusion of not more than the first two hundred fifty dollars (\$250) of loss resulting from injury to or destruction of property of the insured in any one accident. The named insured shall have the right to reject uninsured motorist coverage as described in Subsections A and B of this section; provided that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to [him]

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the insured by the same insurer.

D. The uninsured motorist coverage provided pursuant to this section may permit the issuing insurer to recover proceeds against third parties in subrogation; provided that any action brought to recover proceeds paid pursuant to this section shall:

(1) include any insured party or party who received payment from the uninsured motorist coverage as a named plaintiff therein and no action in subrogation shall be permitted absent the inclusion of the insureds and any beneficiaries to the uninsured motorist coverage as named parties;

(2) require claims made against any third party be proven by a preponderance of the evidence;

(3) be triable to a jury upon request of any party; and

(4) not permit either the fact that uninsured motorist coverage benefits were paid or the amount of any such payment to be admissible in any action to recover damages against a third party.

E. No action for subrogation may be brought or maintained against any party who was covered by a motor vehicle or automobile liability policy insuring against loss resulting from liability in the minimum limits for bodily injury or death and for injury to or destruction of property as set forth in

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Section 66-5-215 NMSA 1978 at the time of an alleged loss."

SECTION 8. APPLICABILITY.--The provisions of this act apply to lien enforcement actions filed on or after July 1, 2023.

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

- 10 -