

1 HOUSE BILL 317

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LIENS; IMPOSING RESTRICTIONS ON LIENS IMPOSED BY A
12 SERVICE PROVIDER; AMENDING SECTIONS OF CHAPTER 48, ARTICLE 8
13 NMSA 1978; AMENDING A SECTION OF THE MOTOR VEHICLE CODE
14 REGARDING RIGHTS OF SUBROGATION.
15

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

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

19 "48-8-1. LIENS UPON PERSONAL INJURY DAMAGES RECOVERED BY
20 PATIENTS--CREATION--EXCEPTION.--

21 A. Every [~~hospital~~] service provider located within
22 the state that furnishes emergency, medical or any other
23 service to any patient injured by reason of an accident not
24 covered by the state [~~workmen's~~] workers' compensation laws is
25 entitled to assert a lien upon that part of the judgment,

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1 settlement or compromise going, or belonging to such patient,
2 less the amount paid for [~~attorneys~~¹] attorney fees, court
3 costs and other necessary expenses [~~necessary thereto~~] in
4 obtaining the judgment, settlement or compromise, based upon
5 injuries suffered by the patient or a claim maintained by the
6 heirs or personal representatives of the injured party in the
7 case of the patient's death. Every service provider asserting
8 a lien shall be liable for a share of any attorney fees and
9 costs incurred in securing the judgment, settlement or
10 compromise equal to the proportion of any attorney fees and
11 costs paid by the patient pursuant to the common fund doctrine.

12 B. A [~~hospital~~] service provider lien may be filed
13 upon damages recovered, or to be recovered, either as a result
14 of a judgment, or upon a contract of settlement or compromise,
15 for the amount of the reasonable, usual and necessary
16 [~~hospital~~] service provider charges for treatment, care and
17 maintenance of the injured party [~~in~~] by the [~~hospital~~] service
18 provider and to the date of payment of the damages.

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

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

25 "48-8-2. FILING AND NOTICE OF [~~HOSPITAL~~] SERVICE PROVIDER

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1 LIENS.--No ~~[hospital]~~ service provider lien is effective upon
2 damages recovered for personal injuries unless:

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

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

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

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

13 (4) the name of the person, firm or
14 corporation alleged to be liable to the injured party for the
15 injuries received; ~~[and]~~

16 B. the ~~[hospital]~~ service provider sends by
17 certified mail, with return receipt requested, prior to the
18 payment of any money to the injured ~~[person]~~ party, or ~~[his]~~
19 the injured party's attorneys or legal representative as
20 compensation for the ~~[patient's]~~ injured party's injuries, a
21 copy of the written notice, together with a statement of the
22 date of filing, to the person, firm or corporation alleged to
23 be liable to the injured party for the injuries sustained. The
24 person, firm or corporation alleged to be liable to the injured
25 ~~[person]~~ party shall, upon request of the ~~[hospital]~~ service

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1 provider, disclose the name of the insurance carrier that has
2 insured the person, firm or corporation against liability; and

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

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

10 "48-8-3. PERSONS LIABLE FOR PAYMENT OF LIEN--LIMITATION
11 OF ACTIONS.--

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

24 B. Liability of the person, firm or corporation for
25 the satisfaction of the [~~hospital~~] service provider lien shall

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1 continue for a period of one year after the date of any payment
2 of any money to the patient [~~his~~] or the patient's heirs or
3 legal representatives as damages or under a contract of
4 compromise or settlement. Any [~~hospital~~] service provider may
5 enforce its lien by a suit at law against the person, firm or
6 corporation making the payment. [~~In the event of a suit to~~
7 ~~enforce a lien, the hospital may recover a reasonable~~
8 ~~attorney's fee and the costs of filing and recording the lien.]~~
9 If the patient, or the patient's heirs or legal representatives
10 seeking damages under a contract of compromise or settlement,
11 exercise a hold harmless agreement with the person, firm or
12 corporation making payment of money to the patient or the
13 patient's heirs or legal representatives, any enforcement of a
14 lien by a suit at law shall be brought or maintained against
15 the party or parties receiving payment of money."

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

18 "48-8-4. COUNTY CLERK TO MAINTAIN [~~HOSPITAL~~] SERVICE
19 PROVIDER LIEN RECORDS.--Every county clerk shall maintain a
20 proper index of all [~~hospital~~] service provider liens under the
21 name of the injured person."

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

24 "48-8-5. RELEASE OF LIEN.--The [~~hospital~~] service
25 provider shall, upon receipt of payment of the lien or the part

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1 recoverable under the lien, execute and file, at the expense of
2 the ~~[hospital]~~ service provider, a release of lien."

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

5 "48-8-7. SERVICE PROVIDER'S INTEREST IN SETTLEMENT
6 LIMITED TO LIEN RIGHTS.--Nothing in ~~[this act]~~ Sections 48-8-1
7 through 48-8-7 NMSA 1978 shall be construed to permit any
8 ~~[hospital]~~ service provider to be a party to or to have any
9 interest in the amount or manner of any settlement of any claim
10 on which a lien has been filed other than the lien rights as
11 provided in ~~[this act]~~ those sections."

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

14 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
15 MOTORISTS--REJECTION OF COVERAGE BY THE INSURED--SUBROGATION
16 RIGHTS.--

17 A. No motor vehicle or automobile liability policy
18 insuring against loss resulting from liability imposed by law
19 for bodily injury or death suffered by any person and for
20 injury to or destruction of property of others arising out of
21 the ownership, maintenance or use of a motor vehicle shall be
22 delivered or issued for delivery in New Mexico with respect to
23 any motor vehicle registered or principally garaged in New
24 Mexico unless coverage is provided therein or supplemental
25 thereto in minimum limits for bodily injury or death and for

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1 injury to or destruction of property as set forth in Section
2 66-5-215 NMSA 1978 and such higher limits as may be desired by
3 the insured, but up to the limits of liability specified in
4 bodily injury and property damage liability provisions of the
5 insured's policy, for the protection of persons insured
6 thereunder who are legally entitled to recover damages from
7 owners or operators of uninsured motor vehicles because of
8 bodily injury, sickness or disease, including death, and for
9 injury to or destruction of property resulting therefrom,
10 according to the rules and regulations promulgated by, and
11 under provisions filed with and approved by, the superintendent
12 of insurance.

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

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

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

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

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

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

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

5 E. No action for subrogation may be brought or
6 maintained against any party who was covered by a motor vehicle
7 or automobile liability policy insuring against loss resulting
8 from liability in the minimum limits for bodily injury or death
9 and for injury to or destruction of property as set forth in
10 Section 66-5-215 NMSA 1978 at the time of an alleged loss."

11 SECTION 8. APPLICABILITY.--The provisions of this act
12 apply to lien enforcement actions filed on or after July 1,
13 2023.

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