

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 317

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

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:

"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,

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underscored material = new
[bracketed material] = delete

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~~]
7 patient in the case of the patient's death. Every service
8 provider asserting a lien shall be liable for a share of any
9 attorney fees and costs incurred in securing the judgment,
10 settlement or compromise equal to the proportion of any
11 attorney fees and costs paid by the patient pursuant to the
12 common fund doctrine.

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

20 C. As used in Chapter 48, Article 8 NMSA 1978,
21 "service provider" means a natural person, corporation,
22 company, trust, partnership, incorporated or unincorporated or
23 cooperative association, hospital or other legal entity
24 permitted by law to provide care to an injured patient and that
25 provides care to that patient. A service provider shall be

1 licensed to provide that care when a license is required. The
2 care provided to the injured patient shall be provided in the
3 normal course of business."

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

6 "48-8-2. FILING AND NOTICE OF [~~HOSPITAL~~] SERVICE PROVIDER
7 LIENS.--No [~~hospital~~] service provider lien is effective upon
8 damages recovered for personal injuries unless:

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

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

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

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

19 (4) the name of the person, firm or
20 corporation alleged to be liable to the [~~injured party~~] patient
21 for the injuries received; [~~and~~]

22 B. the [~~hospital~~] service provider sends by
23 certified mail, with return receipt requested, prior to the
24 payment of any money to the [~~injured person~~] patient, or [~~his~~]
25 the patient's attorneys or legal representative as compensation

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1 for the patient's injuries, a copy of the written notice,
2 together with a statement of the date of filing, to the person,
3 firm or corporation alleged to be liable to the ~~[injured party]~~
4 patient for the injuries sustained. The person, firm or
5 corporation alleged to be liable to the ~~[injured person]~~
6 patient shall, upon request of the ~~[hospital]~~ service provider,
7 disclose the name of the insurance carrier that has insured the
8 person, firm or corporation against liability; and

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

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

16 "48-8-3. PERSONS LIABLE FOR PAYMENT OF LIEN--LIMITATION
17 OF ACTIONS.--

18 A. Any person, firm or corporation, including an
19 insurance carrier, making any payment to a patient or to ~~[his~~
20 ~~attorney]~~ the patient's attorneys, heirs or legal
21 representative as compensation for the injury sustained, after
22 the filing and receipt of written notice of the lien ~~[as~~
23 ~~aforsaid]~~ and without paying the ~~[hospital]~~ service provider
24 asserting the lien the amount of its lien or that portion of
25 the lien ~~[which]~~ that can be satisfied out of the money due

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1 under any final judgment or contract of compromise or
 2 settlement, less payment of the amount of any prior liens,
 3 shall be liable to the ~~[hospital]~~ service provider for the
 4 amount that the ~~[hospital]~~ service provider was entitled to
 5 receive.

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

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

25 "48-8-4. COUNTY CLERK TO MAINTAIN ~~[HOSPITAL]~~ SERVICE

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1 PROVIDER LIEN RECORDS.--Every county clerk shall maintain a
2 proper index of all [~~hospital~~] service provider liens under the
3 name of the injured person."

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

6 "48-8-5. RELEASE OF LIEN.--The [~~hospital~~] service
7 provider shall, upon receipt of payment of the lien or the part
8 recoverable under the lien, execute and file, at the expense of
9 the [~~hospital~~] service provider, a release of lien."

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

12 "48-8-7. SERVICE PROVIDER'S INTEREST IN SETTLEMENT
13 LIMITED TO LIEN RIGHTS.--Nothing in [~~this act~~] Sections 48-8-1
14 through 48-8-7 NMSA 1978 shall be construed to permit any
15 [~~hospital~~] service provider to be a party to or to have any
16 interest in the amount or manner of any settlement of any claim
17 on which a lien has been filed other than the lien rights as
18 provided in [~~this act~~] those sections."

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

21 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
22 MOTORISTS--REJECTION OF COVERAGE BY THE INSURED--SUBROGATION
23 RIGHTS.--

24 A. No motor vehicle or automobile liability policy
25 insuring against loss resulting from liability imposed by law

1 for bodily injury or death suffered by any person and for
2 injury to or destruction of property of others arising out of
3 the ownership, maintenance or use of a motor vehicle shall be
4 delivered or issued for delivery in New Mexico with respect to
5 any motor vehicle registered or principally garaged in New
6 Mexico unless coverage is provided therein or supplemental
7 thereto in minimum limits for bodily injury or death and for
8 injury to or destruction of property as set forth in Section
9 66-5-215 NMSA 1978 and such higher limits as may be desired by
10 the insured, but up to the limits of liability specified in
11 bodily injury and property damage liability provisions of the
12 insured's policy, for the protection of persons insured
13 thereunder who are legally entitled to recover damages from
14 owners or operators of uninsured motor vehicles because of
15 bodily injury, sickness or disease, including death, and for
16 injury to or destruction of property resulting therefrom,
17 according to the rules and regulations promulgated by, and
18 under provisions filed with and approved by, the superintendent
19 of insurance.

20 B. The uninsured motorist coverage described in
21 Subsection A of this section shall include underinsured
22 motorist coverage for persons protected by an insured's policy.
23 For the purposes of this subsection, "underinsured motorist"
24 means an operator of a motor vehicle with respect to the
25 ownership, maintenance or use of which the sum of the limits of

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1 liability under all bodily injury liability insurance
2 applicable at the time of the accident is less than the limits
3 of liability under the insured's uninsured motorist coverage.
4 No motor vehicle or automobile liability policy sold in New
5 Mexico shall be required to include underinsured motorist
6 coverage until January 1, 1980.

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

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

23 (1) include any insured party or party who
24 received payment from the uninsured motorist coverage as a
25 named plaintiff therein and no action in subrogation shall be

1 permitted absent the inclusion of the insureds and any
2 beneficiaries to the uninsured motorist coverage as named
3 parties;

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

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

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

12 E. If a driver is covered by a motor vehicle or
13 automobile liability policy in the minimum limits set forth in
14 Section 66-5-215 NMSA 1978 at the time of an alleged loss, that
15 person shall be immune from any third-party subrogation action
16 seeking subrogation of payment of underinsured benefits paid in
17 excess of those limits."

18 **SECTION 8. APPLICABILITY.**--The provisions of this act
19 apply to lien enforcement actions filed on or after July 1,
20 2023.

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