Hospital Billing (Best) Practices When Treating Motor Vehicle Accident Victims

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HFMA Arkansas Chapter

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Preview

- Recent litigation has increased focus on hospital billing practices when treating patients who have been involved in motor vehicle accidents
- Focus: Medical Lien Statute
- Recent Arkansas Lawsuits
- Takeaways from Recent Litigation
- Best Practice

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42° Little Rock, AR

Ark. hospitals face lawsuits after filing medical liens against patients

Legal & Regulatory Issues

Billing practices incite lawsuits against 5 Arkansas hospitals

Kelly Gooch - Tuesday, October 4th, 2016 Print | Email

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Arkansas hospitals face four lawsuits, including one that see patients, reports KTHV.

Arkansas Hospitals Face Lawsuits After Refusing Insurance

by Mark Friedman

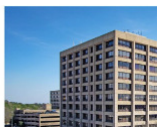
Monday, Oct. 3, 2016 12:00 am 1 min read

Complaints in Arkansas are challenging the growing and controversial practice of hospitals refusing to accept the health insurance of patients who have been injured by

12 November 4, 2019 Arkansas Business SPOTLIGHT: Insurance

Insurance Liens: Class action tests billing practice seen as unfair

Continued From Page One



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Medical Lien Statute

Medical, Nursing, Hospital, and Ambulance Service Lien Act (Ark. Code Ann. § 18-46-101 *et seq.*)

- Purpose: encourage physicians, hospitals and nurses to extend their services and facilities to indigent persons who suffer personal injury through the negligence of another, by providing the best security available to assure compensation.
- Creates a right of lien in personal injury cases only.

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Medical Lien Statute

- Extent of Lien (Ark. Code Ann. § 18-46-104)
  - For the value of the service rendered to a patient
  - for the relief and cure of an injury
  - Suffered through the fault or neglect of someone other than the patient himself or herself
  - On any claim, right of action, and money to which the patient is entitled because of that injury, and to costs and attorney's fees incurred in enforcing that lien
- Sets forth specific procedure
  - Filing
  - Perfecting
  - Enforcing
  - Releasing

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Recent Lawsuits

- *Mounce et al. v. CHSPSC, LLC, et al.*
- *Whitley et al. v. Baptist Health et al.*
- *Hurst et al. v. Conway Regional Medical Center, Inc., et al.*
- *Garrison et al. v. RevClaims, LLC, et al.*

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Recent Lawsuits

- Hospital Defendants
  - Argue that state law and industry practice support billing practice of not billing patient's health insurance for treatment provided when treatment relates to MVA and instead file medical lien against the patient in anticipation of a future settlement
- Plaintiffs
  - Argue that filing a medical lien, when combined with refusing to bill the patient's health insurance, is a violation of the Arkansas Deceptive Trade Practices Act and violates the terms of the Hospital's contract with the third party health insurer
  - "…hospitals are creating financial nightmares for injured patients in hopes of being paid higher list prices for services out of the patients' settlements with the at-fault party rather than the discounted prices that health insurance companies have negotiated for policyholders."

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Case 1: NWA Hospital Class Action

- A federal district judge in Arkansas recently certified a class-action lawsuit against a NWA hospital
- Based on common billing practices for hospitals
- The case alleged violations of the Arkansas Deceptive Trade Practices Act…and serves as an example of emerging area of litigation.
- The lawsuit resulted in a $2.2 million settlement.

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Mounce

- In 2013, Plaintiff (a 24-year-old elementary teacher) was treated in the ED for injuries she attributed to a car accident. She reported she was not at fault.
- Plaintiff had medical insurance through an ERISA-based employer benefit plan contracted with AR BCBS.
- Signed "Conditions of Admission and Consent to Medical Treatment" form –
  - Granted the hospital rights to proceeds of all claims resulting from the liability of a third party, and
  - Included a statement that the patient was responsible for any charges not covered by insurance.

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Mounce

- Plaintiff's ED bill was not submitted to insurance within the 180-day claim period, and a lien was filed for the full amount of charges billed ($6,104.96)
- The plaintiff was interviewed for several news articles…
  - Stated that she was not aware the hospital did not bill her health insurance
  - Later, her personal injury attorney urged the hospital to bill her health insurance
  - The collection agency contracted by the hospital eventually began trying to collect the debt from the plaintiff

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Mounce

- The hospital had a provider agreement with BCBS that included, among other things:
  - negotiated charges;
  - that claims must be made within 180 days, and;
  - that the hospital could not attempt to recover money in excess of negotiated prices, which would be a violation of the provider agreement.
- Plaintiff settled the lawsuit form the car wreck for $16,000. Her attorney negotiated the lien amount to $3,052.48, which Plaintiff paid from the settlement proceeds.
  - Plaintiff maintained that the negotiated amount was still in excess of what she would have owed had her health insurance been billed

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Mounce – Claims in the lawsuit

- Hospital's billing practices violated the Arkansas Deceptive Trade Practices Act ("ADTPA," Ark. Code Ann. § 4-88-101, *et seq.*)
- Tortious interference with business expectancy/contract (interfered with her right to receive the benefits of PPO membership with BCBS)
- Unjust enrichment (filed lien against her settlement proceeds in an amount more than she would have been charged when she owed no underlying debt [i.e., it would have been paid by her health insurance company and she would have owed nothing to the hospital])

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ADTPA, Effective 8/1/17

- Prohibited individual from bringing class-action claim under this statute "unless the claim is being asserted for a violation of the Arkansas Constitution" (Ark. Code Ann. § 4-88-113(f)(1)(B))
- Court stated that while this provision is procedural in nature, and therefore should be applied retrospectively to *Mounce*, it conflicted with F.R.C.P. 23, which trumps any state law also procedural in nature and allows class-actions to be filed in all civil actions in U.S. district courts. (Relying on *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.,* 559 U.S. 393 (2010).
- Court granted class certification (gave substantial weight to the fact that the hospital's billing and lien policy as to car-accident victims was applied uniformly to all approximately 850 class members)
- This protection would not extend to actions filed in state court.

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Mounce – Hospital's Defenses

- Voluntary Payment Defense
  - Court found that there was an issue of fact as to whether exceptions to the voluntary payment rule applied, including duress, mistake of fact, fraud, coercion, and extortion, on the representations that:
    - Her health insurance would be billed for her treatment;
    - She owed the hospital a debt for the full amount of her bill;
    - The lien for the full amount of the bill was valid; and
    - She owed the hospital money after the BCBS 180-day deadline.
  - Court also found that the voluntary payment defense did not apply to the statutory claims, including those made under the ADTPA.

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Mounce – Hospital's Defenses

- Arkansas Medical, Nursing, Hospital, and Ambulance Service Lien Act (Ark. Code Ann. § 18-46-101, *et seq.*)
  - Court made the following findings:
    - The hospital has statutory lien rights under these circumstances
    - Statute, as well as the admission form, does not require the hospital to file a claim with the patient's insurance before filing a lien or to collect any insurer in any particular order
    - Contract with BCBS did not require that claims be filed with them and specifically grants a lien to providers for Third Party Liability
  - *However….*

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Mounce – Hospital's Defenses

- *Arkansas Medical, Nursing, Hospital, and Ambulance Service Lien Act (continued)*
  - The Court found that the statute did not authorize the hospital to bypass:
    - The contractually negotiated rates;
    - The provision that the hospital could not attempt to receive excess payment from the patient above the negotiated rates; and
    - The 180-day claim requirement.

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Mounce – Hospital's Defenses

- Plaintiff could not prove "actual damage or injury as a result of an offense of violation" of the ADTPA because the Admission Form provided the appropriate disclosures
- The Court found there were material disputes of fact as to whether:
  - The Admission Form was deceptive or misleading (Plaintiff claimed it implied the hospital would bill her insurance company first and only after that would it seek payment from her on remaining balances);
  - The billing practice was deceptive for patients with proof of insurance;
  - The defendants acted deceptively when they did not inform Plaintiff that they did not charge her the rates negotiated with BCBS and did not submit the medical bill to the insurance company for payment.

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Mounce - Result

- The Hospital settled for $2.2 million.
- Each class member with a valid claim paid 77% of their respective valid claim amount
  - 858 Potential Class Members

Settlement Fund Amount	$2,234,829.00
Less Class Counsel's Fees and Costs (33 and 1/3% of Settlement Fund Amount)	- $744,868.00
Less Incentive Payment to Class Representative Mounce	- $7,500.00
Less Cost of Claims Administration (estimate)	- $15,000.00
Net Proceeds (Payout Amount) to Be Distributed to Settlement Class	$1,467,461.00

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Mounce – Things to Consider

- Language in admission forms regarding liens
- Provider agreements with insurance companies
- Timing of lien filing
- Amount of lien (full, negotiated rate, or the difference)
- Process implemented by third-party collections groups

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Case 2: Central Arkansas Class Action

- Plaintiff, employed by the Little Rock Fire Department, was severely injured when he was hit by a car being driven the wrong way on Interstate 440 in November 2013.
- Plaintiff was treated at the Hospital until July 2014 and the medical bills totaled nearly $64,000.
- The driver who caused the accident, who died in the crash, had a $60,000 limit of liability coverage
- Plaintiff informed Hospital he was insured by QualChoice
- Plaintiff maintained that he did not know until later that the Hospital did not file his claim with QualChoice, and that the Hospital refused to give him a sufficiently detailed bill so that he could file the claim himself.

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Whitley

- Hospital Policy
  - Where Third Party Liability was clear, the Hospital's policy was to code the primary insurance for the charges as "RevClaims" (the third-party collection entity), and the patient's insurance as secondary insurance.
  - If the lien is not resolved in a few months, the Hospital would also file a claim with the patient's health insurance.
  - First Hospitalization – approximately $18,000.00 lien filed
  - Here, there was a *mistake* – the deadline passed to file with QualChoice for the first round of charges. QualChoice thus rejected what *would have been paid* but for a small-copay based on the late submission.

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Whitley

- January 2014 – follow up treatment incurred approximately $46,000 of charges.
- The Hospital increased its lien to approximately $64,000
- In May 2014, the at-fault driver's insurance company offered a settlement of $50,000 – but settlement talks stalled because of the lien.
- The Hospital met its 180-day deadline to file the second round of claims with QualChoice, which paid approximately $7,000 (the negotiated rate).
- The lien was not reduced until late 2015 to $19,000 – the full initial bill, plus a copay for the second round of care.

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Whitley

- Plaintiff filed suit in State court in July 2016 on behalf of himself and all similarly situated class members
- Plaintiff's Key Arguments
  - Hospital required Plaintiff to sign "Assignment of Insurance Benefits/Promise to Pay" that included the language "I understand that I am responsible for any charges not covered by my insurance company."
  - Plaintiff was unaware that Hospital would not bill his health insurance and would not provide him with sufficient billing and treatment codes that would have allowed him to submit the claims himself
  - Plaintiff was unaware that Hospital would seek recovery from him personally, either by billing his medical payments coverage or by placing a lien against his third-party tort claim.
  - Plaintiff was unaware that Hospital would pursue a third-party lien against his personal injury recovery.

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- Plaintiff's Key Arguments (continued)
  - Hospital was required to apply a contractual reduction in the amount of his medical bills charged by Hospital pursuant to QualChoice agreement
  - Hospital was required to seek payment only from QualChoice.

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Whitley

- Plaintiff's Legal Claims
  - Violation of Arkansas Deceptive Trade Practices Act
  - Tortious Interference with Contractual Relationship/Business Expectancy
  - Unjust Enrichment
  - Third Party Beneficiary
    - Plaintiff alleged he and class members were Third Party Beneficiaries to the contract between Hospital and QualChoice
    - Argued that Hospital breached provider agreements with health insurance carrier when they refused to submit Plaintiff's and Class Members' claims to health insurance carriers and instead sought payment for treatment form the Class Members and/or their third-party tort recoveries.

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Whitley

- After *Mounce* ruling on ability to proceed in Federal Court, *Whitley* was removed to Federal Court.
- A Federal Judge approved class action status – near 3,000 individuals may be eligible
- The following issues will be decided by a jury this Fall:
  - Whether the Hospital's actions in tying up Plaintiff's settlement funds by maintaining a lien for the full bill after accepting payment for most of it was deceptive under the ADTPA
  - Whether Plaintiff was a third-party beneficiary of the Hospital/Insurer provider agreement such that he can maintain a breach of contract claim

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Whitley Takeaways

- The language in the Assignment of Benefits matters.
  - Here, the Court found it persuasive that the language, which Plaintiff signed that he read and understood on two occasions, was clear:
    - "I authorize the full and undiscounted pursuit of payment on my account from any available liability insurance policy or third party source before submission of my account for payment to my own health insurance company . . ."
- The language in the Admission Agreement mattered:
  - Plaintiff authorized "the full and undiscounted pursuit of payment on my account from any available liability insurance party or third-party source *before* submission of my account for payment to my own health insurance company . . ."

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Whitley Takeaways

- Courts have continued to uphold the Medical Lien Act and will not limit its application to the treatment of patients without health insurance.
- Make sure you are in compliance with your Provider Agreement
  - This Court points to differences in Provider Agreements, some of which contemplate beneficiaries as third party beneficiaries of the agreement, and others which specifically exclude this possibility.
  - The Court pointed to one Provider Agreement which forbade the Hospital from seeking reimbursement from any settlement:
    - "Hospital hereby agrees that in no event . . . Shall Hospital bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse [against] . . .any settlement fund or other *res* controlled by or on behalf of, or for the benefit of, a Member for Covered Services."

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Case 3: Central Arkansas Class Action

- Plaintiff *Hurst* was injured in a motor vehicle accident collision caused by an at-fault third party.
- Plaintiff maintains that the Hospital represented it would bill his health insurance, but instead pursued a third-party medical lien against his personal injury recovery from the negligent driver.
- Plaintiff settled the lien for $3,056.

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Hurst

- Plaintiff argued that the Hospital's provider agreement with his insurer categorically prohibited the Hospital from seeking payment for covered treatment from insurance beneficiaries directly or indirectly.
- Plaintiff filed suit in State court in October of 2018 – only claim for breach of contract
- Plaintiff argues that he and similarly situated patients are Third Party Beneficiaries of Provider Agreements
- The Hospital's Motion to Dismiss is pending.

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Case 4: *Garrison*

- Plaintiff was injured in a car accident in August 2013, and another driver was deemed to be at-fault.
- She received emergency treatment followed by several surgeries and physical therapy from three different hospitals.
- One of these hospitals did not bill her health insurance and instead filed a Medical Lien in the amount of $2,010, which was not the negotiated contractual amount.
- The lien was eventually released and enforcement was never sought; the Plaintiff was provided a release notice stated that the Hospital had written off all outstanding amounts and would not report any unpaid amount on her credit history.

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Garrison

- Plaintiff filed a class action lawsuit against:
  - 5 Hospitals
  - Who have provider agreements with 4 Insurers
  - And utilize 2 entities to perform collections services
- Causes of Action
  - Violation of the Arkansas Deceptive Trade Practices Act
  - Violation of the Arkansas Fair Debt Collection Practices Act (as to the entities performing collections services)
  - Breach of Contract
  - Unjust Enrichment

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Garrison

- Causes of Action (continued)
  - Conversion
  - Breach of Fiduciary Duty
  - Abuse of Process
  - Civil Conspiracy
- Hospitals' Motion to Dismiss was granted
  - Plaintiff suffered no harm, as Hospital did not enforce lien
  - Hospital also did not attempt to collect lien from $100,000 settlement proceeds
  - No facts to support conspiracy claim
  - No judicial enforcement of lien, thus no abuse of process.

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Common Claims

- Violation of Arkansas Deceptive Trade Practices Act
- Breach of Contract
  - Failing to bill health insurance
  - Attempting to collect full amount (rather than negotiated rates)
- Tortious Interference with Business Relationship/Expectancy
  - Between Patient and Insurer
- Unjust Enrichment

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Takeaways

- Admission Forms / Releases
- Provider agreements with insurance companies
  - Does the Agreement allow the Hospital to collect from Third Parties at fault? Does the Insurer accept responsibility for doing so? What is usual practice for the Parties?
  - Does the Agreement make Insurance Beneficiaries a Third Party Beneficiary?
  - Does the Agreement prohibit use of a lien against settlement proceeds?
- Timing of lien filing/release
- Amount of lien (full, negotiated rate, or the difference)
- Process implemented by third-party collections groups
- Billing Health Insurance

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Best Practice

- If the patient has health insurance, *always* bill it.
- Do not miss timely filing.
- Utilize the Medical Lien Statute for situations where the Hospital would otherwise be without payment.
- Formulate a clear policy for billing practices regarding patients who were involved in a motor vehicle accident, follow it, and document.

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Best Practice

What if Patient asks Hospital to not bill Patient's health insurance?

- Two scenarios –
  - Patient's Auto Insurance
    - Patient may have auto insurance benefits such as medical payments coverage or other personal injury coverage
  - At-Fault Party's Auto Insurance
- Use Express Waivers
  - Consent to Bill Patient's Automotive Insurance
  - Consent to Bill Automotive Insurance Company of At-Fault Party
    - Should contain express acknowledgement that a medical lien may be filed against the proceeds of any potential settlement
    - Express acknowledgement that patient's health insurance may not cover expenses that would be covered otherwise as a result of his or her request

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Questions?

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