



# **Wisconsin Hospital Liens: Do's and Don'ts for Collecting from Third-Party Liability Insurers**

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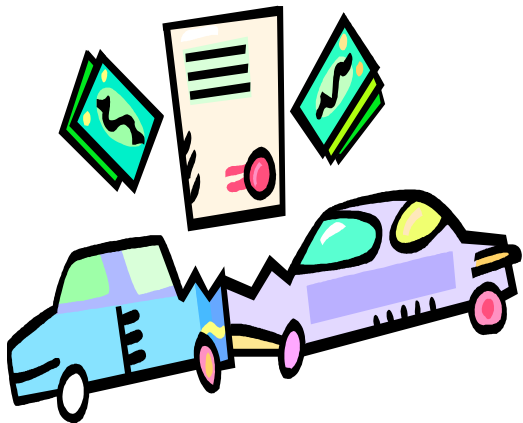
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# What is a Hospital Lien?

- A perfected hospital lien gives the hospital a priority interest over all other creditors (other than the patient's personal injury lawyer) to receive payment from personal injury settlement proceeds



# Hospital Lien Statute



- Every corporation, association or other organization operating as a charitable institution and maintaining a hospital in this state shall have a lien for services rendered, by way of treatment, care or maintenance, to any person who has sustained personal injuries as a result of the negligence, wrongful act or any tort of any other person. Wis. Stat. § 779.80(1).

# Hospital Should File A Lien if:

- Patient, who has received care for injuries sustained due to the negligence or wrongful conduct of any person, is:
  - Uninsured;
  - Medicare beneficiary; or
  - Medical Assistance recipient

# Hospital Liens apply in situations where patients have been injured due to:

- Auto accidents
- Fights/Intentional Torts
- Safe Place Violations/Slip and Falls
- Product Liability/Food Poisoning
- Any incident involving negligence or wrongful conduct



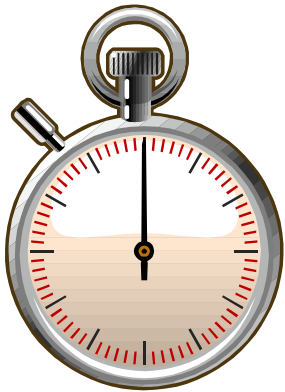
# What should the Hospital Staff do?



- Hospital staff should determine the underlying cause of the injury and, where appropriate, seek police reports and accident reports to identify potentially liable persons.
- File a hospital lien to secure hospital's priority interest even if insurance information has not been ascertained.

# When to file the "Notice of Hospital Lien"

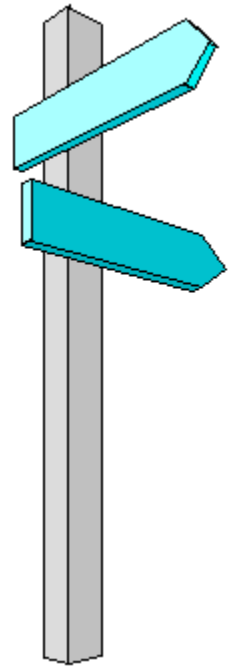
- The Notice of Hospital Lien must be filed no later than **60 days** after the patient's discharge from the hospital.



- Although the hospital has 60 days from discharge, it is advisable that the hospital work as quickly as possible to file the lien; time is of the essence.
- Insurance carriers often settle quickly where the injured person's damages are great and the policy limits are low. Consequently, it is important to avoid the situation where the insurance payout is made prior to the attachment of the lien.

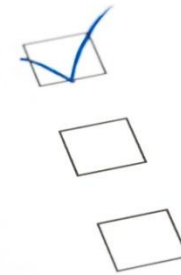
# Where is the "Notice of Hospital Lien" Filed?

- The Notice of Hospital Lien is filed with the Clerk of Circuit Court in the county where either:
  - the injuries occurred;
  - the hospital is located; or
  - a lawsuit for recovery of such damages is pending.





# Completing the "Notice of Hospital Lien" Form



- Under Wis. Stat. § 779.80(3), the Notice of Hospital Lien form must contain the following:
  - (1) the name and address of the injured person
  - (2) the date and location of the event causing such injuries
  - (3) the name and location of the hospital
  - (4) if reasonably ascertainable, the names and addresses of all persons alleged to be liable for the patient's injuries and their insurers

# Completing the "Notice of Hospital Lien" Form



- (5) the amount of reasonable and necessary charges for treating the patient
- (6) the dates the patient was treated
- (7) the name of the insurance company which has insured the alleged liable party for the injury
- See <http://www.wilegalblank.com> for a blank Notice of Hospital Lien Form (Form No. 227)
- **DO NOT ATTACH EITHER THE STATEMENT OF CHARGES OR THE UB-04**

# Serving Notice

- As soon as the Notice of Hospital Lien form is completed, staff should make a sufficient number of copies to serve on:
  - (1) the injured person/discharged patient;
  - (2) the liable person(s); and
  - (3) the insurance carrier(s) for the liable person(s).

# Serving Notice

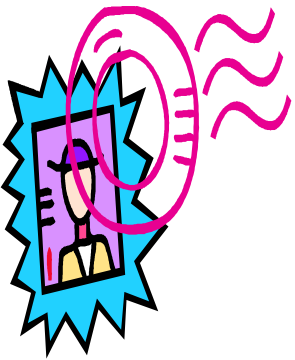


- The Hospital Lien form must be submitted to the Clerk of Circuit Court with a check in the amount of \$5.00 to cover the filing fee.

# How to Perfect the Hospital Lien

- Within **10 days** of the filing of the Notice of Hospital Lien with the Clerk of Circuit Court, the hospital must either send by certified or registered mail or serve personally a copy of the Notice of Hospital Lien with the date of filing thereof to or upon the injured person (patient) and the persons alleged to be liable for damages sustained by the injured person. Wis. Stat. § 779.80(3)(b).

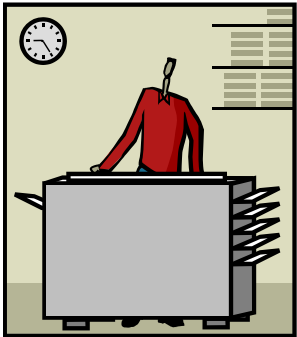
# How to Perfect the Hospital Lien



- The hospital must also either send by certified or registered mail or serve personally a copy of the file-stamped copy of the Notice of Hospital Lien to any insurer which has insured the person or persons alleged to be liable for the injury. Wis. Stat. § 779.80(3)(c).
- Do not wait to send notice to required parties.

# Beware: Timing is Critical

- If the hospital files its lien by mail with the Clerk of Circuit Court, it may not receive the returned file-stamped copies in time to meet the **ten-day statutory deadline** for providing service to the injured person/patient, the liable person(s), and the insurance carrier(s).
- As a preventative measure, the hospital should reserve photocopies of the Notice of Lien form it has sent to the Court to be filed.



# How to Perfect the Hospital Lien



- Once filed, check the Wisconsin Circuit Court Access Web site (<http://wcca.wicourts.gov>) daily to determine the date and time the lien was filed, and write the date on the reserved copy of the Notice of Lien form and send that Notice of Lien, by certified mail with return receipt requested, to: (1) the injured person/patient; (2) the liable person; and (3) the liable person's insurance carrier.



# How to Perfect the Hospital Lien



- Time is of the essence in both filing and serving the Notice of Hospital Lien. It is recommended that the hospital send the Notice of Hospital Lien, exhibiting the date of its filing, via certified mail with return receipt requested to ensure that it can establish that the lien was timely sent, to:
  - (1) the injured person/discharged patient;
  - (2) the alleged liable person(s); and
  - (3) the insurance carrier which has insured the person(s) alleged to be liable,and, further, that the Notice of Hospital Lien was received by each.

# How to Perfect the Hospital Lien

- If a dispute arises over whether notice was received, a court may well require the hospital to show how service was provided and the dates on which the parties received notice. Proof of a return receipt confirming service is an excellent way for the hospital to meet its burden of proof.



# Limitations to Hospital's Statutory Lien Rights



- Hospital may not file a lien where:
  - The person injured is definitively eligible for worker's compensation.
  - The person injured is insured by an HMO.  
***Dorr v. Sacred Heart Hosp.***, 228 Wis. 2d 425, 597 N.W.2d 462 (Ct. App. 1999); Wis. Stat. § 609.91.
  - Wis. Stat. § 609.91 contains immunity provisions for enrollees/members.

# HMOs: General Rule



- When it is known that the injured patient is covered by an HMO administered by a private company, the hospital **should not** file a lien against the proceeds of any insurance settlement which the injured patient may receive from the insurer of the party that caused the patient's injuries.
- Exception: Wis. Stat. §§ 609.91(1)(b) & 609.92
- The hospital **should** submit the claim for payment directly to the HMO.
  - Where the hospital has an existing lien, the hospital should release the lien and seek payment solely from the HMO.

# Medical Assistance HMOs

- When it is known that the insured patient is covered by a MA HMO, the hospital should not file a lien under Wis. Stat. § 779.80 against the proceeds of any insurance settlement which the injured patient may receive from the insurer or the party that caused the patient's injuries.

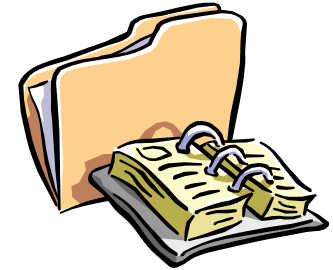
# Medicare HMOs

- For injured patient covered by a Medicare HMO for which a written provider agreement between the hospital and the Medicare HMO exists, the hospital's procedure relating to the enforcement of a lien should be determined based on the contract language found in the written provider agreement.
- Federal regulations require Medicare HMO organizations to include provisions in provider agreements requiring the provider to hold the injured patient harmless.

# Judicial Interpretation of Wisconsin's Hospital Lien Statute

- ***Dorr v. Sacred Heart Hosp.***, 228 Wis. 2d 425, 597 N.W.2d 462 (Ct. App. 1999)(Wis. Stat. § 609.91/HMO);
- ***Gister v. American Family Mut. Ins. Co.***, No. 2009-CV-1608, unpublished slip op., 2010 WL 4513412 (Nov. 12, 2010)(Wis. Stat. §§ 49.46(2)(d) & 49.49(3m) versus Medicaid's Payer of Last Resort Rule) (Wisconsin Supreme Court's Decision Pending);
- ***Laska v. General Cas. Co. of Wis.***, Dane County Case No. 2008CV004269 (Medicare's Secondary Payer Provisions) (Wisconsin Court of Appeals' Decision On Hold Pending Wisconsin Supreme Court's Decision in ***Gister***)

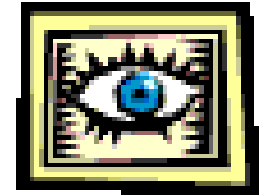
# Monitoring Patient's Personal Injury Claim



- Implement a tickler system to monitor patient's claims
  - Keep an open dialogue with patient or patient's legal representative;
  - Ascertain insurance limits;
  - Ascertain the adjuster's name, claim number;
  - Verify and monitor CCAP for Patient's Personal Injury Claim



# Monitoring Patient's Personal Injury Claim



- Statute of Limitations on Personal Injury Claims: Minors vs. Adults
- Lawsuit vs. Settlement
- Maintain Records: Accident/Police Report, lien documents, letters enclosing Notice of Hospital Lien, certified mailings, and all communications with patient's counsel (SCR 20:1.15)
- Assess Need to Intervene in Lawsuit

# Release of Hospital Lien

- Business decision to release lien and submit to Medicare or Medical Assistance;
- Prohibition on balance or substitute billing;
- File Release of Lien

# Satisfaction of Hospital Lien

- Negotiate settlement or Foreclose on Hospital Lien;
- Receive payment from liable person/insurer; and
- File Satisfaction of Lien

# Questions

