

Medical Lien Form

Cautions for Use

1. This form contract was prepared in January 2021 to address the new Colorado lien law that went into effect September 2021. Do not presume that the form continues to be in compliance with any subsequent changes in the law.
2. **Use at your own risk.** This is a “form.” This means that it is not tailored to your specific business and client circumstances. Carefully prepare and use this form. Even if you use this form as is, there are blank sections that must be filled in for your specific practice and specific relationships vis a vis attorneys and lien assignees.
3. Particularly because of #2, consider hiring an attorney to assist you with preparing a customized form for your business. This form was prepared by an attorney, but it was not prepared by an attorney on your behalf who had an attorney-client relationship with you, and the attorney could not possibly know your circumstances. Only your individual attorney can provide assurances that this form, as customized for your circumstances, is applicable or appropriate to your particular situation.
4. Ensure you thoroughly understand the contract and all of the steps necessary to have a fully and correctly completed contract, and what your legal and administrative obligations are under the contract.
5. Do not use this form without reading up on and understanding new Colorado lien law that went into effect in 2021, so that you understand compliance requirements. There are a lot of things you must know and understand about liens that are not readily evident from this form contract. A good guide is: *A Provider's Guide to Colorado's New Health-care Lien Statute*, by attorney Thomas Neville of Ogborn Mihm LLP.
6. The guide referenced above has a good example of a **Lien Questionnaire** you can use to develop your own to accompany the form contract, which has a specific reference to the questionnaire and that the Patient must complete it.
7. This contract imposes obligations that you must comply with, in particular, obligations imposed by Colorado law. You must take steps to make sure you are complying with them.
8. Consult with an attorney if you believe you may need to enforce rights under this contract against the Patient, their representative, or any other third party. It is highly discouraged to exercise self help because you risk acting unlawfully.
9. This form does not address what to do with existing liens you may have had in place before the new law went into effect. Consult a lawyer if you have questions about those.
10. There are some things that the new law leaves unclear. For that reason and for the reason that any contract can be the subject of a dispute, there is no guarantee that using this contract will immunize you from problems, or that every possible contingency is accounted for. If a dispute arises, the contract may be scrutinized by litigants and ultimately a court, and not necessarily in the favor of the chiropractor.
11. Attend continuing education seminars about lien laws, such as those organized by Colorado Chiropractic Association.

Included in this packet along with the form:

1. C.R.S. 38-27.5-101 to -108
2. *A Provider's Guide to Colorado's New Health-care Lien Statute*, by attorney Thomas Neville of Ogborn Mihm LLP, which also contains a sample Lien Questionnaire

Patient Lien and Assignment Agreement for Payment of Services

Date of this Agreement: _____
Injured Person Name: _____
Patient Legal Representative
(if Injured Person is under age 18/lacks capacity): _____
Check Here When Lien Questionnaire is Completed: []

This Patient Lien and Assignment Agreement for Payment of Services ("Agreement"), is made between health-care provider _____ ("Provider") and the Injured Person and Patient Legal Representative (if any) identified above effective on the date identified above. "Patient" in this Agreement refers to the both the Injured Person and, if there is one, the Patient Legal Representative, who is entering into this Agreement both on behalf of the Patient and in his or her individual capacity as if he or she were the Patient.

1. **Statement of Purpose of Agreement.** The Injured Person was injured in an automobile accident or other incident (Incident) as a result of the alleged negligence or wrongful act of another. Provider and Patient desire for Provider to provide Injured Person with Incident-related health-care services (the "Services") in exchange for Patient's agreement to all of the terms of this Agreement, without which Provider would not provide the Services on a lien basis. To further these purposes, the parties enter into this Agreement.
2. **Grant of Health-Care Provider Lien.** Except as limited by the terms of this Agreement and by Colorado law, Patient grants to Provider and any assignee of Provider a health-care provider lien as security for the payment of Provider's charges for the Services. Provider's health-care provider lien is a legally enforceable right in money that Patient receives as a result of a claim arising out of or related to the Incident that Patient asserts against any third party or insurer, including but not limited to individuals involved in the Incident and insurers under an uninsured or underinsured motorist policy.
3. **Assignment of Benefits Payable.** Except as limited by the terms of this Agreement and by Colorado law, Patient assigns to Provider any and all benefits payable by Patient's insurance or health care plan(s) as a result of charges incurred by Patient for the Services, and Patient further assigns to Provider any and all contractual rights that Patient has against any insurance company, health care benefit plan, or any other party liable to Patient for costs incurred by Patient as a result of the Services.
4. **Irrevocability of Lien and Assignment.** The lien and assignment in this Agreement are irrevocable.
5. **Patient Representations as to Truthfulness and Completeness.** Patient represents to Provider that he or she has truthfully and comprehensively completed Provider's patient Lien Questionnaire, which requires Patient to provide information that is critical to Provider's decision and agreement to treat Injured Person on a lien basis instead of another payment arrangement. Failure of Patient to complete the Lien Questionnaire and to be comprehensive and truthful will constitute fraud or misrepresentation by Patient that entitles Provider and its assignee to greater recovery rights under section 9.1(c) below.
6. **Agreement by Patient's Attorney.** Patient will direct Patient's attorney(s), if any, to sign this Agreement where indicated, honor this Agreement, and make payment under the irrevocable lien and assignment directly to Provider. Provider is not obligated to provide Services in the absence of attorney agreement and signature.
7. **Direct Payment by Third-Party Payors.** Patient hereby directs and will direct all insurers and others possibly responsible for Injured Person's healthcare costs to include Provider as a payee on any check or draft payable for Services or make all payments for the Services directly to Provider. Patient agrees that Provider may submit a copy of this Agreement and related documents to any such third-party payors as notice of the terms of this Agreement. Patient may, upon reasonable request to Provider and during normal business hours, request a copy of all such submissions.
8. **Assignment by Provider.** Provider may assign, in writing, its health-care provider lien to any other person or entity. Provider's assignee of this lien has all the rights, remedies, and restrictions of Provider in relation to this lien.
9. **Disclosures and Agreements Pursuant to C.R.S. § 38-27.5-104.**
 - 9.1 The following disclosures and agreements are made pursuant to C.R.S. § 38-27.5-104:
 - (a) The following are potential methods for payment of a health-care provider's billed charges:
 - (i) The creation of a health-care provider lien such as in this Agreement;
 - (ii) The use of benefits available from insurance or any payer of benefits as defined in C.R.S. § 38-27-101(9) to which Patient is a beneficiary (the Patient can obtain information about the payer of benefits' network from the payer of benefits or the Provider);

- (iii) Any other payment method or arrangement agreed to in writing by both the Provider or its assignee and the Patient; or
- (iv) A combination of the payment methods specified in subsections 9.1(a)(i) to 9.1(a)(iii) of this section;
- (b) Neither Provider nor its assignee is a health insurer or payer of benefits;
- (c) Except in the event of fraud or misrepresentation by Patient:
 - (i) If the Patient does not receive a judgment, settlement, or payment on either Patient's claim(s) against third parties or under an uninsured or underinsured motorist policy, the Patient is not liable to the holder of the health-care provider lien for any portion of the health-care provider lien;
 - (ii) If the Patient receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the Patient is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment, and the holder of the health-care provider lien may not file a complaint or counterclaim against the Patient directly to be reimbursed for any amount beyond the net judgment, settlement, or payment. Nothing in this section 9.1 prevents a Provider or its assignee from initiating a declaratory judgment action or participating in an interpleader action or claim pursuant to the Colorado rules of civil procedure, or any other similar action or claim, to determine the Provider's or its assignee's share of the Patient's net judgment, settlement, or payment.
 - (iii) Neither Provider nor its assignee may assign a health-care provider lien to a collection agency or debt collector;
- (d) Provider's assignee's compensation from the Patient is based on the difference between the Provider's usual and customary billed charge and the amount that the assignee pays to purchase the health-care provider lien;
- (e) The following common ownership interest exists between the holder of the health-care provider lien and the Patient's legal counsel:
_____;
- (f) Provider has the following common ownership interest with its assignee _____; and
- (g) If the Patient has obtained health insurance even after a health-care provider lien has been created, and the Patient or the Patient's legal counsel so informs the holder of the health-care provider lien, all future care may be billed to the health insurance carrier at the Patient's discretion.

9.2 Upon request by the Patient or the Patient's legal counsel, the holder of a health-care provider lien shall provide in writing to the Patient an itemized statement of all the billed charges for treatment comprising the total value of the health-care provider lien as the billed charges are accrued, to the extent practicable, and when the health-care provider lien is final. The final itemized statement must include a summary of all treatments provided, the total amounts billed for each treatment, and the total amount of the health-care provider lien due and owing.

- 10. Patient Fraud or Misrepresentation.** If Patient commits fraud or makes misrepresentations to Provider about any fact or circumstance surrounding this Agreement or any disclosure made in the intake form or in this Agreement itself, then Patient is personally responsible for payment of all charges associated with the Services, and Patient's obligation to make payment is not contingent on any judgment, settlement, or payment recovered by Plaintiff, and is regardless of whether Patient's recovery is a full, partial, or nonpayment for the Services. Further, in the event of such fraud or misrepresentation, Provider or its assignee may assign the health-care provider lien to a collection agency or debt collector.
- 11. Amount of Lien.** The amount of the health-care provider lien will not exceed the charges for Services provided at the time of service at a rate equal to the Provider's usual and customary billed charge.
- 12. No Finance Charge.** Neither Provider nor its assignee will add interest or other finance charge, as defined in C.R.S. § 5-1-301(20), to the Provider's usual and customary billed charges or otherwise increase the amount of Provider's usual and customary billed charge when creating or claiming a health-care provider lien. The Patient is only obligated to pay the Provider or its assignee the amount of the health-care provider lien.

13. **Filing of Lien.** The holder of a health-care provider lien may but is not required to file a record of its health-care provider lien under the “Colorado Statutory Lien Registration Act,” including listing the name and address of the Injured Person and Patient Legal Representative, the date of the Incident, the name and address of the holder of the health-care provider lien, and the name and address of each health-care provider that rendered health-care services underlying the health-care provider lien.
14. **Authorizations to Disclose Records and Information.**
- 14.1 Patient authorizes Provider to furnish a full report and records regarding case history, examination, diagnosis, treatment and prognosis, x-rays, laboratory reports and the results of all tests of any type or character to such persons as Provider deems appropriate.
- 14.2 Patient authorizes and directs Patient’s attorney to disclose any settlement or judgment amounts, distribution sheets, and final accounting to Provider, and in doing so, Patient waives any confidentiality and attorney-client privilege associated with any communications relating to the terms, distributions, and final accounting of any funds collected. If Patient does not have an attorney, Patient agrees to give this information to Provider.
- 14.3 Patient authorizes and directs any insurance company to give Provider a complete copy of Patient’s insurance policy, including any endorsements, conditions, limitations, or exclusions, and to disclose to Provider any settlement or judgment amounts, dates of settlement, and any related terms.
15. **Remittance of Payments to Provider.** Patient agrees that if Patient receives any check, draft, or other payment that is subject to this agreement, Patient acts as a fiduciary agent for Provider and will immediately deliver the check, draft, or payment to Provider to be applied to the debt for the Services.
16. **Power of Attorney.** Patient irrevocably appoints Provider as power of attorney for Patient and in Patient’s name, to ask, demand, sue for, collect, endorse, sign and receive proceeds from insurance, other health benefits, and third-party claims relating to the Services. Provider is not obligated or compelled to exercise such powers but may do so in its sole discretion. Patient agrees to fully cooperate with Provider in collecting said amounts.
17. **General Terms.**
- 17.1 **Amendment.** This Agreement may not be amended except in writing signed by both parties.
- 17.2 **Jurisdiction and Venue; Choice of Law.** This Agreement is governed by Colorado law. Any legal dispute not resolved by the parties through informal negotiation or mediation must be brought in _____ County, Colorado, or the U.S. District Court for the District of Colorado.
- 17.3 **Severability.** Any invalid or unenforceable term of this Agreement, including any term that a court rules is contrary to C.R.S. § 38-27.5-104, will be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and the remainder of this Agreement will remain in full force and effect.
- 17.4 **No Waiver.** No waiver of any breach of any term of this Agreement by a party will be deemed to imply or constitute a waiver of a breach of the same term in the future, or a waiver of a breach of any other term of this Agreement. No provision of this Agreement may be waived except in a writing signed by the waiving party.
- 17.5 **Complete Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter of this Agreement, and supersedes completely all related negotiations, discussions, and prior agreements, between the parties.
- 17.6 **Interpretation.** Any ambiguity in this Agreement shall not be resolved against either party under any rules of construction.
- 17.7 **Notice.** Any notice, demand, or other communication (collectively, a “notice”) required under or provided pursuant to this Agreement must be in writing and delivered to the other party personally, by overnight delivery courier, or by certified or registered mail, postage prepaid, return receipt requested. Delivery is effective on the date emailed (with no notification of failed email transmission) or personally delivered to the party requiring notice, or the date confirmed delivered by the overnight delivery courier or by the mail service. Each party shall advise the other party immediately of any change in address or other contact information to which notice should be given. A notice to Patient shall be sent to the contact information maintained on file with the Provider. A notice to Provider must be delivered to the following mailing address:
_____.
- 17.8 **Scanning and Photocopies.** The original of this Agreement may be scanned and stored digitally, and any printout or other output that accurately reproduces the original may be used for any purpose as if it were the original.

17.9 **Counterparts.** This agreement may be signed in counterparts and transmitted electronically. When taken together, the counterparts will be deemed an original.

Each party is signing this Agreement on the date stated opposite that party's signature.

Injured Person

Date: _____

Signature: _____

Print Name: _____

Patient Legal Representative (if applicable), individually and on behalf of Injured Person

Date: _____

Signature: _____

Print Name: _____

Principal

Date: _____

Signature: _____

Print Name: _____

Agreement of Patient's Attorney:

I acknowledge that I have been instructed by my clients, the Injured Person and the Patient Legal Representative (if any) to honor the terms of this Agreement. I agree to be bound by and to honor the irrevocable lien and assignment in this Agreement.

Patient Attorney

Date: _____

Signature: _____

Print Name: _____

Law Firm: _____

A Provider's Guide to Colorado's New Health-care Lien Statute

Colorado Revised Statutes
Sections 38-27.5-101–38-27.5-108

Thomas Neville

OGBORN **MIHM** 

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WHY WAS THIS STATUTE ENACTED?

Ten years ago, the Colorado General Assembly passed, Colorado's Made Whole Statute (Colo. Rev. Stat. § 10-1-135). That statute codified the common law rule that evidence of payments by health insurance companies are inadmissible as evidence in personal injury cases—and for good reason. Juries who learned that an injured person was covered by health insurance would frequently refuse to award damages for medical care paid for by health insurance.

Almost immediately, the auto insurance industry started trying to find ways around the rule. It argued that payments by Medicaid and Medicare were admissible. **And it took aim at health-care provider liens.** While Colorado's appellate courts addressed arguments about social insurance programs quickly, the question of whether the defendant in a lawsuit could tell the jury that the injured person had received care on a lien and that the injured person may not be required to repay the full amount of any bills has remained open for ten years. Colorado's trial courts have been inconsistent in how they have approached the question. Some trial courts have held that evidence of lien-based treatment is inadmissible. Others have allowed insurance defense firms to engage in substantial discovery into health-care provider liens, including not only the lien itself, but all communications having anything to do with the lien.

In cases where courts allowed discovery about health-care provider liens, defense lawyers developed an effective strategy. In recent years, defense lawyers have begun seeking any and all communications between personal injury lawyers and lien companies. Then, the defense lawyers would argue that communications between lawyers and lien companies was evidence that the lawyers were “directing” their clients' medical care through the lien companies. Over time, these allegations shifted to insinuations that doctors, lien companies, and lawyers were conspiring to inflate patients' damages and defraud juries. This strategy drove a wedge between lawyers, clients, lien companies, and health-care providers, presenting injured people with the choice of either having the lawyer who knew their cases best withdraw so the lawyer could become a witness in the case, or put their faith in jurors who may be misled by defense lawyers' insinuation and innuendo.

To address this Hobson's choice, Colorado's lien companies asked the General Assembly for assistance. In each of the last three legislative sessions, the General Assembly has considered bills to address these evidentiary issues and regulate the large lien companies. This year, a compromise bill passed the General Assembly. That bill, HB21-1300, addresses some of the evidentiary concerns surrounding health-care provider liens, imposes consumer protections, and creates a process by which a health-care provider can perfect their lien priority ensuring its position in line in the event that the eventual recovery is insufficient to satisfy all liens.

Disclaimer of Attorney-Client Relationship

The verbal and written material provided in conjunction with this presentation is not intended to, and does not, constitute legal advice. Instead, all information is provided for general informational purposes to allow participants to understand the developing legal and regulatory landscape. Readers of these materials should contact their attorneys to obtain advice particular to their individual legal situations. No participant in this presentation, or reader of these materials, should act or refrain from acting solely on the basis of information presented herein without first seeking legal advice from the reader's own attorney. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Nothing herein is intended to create an attorney-client relationship between the presenter or author and the participants or readers.

THE SIX THINGS EVERY HEALTH-CARE PROVIDER NEEDS TO KNOW RIGHT NOW ABOUT TREATING PERSONAL INJURY PLAINTIFFS ON A LIEN BASIS

The new health-care provider lien statute contains a number of important provisions that significantly change the law surrounding these liens.

- The most important thing for healthcare providers to know is that, when this statute becomes effective (on September 6, 2021), if your patient does not receive a judgment, settlement, or payment on his or her claim, **you cannot recover for care provided on a lien basis.**¹
- If your patient goes to trial and recovers less than the full amount of the health-care provider liens (or accepts a settlement for less than the full amount of the lien), **you cannot pursue amounts beyond the patient's recovery.**² This means you cannot assign a patient's lien account to a collection agency or debt collector.³
- When you treat a patient on a lien basis, the charges for your services cannot exceed the rate equal to your usual and customary billed charges.
- You cannot add a finance charge or otherwise increase the amount of your usual and customary billed charge when treating on a lien basis.
- If a court finds that a health-care provider knowingly violated certain provisions of the statute, it has discretion to invalidate the health-care provider's lien in whole or in part.
- Your lien agreement must give the patient certain mandatory disclosures and advisements about treating on a lien.

WHAT DOES IT ALL MEAN?

Here is the big takeaway: You're going to have to decide whether you want to carry your own liens, or cut your compensation and shift the risk inherent in litigation to a lien company. And if you decide to carry your own liens, **you will need to spend more time at the beginning of a case evaluating whether you are comfortable working on a lien basis.** This means you're going to have to think like a lawyer, because the new statute changes the risk calculus for health-care providers like you. Under the new law, your liens will be non-recourse loans. If the patient's lawsuit is successful and the defendant has sufficient assets and insurance, your lien will get paid. If the patient's lawsuit is only partially successful, the value of your lien will depend on whether you timely recorded it and whether there are other health-care providers treating on liens as well.

You're going to have to disclose certain information to your lien patients. If you don't, you could jeopardize the validity of your lien. You may have to change how you charge for your liens. You cannot charge interest or have different rates for lien patients. If you do, your lien may be invalid. You won't be able to send lien patients to collections or a debt collector. If you do, your lien may be invalid. You need to have a usual and customary rate that is high enough to cover your risk, and low enough not to drive off your other patients.

You're going to need to ask questions of patients who want to treat on a lien to ensure they're being fully honest with you about the kinds of things that can tank a personal injury case. That means you're going to want to know more about the circumstances of the crash to make sure the patient was not wholly

¹ Subject to one major exception. The statute provides that "[i]n the absence of fraud or misrepresentation by the injured person," the injured person is not liable to the holder of a healthcare provider lien if he or she does not receive a judgment, settlement, or payment on the claim.

² This section is subject to the same exception.

³ As is this section. Note that you **can** assign the lien to a medical factoring company, or lien company.

or partially at fault; you're going to want to know what the underlying policy limits are, who the defendant driver is, and whether the patient has uninsured/underinsured motorist coverage (and how much coverage they have); you're going to want to know whether your patient has a significant history of treatment to the same or related body parts or for the same kind of complaints; and you're going to want to know whether they were wearing a seatbelt. You're probably also going to want to know who is representing your patient. Do you trust that lawyer to do a good job and get a settlement or verdict that covers all medical expenses and damages? Certainly, no one can guarantee a successful outcome, however.

Now, if your patient lies to you or makes misrepresentations to convince you to treat them on a lien, they will forfeit many of the statute's protections. If the patient lies about or misrepresents their past treatment, the facts of the crash, or other material facts you relied on in deciding to treat on a lien, you may be able to pursue the patient after a bad (or even disastrous) trial result. But a patient's lack of honesty won't cure failure to comply with the requirements regarding finance charges, mandatory disclosures, or billing rate requirements.

HOW TO EVALUATE A CASE LIKE A LAWYER

Fortunately, there are people who have experience evaluating whether to take on cases, given the unpredictable nature of litigation—trial lawyers. Here is how we evaluate potential cases that come in.

First, you need to evaluate liability. What happened in the crash? Was the potential patient rear-ended? Were they t-boned in an intersection? Did the other driver run a red light? Is it clear who was at fault? If liability is unclear (or potentially evenly split between the patient and the other driver), that is a case that may not result in any recovery.

When you evaluate liability, you should also investigate insurance coverage. How much coverage did the other driver have?⁴ Does the patient have uninsured/underinsured motorist coverage? In most cases, the most an injured person can reasonably expect to recover is the limits of the other driver's insurance policy plus any UM/UIM coverage on the driver's own policy. Fortunately, in Colorado, UM/UIM coverage is now excess to the driver's liability policy. In other words, if the other driver has \$100k in liability coverage and the patient has \$500k in UIM coverage, the total potential recovery is \$600k.⁵ You should also investigate whether there are multiple policies in play for any of the people involved in the crash. In rare cases, a patient who has multiple UIM policies may be able to recover from each one of them.

Similarly, you need to investigate whether there are other health-care providers involved in their case? Who are they? Are any of those providers treating on liens? This may have an impact on the value of the case or your odds of recovering the value of the care you provide.

Second, now that you've investigated liability and coverage, it's time to evaluate whether this patient's medical condition will be a benefit to his or her claim or a detriment. You will need to get a detailed medical history of the patient, including whether they have ever experienced injuries to the same parts of their bodies before; whether they have had prior medical care from another doctor within your specialty; or whether they have been in prior car accidents, made worker's compensation claims, or been involved in personal injury litigation previously. All of these are factors that may suggest that the treatment you are going to provide may relate to a pre-existing condition. Vetting a patient's past medical history is very important.

⁴ In Colorado, all drivers are required to carry at least \$25,000 in liability coverage.

⁵ Back in the "old days," the UIM carrier received an offset for the other driver's liability insurance. Under the old rule, under the facts described above, the total coverage available would have been \$500k, because the UIM carrier could offset \$100k (representing the at-fault driver's liability coverage) against its own coverage.

You also need to look into the patient's post-crash medical care. When did they start treatment? Were they obviously injured at the time of the crash? Were they transported to the hospital in an ambulance, or did they drive themselves? Have there been gaps in treatment? Is there a good explanation for those gaps? Is the client generally compliant with other health-care providers' treatment plan? Has the patient undergone a surgical procedure? Multiple procedures? On a lien basis? That could easily mean that the available coverage has already been spent.

Third, you need to evaluate whether the injuries are consistent with the car crash. Consider reviewing photographs of the damaged vehicles. That is going to help you decide whether you think the injuries are consistent with the forces involved in the crash. Also, if the damage appears minor, make sure you're familiar with medical research on low damage, high energy collisions. You should already know how to do most of this because you are routinely asked to offer causation opinions in civil cases. This is a great time to start developing those opinions.

Finally, take a good long look at the patient. Consider everything you know about them. Did they have their life in order before they were injured, or were they always a walking disaster? What do you think of their character and integrity? Are there any red flags that make you think they will not be well received by a jury? The most important witness in a personal injury case is the plaintiff. If you don't trust the patient, how can you expect a jury to do so?

At the end of this process, you're going to have a sense of whether you feel comfortable taking a gamble and treating the patient on a lien.

STATUTORY DEFINITIONS – ANNOTATED

The following terms are defined in the statute (at Colorado Revised Statutes § 38-27.5-102) and used throughout.

“Health-care provider” means a person licensed or certified in the state to practice medicine, pharmacy, chiropractic, nursing, physical therapy, podiatry, dentistry, optometry, occupational therapy, or other healing arts, or an entity directly employing such persons, and any other licensed health-care provider as permitted by the laws of the state.

EXPLANATION: This definition is extremely broad and is intended to encompass virtually any licensed or certified health-care provider licensed under §12-200-101– §12-315-101 of the Colorado Revised Statutes.

“Health-care provider lien” means a lien created by a health-care provider or its assignee related to charges for health-care services given to a person injured as a result of the negligence or wrongful acts of another person, which is asserted against money received as a result of a claim or claims that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy.

EXPLANATION: A lien is a legally enforceable right in the property of another. A health-care provider who treats an injured plaintiff and wishes to secure his or her right to payment against the injured person's judgment, settlement, or payment for damages can enter into a health-care provider lien.

“Net judgment, settlement, or payment” means the proceeds received by an injured person on the injured person's claim or claims against third parties or under an uninsured or underinsured motorist policy, after the reduction of reasonable attorney fees and litigation expenses, if any.

EXPLANATION: This term defines the pool of funds against which a health-care provider can assert his or her lien. Note that the pool of funds is what remains after payment of attorney fees and expenses. The reason this definition is phrased this way is that, in Colorado, attorneys have always had a first priority charging lien on their clients' recoveries. This language was included to clarify that the new statute remains consistent with existing Colorado law.

“Usual and customary billed charge” means a health-care provider's billed charge in the absence of insurance for a service that is similar to the billed charges for like services provided by other health-care providers in the same geographic region.

EXPLANATION: This is a very important definition, in part because the statute prohibits you from charging patients who you treat on a lien basis more than your usual and customary billed charge. The insurance industry was adamant about this definition, because they were concerned about artificially elevated billing rates. Specifically, they were concerned that doctors or lien companies would charge exorbitant rates on cases involved in litigation, but not for their regular patients.

Bonus Definitions (these terms are not defined in the health-care lien statute):

“Finance charge” means interest, time-price differential, service charges, or premiums to protect the health-care provider (or its assignee) against the injured person's breach or other credit loss.

EXPLANATION: The full definition of “finance charge” is in the Colorado Consumer Credit Code (Colo. Rev. Stat. § 5-1-301(20)). Based on our review of the Colorado Consumer Credit Code and the Federal Truth in Lending Act, we believe that it is still permissible for health-care providers to offer discounted rates for cash payments made on the date of service, provided that these discounted rates are 1) for the purpose of inducing payment by cash or checks, 2) offered to all prospective patients, and 3) the availability of the discount is clearly and conspicuously disclosed. Nevertheless, given 1) how new this statute is, 2) the complexity of the Colorado Consumer Credit Code and the Federal Truth in Lending Act, and 3) the potential consequences for health-care providers who improperly include finance charges, we encourage all health-care providers to consult with lawyers who specialize in those statutes. Alternatively, it may be worthwhile to seek an advisory opinion from the Colorado Attorney General prior to the Act's effective date.

We also suspect that the reason health-care providers cannot charge a finance charge is twofold: first, to avoid lienholders or providers from artificially inflating their billed rates to pump up damages; and second, to avoid becoming regulated under the Consumer Credit Code like litigation finance companies were.

“A health-care provider's assignee” (this term appears throughout the statute, and is not defined anywhere).

EXPLANATION: In most cases, it means a lien company. Conceptually, the statute is structured as if health-care providers entered into lien agreements directly with their patients and then lien companies purchase the lien. While that was often the case in the past, it is our understanding that some lien companies actually directed patients to certain health-care providers. Regardless, it is likely that the lien companies will have their own preferred forms for lien agreements.

THE MANDATORY DISCLOSURES

Section 38-27.5-104 lays out the disclosures and advisements a health-care provider (or its assignee) must give to an injured person before a lien is created. These disclosures are mandatory.

A health-care provider (or its assignee) must inform the patient of the methods for payment for the health-care provider's billed charges, including:

- 1) The creation of a health-care provider lien;
- 2) The use of benefits available from health insurance (or a health insurance equivalent),⁶ to which the injured person is a beneficiary, including that the injured party can obtain information about the payer of benefits' network from the payer of benefits or the health-care provider;
- 3) Any other payment method or arrangement agreed to in writing by both the health-care provider or its assignee and the injured person; or
- 4) A combination of any or all of the above methods.

A health-care provider (or its assignee) must inform the patient that the health-care provider or its assignee is not a health insurer or payer of benefits.

A health-care provider (or its assignee) must inform the patient that, except in the event of fraud or misrepresentation by the injured person:

- 1) If the injured person does not recover from the negligent third party, its liability insurer, or the injured person's own uninsured or underinsured motorist policy, he or she is not liable to the lienholder for any portion of the lien.
- 2) If the injured person's recovery is less than the full amount of the lien (or liens), the injured person is not liable to the lienholder for any amount beyond the net judgment, settlement, or payment, and the holder of the lien may not file a complaint or counterclaim against the injured person, except that a health-care provider may file a declaratory judgment action to determine the health-care provider's (or its assignee's) share of the net judgment, settlement, or payment.
- 3) The lienholder may not assign its lien to a collection agency or debt collector.

A health-care provider (or its assignee) must inform the patient that its assignee's compensation from an injured person is based on the difference between the health-care provider's usual and customary billed charge and the amount the assignee pays to purchase the lien.

A health-care provider (or its assignee) must disclose any common ownership interest between the holder of the lien and the injured person's legal counsel, or any common ownership interest between the assignee of the lien and any health-care provider who is or may be providing treatment to the injured person under the lien.

That, if the injured person obtains health insurance, even after a lien is created, and directly or through counsel informs the health-care provider of that fact, all future care may be billed to the health insurance carrier at the injured person's discretion.

Upon request by the injured person or their attorney, the holder of a lien must provide a written, itemized statement of all the billed charges for all treatment comprising the total value of the lien, as such charges are accrued and when the lien is final. A final lien statement must include a summary of all treatments provided, the total amounts billed for each treatment, and the total amount owed under the lien.

Health-care providers who have working relationships with one or more of the lien companies should ensure that all parties are clear on who bears the responsibility for providing the required disclosures.

⁶ Generally, the term refers to any of the following: an insurer, a health maintenance organization, a health benefit plan, a preferred provider organization, an employee benefit plan, a program of medical assistance under the "Colorado Medical Assistance Act," the children's basic health plan, any other insurance policy or plan, or any other benefit available as a result of a contract entered into and paid for by or on behalf of an injured person.

LIMITATIONS ON HEALTH-CARE PROVIDER LIENS

Section 38-27.5-105 places limitations on health-care providers' liens. Violating these limitations has serious consequences for the health-care provider, including potentially invalidating the lien in whole or in part.

A health-care provider may not charge more than the health-care provider's usual and customary billed charges for the services provided.

Finance charges are prohibited. This means no interest. It means no "special" (meaning higher) rate for patients treating on a lien.

In the absence of fraud or misrepresentation by the patient, the health-care provider's recovery rights are limited as follows:

- If the patient does not recover, the health-care provider cannot recover;
- If the patient's recovery is inadequate to pay off all health-care provider liens, the health-care providers are limited to the net settlement, judgment, or payment obtained by the patient. Providers cannot pursue any shortfall; and
- Health-care providers cannot send a lien patient to a collection agency or debt collector.

By providing health-care on a lien basis, a provider does not become a payer of benefits or a real party in interest (and therefore is not subject to the made whole statute and cannot be made a party to the injured patient's lawsuit). In most cases, health insurance companies that pay for accident related medical care insist on being repaid from the injured person's recovery. In Colorado, the made whole statute provides that insurance companies (with a major exception for certain forms of employer sponsored health benefits)⁷ cannot pursue reimbursement from the injured person's recovery unless the injured person has been fully compensated for their injuries. If the injured person recovers the full liability or uninsured/underinsured motorist policy limits, the injured person is presumed to not be made whole. The health-care lien statute means that providers and their assignees are not subject to the made whole statute's provisions and can recover even if the injured person is not fully compensated.

If a healthcare provider knowingly violates any of these requirements, the patient may ask a court to invalidate some or all of the health-care provider's lien.

On the other hand, the person or entity against whom the patient is asserting their claim cannot challenge a health-care provider's compliance with these requirements. Only the patient can raise these concerns (Section 38-27.5-107).

LIEN PRIORITIES

Section 38-27.5-108 creates a system whereby health-care providers can file a notice of their liens and get priority for repayment. Instructions on how to file a lien are included at the end of this guide.

Priority is determined by the date the notice of lien is first filed with the Secretary of State. While filing notice of a health-care provider's lien is not mandatory, a health-care provider would be well-served to file their notice as soon as possible after entering into a lien-payment agreement. If the patient's recovery is not enough to repay all health-care lienholders, payment will be allocated based on "the dates the records were filed, with the health-care provider lien having the earliest filed record receiving priority over those with subsequently filed records." In other scenarios, this is called "first in time, first in right."

⁷ A complete discussion of how ERISA's impact on subrogation and reimbursement rights is beyond the scope of this paper. For now, it is sufficient to observe that if an employer is directly paying the health-care benefits from its own assets (even if an insurance company is handling the administrative process), the terms of the employer's benefit plan preempt state laws with the same force as if they were enacted by the U.S. Congress and signed by POTUS.

From a practical matter, what does the new process look like? Under existing law, if there were multiple claimants to an injured person's recovery, and the recovery was insufficient to satisfy everyone's liens, lawyers were permitted (and encouraged) to interplead⁸ the funds into the court. In addition, each lienholder could file its own lawsuit against the injured party for breaching the lien agreement. Under the new statute, lawyers will still have the power to file interpleaders, but lienholders will be required to file a declaratory judgment action (which involves suing every interested party) to have a court determine the order of payment.

One significant outstanding question is how this statute will play with existing lien contracts. In anticipation of the statute going into effect, we think it would be prudent for providers who are currently treating on a lien basis to file notices of their liens as early as is possible on September 6, 2021. It may also be prudent to obtain updated lien agreements that conform to the new statutory requirements.

EFFECT ON CURRENT LIENS

This is a difficult question with no clear answers. The General Assembly did not provide us with clear guidance as to how this statute will apply to existing liens, and the analysis of a statute's prospective or retrospective effect is one that should be performed by your attorney. That said, here are three different potential ways the courts could apply the statute to existing lien agreements.

First, the statute could have no effect on existing liens. That would be consistent with the presumption that the General Assembly intends new statutes to be purely prospective in effect. If courts apply the statute in this manner, your existing liens will be governed by the law prior to the statute's effective date.

Second, a court might conclude that—while the general provisions of the statute are prospective in effect, the lien priority and lien recovery provisions are effective as of September 6, 2021, because these rules govern lien disputes commenced after that date. If courts apply the statute in this manner, your lien priority will depend on whether you have the earliest notice of lien filing. If this is the case, it would be a good idea to file your lien notices as early as possible on September 6, 2021.

Third, the most drastic approach would be if a court held the statute to require all liens (those existing before the statute's effective date and those created after that date) to comply with the statute by September 6, 2021. This is not a likely result, because it would require you to effectively enter into new contracts with your existing lien patients.

Without detailed information about your precise circumstances, we cannot provide you with an opinion regarding which of the foregoing situations is most likely, nor can we recommend that you take any particular steps to protect your interests.

APPENDICES

Lien Questionnaire

Lien Filing Instructions

Colorado's Health-Care Lien Statute

⁸ "Interpleader" is lawyer-speak for "Judge, I don't know how to divide up this limited pool of funds, so I'm suing everyone with a claim and asking you to do it." It's a process whereby a court can resolve multiple, competing claims simultaneously.

⁹ The author would like to recognize the excellent work of law clerk, Ellie Stainbrook in assembling these instructions.

Name: _____ Date: _____

Date of MVA: _____

Do you have an attorney? No _____ Yes _____

Attorney Name: _____ Phone: _____

Address: _____

What is your health insurance information? _____

Do you have med pay on your auto insurance? No ___ Yes ___ For how much? _____

Who is your auto insurance company? _____

What is your claim number and the adjustor's name and telephone number? _____

What are your auto insurance policy limits? UM _____ BI _____

Who else lives with you in your household that has car insurance and who is their car insurance company? _____

What are the policy limits of the other drivers in the collision? UM _____ BI _____

Were you a passenger? _____

How many people were in the car you were in? _____

Did you own the car you were in at the time of the collision? _____

What types of vehicles were involved in the MVA?

#1 (yours) _____ #2 (other vehicles) _____

Describe the amount and damage to the car you were in: _____

Describe the amount and damage to the other vehicle(s) _____

Who was at fault? Patient/driver of car patient was in ___ Other person ___

Who got the ticket? Patient/driver of car patient was in ___ Other person ___

Were you working at the time of the MVA? No ___ Yes ___ Occupation? _____

Did you miss work—how much? _____

What type of injuries do you currently have? _____

Did you go to the hospital after the MVA? No ___ Yes ___

List providers and length of time you have seen each for this collision: _____

Are any of these providers seeing you on a lien? No ___ Yes ___

How much do you owe? _____

Have you ever been in a previous MVA? No ___ Yes ___ Describe any injuries: _____

Have you had any similar problems to what you are experiencing now? No ___ Yes ___

Have you ever had any prior PI claims? No ___ Yes ___

Have you ever seen a chiropractor, PT, doctor, nurse practitioner, massage therapist or other medical provider for any pain condition? No ___ Yes ___ Describe: _____

Have you ever had a work comp claim? No ___ Yes ___ For what? _____

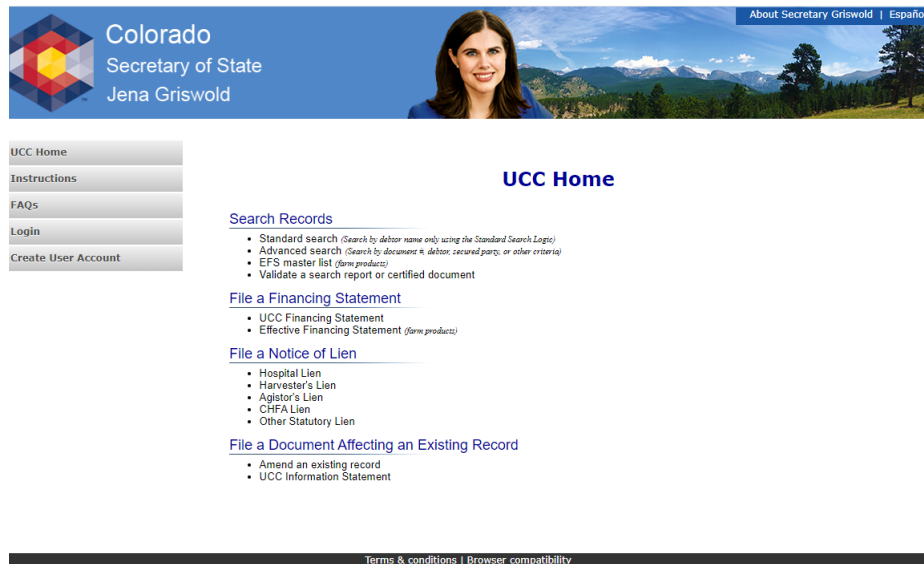
Any prior work comp injuries? _____

Any prior injuries other than MVA or WC related for which you sought treatment? _____

HOW TO FILE A NOTICE OF HEALTHCARE PROVIDER LIEN

A healthcare provider lien is a lien related to charges for medical care provided to a person injured by the negligence or wrongful act of another person, which is asserted against money the injured person may receive from a personal injury claim or uninsured motorist claim.

1. Go to <https://www.sos.state.co.us/ucc/pages/lien.xhtml> and under 'File a Notice of Lien,' select 'Other Statutory Lien.'



2. Fill in the Lien Title (Health-care Provider Lien) and Statute Citation (38-27.5-108) when prompted to do so.

Statutory Lien

Title | Owner | Claimant | Property | Attachments | Review

Complete the form and select "Continue". Fields followed by an "*" are required.

Provide the lien title and citation to the applicable section of the Colorado Revised Statutes

Lien Title: *

Statute Citation: * § , C.R.S.

- Fill in the name and address of the owner of the property (the patient) when prompted to do so. Only the name is required.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review
-------	-------	----------	----------	-------------	--------

Complete the form and select "Continue". Fields followed by an "*" are required.

Owner's name:*

If an organization

(Organization Name)

[Search business database for an organization of record](#)

OR

If an individual

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(Last)	(First)	(Middle)	(Suffix)

Mailing Address:

Address 1:

Address 2:

City:

State:

ZIP/Postal Code:

Province:

Country:

Previous Page

Continue

4. Check that the information entered is correct, and if applicable, add any other owners at this point.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review						
<p>To edit or view the information of an owner listed below, click on the owner name. To delete an owner, click the "delete" link next to the owner.</p> <p>Add an owner</p> <table border="1"><thead><tr><th>Name</th><th>Address</th><th></th></tr></thead><tbody><tr><td>OWNER</td><td></td><td>delete</td></tr></tbody></table>						Name	Address		OWNER		delete
Name	Address										
OWNER		delete									

[Previous Page](#)

[Continue](#)

5. Fill in the name and address of the claimant of the lien (the person who is claiming a lien) when prompted to do so. Only the name is required.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review								
<p>Complete the form and select "Continue". Fields followed by an "*" are required.</p> <p>Claimant's name:*</p> <p>If an organization</p> <input type="text"/> (Organization Name) <p>OR</p> <p>If an individual</p> <table><tr><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td></tr><tr><td>(Last)</td><td>(First)</td><td>(Middle)</td><td>(Suffix)</td></tr></table> <p>Mailing Address:</p> <p>Address 1: <input type="text"/></p> <p>Address 2: <input type="text"/></p> <p>City: <input type="text"/></p> <p>State: <input type="text"/></p> <p>ZIP/Postal Code: <input type="text"/></p> <p>Province: <input type="text"/></p> <p>Country: <input type="text"/></p>						<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	(Last)	(First)	(Middle)	(Suffix)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>										
(Last)	(First)	(Middle)	(Suffix)										

[Previous Page](#)

[Continue](#)

6. Check that the information entered is correct, and if applicable, add any other claimants at this point. If you are claiming liens for treatment provided by multiple healthcare providers, you should list those providers in this section.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review
-------	-------	-----------------	----------	-------------	--------

To edit or view the information of a claimant listed below, click on the claimant name.
To delete a claimant, click the "delete" link next to the claimant.

[Add a claimant](#)

Name	Address
CLAIMANT	delete

[Previous Page](#)

[Continue](#)

7. Fill in the property subject to the lien and state any other information required by law when prompted to do so. This must include the name and address of the injured person and the date of the accident or incident, and should say something like "proceeds from any net settlement, judgment, or payment obtained by <patient name>."

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review
-------	-------	----------	-----------------	-------------	--------

Complete the form and select "Continue". Fields followed by an "*" are required.

Identify the property subject to the lien and state any other information required by law.
(Maximum 1000 characters may be entered. Additional information may be entered as an additional description on the following pages.)

Note: A document may be attached at a later step in the process

[Previous Page](#)

[Continue](#)

8. Check that the information entered is correct, and if applicable, add any other descriptions at this point.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review		
<p>To edit or view a property description listed below, click on the property description. To delete a description, click the "delete" link associated with the property description. Add a description</p> <p>Description</p> <table border="1"><tr><td>PROPERTY SUBJECT TO LIEN</td><td>delete</td></tr></table> <p>Note: A document may be attached at a later step in the process</p>						PROPERTY SUBJECT TO LIEN	delete
PROPERTY SUBJECT TO LIEN	delete						

[Previous Page](#)

[Continue](#)

9. (Optional) Add an attachment and fill in description of attachment. To add an attachment, select the '+ Add Attachment' link and select the desired document from your computer.

Statutory Lien

Title	Owner	Claimant	Property	Attachments	Review
-------	-------	----------	----------	-------------	--------

Complete the form and select "Continue". Fields followed by an "*" are required.

An attachment is optional. To proceed without adding an attachment, select "Continue". If you need to include an attachment, add all of the necessary attachments and select "Continue".

Note: Attachments must be in PDF (.pdf) or text format (.txt) only. Up to 50 attachments may be included for a maximum size of 10 MB total.

All attachments must be in English.

Attachments will be included in the document in the order they are listed below.

Add an attachment

Description:*

(The description will be displayed on the image of the filed document.)

Location:

#	Move	Description	File Name	Size (KB)	Format	Remove
No records found.						

*Legend: KB = Kilobytes (1024 bytes)
MB = Megabytes (1024 KB)*

10. Review your document for accuracy and correctness. Select 'Continue' to proceed to payment step.

Statutory Lien

Title Owner Claimant Property Attachments Review

Review the document for accuracy and, if all information is correct, select "Continue" to proceed to the Online Payment step. To edit information, select the appropriate tab above.

If the PDF image of the document is not displayed, your browser does not support this operation. [Click here](#) to open the document in a separate window.

1 / 1 | - + | [Refresh] [Download] [Print] [More]

Statutory Lien
Title: Stat Lien
JENLAK: § 44, C.R.S.

Owner (Organization)
Name: OWNER
ADDRESS:
City: State: ZIP/Postal Code:
Province: Country:

Claimant (Organization)
Name: CLAIMANT
ADDRESS:
City: State: ZIP/Postal Code:
Province: Country:

Property
Description:
PROPERTY SUBJECT TO LIEN

Note: The Secretary of State bears no responsibility for legal effectiveness of filing. This responsibility rests with the filer.

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Continue

11. Select payment method.

Payment

Item: UCC - Statement - Online \$8.00

Total: \$8.00

Pay with

- Credit or debit. These payments are securely processed through Wells Fargo (the address in your browser will say "cybersource"). After completing your payment, you will return to our website.
- Prepaid account

Back

Cancel

- a. For credit/debit, fill in information when prompted to do so.

Payment

Item: UCC - Statement - Online \$8.00

Total: \$8.00



Secure payment information
This is a secure, encrypted payment.



* Name on card

Enter the name on the card exactly as it appears

Billing Address

The address on the credit or debit account

* Address 1

Address 2

* City

* State

* ZIP code

* Email address

These payments are securely processed through Wells Fargo (the address in your browser will say "cybersource"). After completing your payment, you will return to our website.

Pay now

Back

Cancel


- b. For prepaid account, fill in information when prompted to do so.


Payment

Item: UCC - Statement - Online \$8.00

Total: \$8.00

Prepaid account

**Secure payment information**
This is a secure, encrypted payment.



* **Account number**

Reference (optional)

Pay now

12. Select 'Pay now.'

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 21-1300

BY REPRESENTATIVE(S) Weissman and Neville, Bernett, Bockenfeld, Exum, Hooton, Jackson, Lontine, Michaelson Jenet, Ortiz, Ricks, Snyder, Valdez A., Van Winkle, Williams, Young, Garnett;
also SENATOR(S) Smallwood and Zenzinger, Buckner, Ginal, Gonzales, Moreno, Story.

CONCERNING HEALTH-CARE PROVIDER LIENS RELATED TO CHARGES FOR HEALTH CARE PROVIDED TO A PERSON INJURED AS A RESULT OF THE NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER PERSON.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 27.5 to title 38 as follows:

ARTICLE 27.5
Health-care Provider Liens

38-27.5-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) RESIDENTS OF THE STATE WHO ARE INJURED AS THE RESULT OF

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER PERSON SHOULD RECEIVE TIMELY MEDICAL SERVICES AND CARE FOR THEIR INJURIES, EVEN IF THEY HAVE LIMITED OR NO HEALTH INSURANCE;

(b) HEALTH-CARE PROVIDERS SOMETIMES PROVIDE MEDICAL SERVICES AND CARE TO INJURED PERSONS AND AGREE TO DELAY PAYMENT FOR THEIR SERVICES IN EXCHANGE FOR A LIEN ON ANY MONEY RECEIVED AS A RESULT OF A CLAIM OR CLAIMS THAT THE INJURED PERSON ASSERTS AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY;

(c) IT IS IN THE BEST INTERESTS OF THE RESIDENTS OF THE STATE TO ENSURE THAT:

(I) COMPENSATION TO AN INJURED PERSON IS NOT REDUCED MERELY BECAUSE A HEALTH-CARE PROVIDER ASSIGNS OR SELLS SUCH A LIEN TO ANOTHER PERSON; AND

(II) THE CHARGES UNDERLYING HEALTH-CARE PROVIDER LIENS ARE NOT EXCESSIVE, UNREASONABLE, OR INFLATED AND THAT HEALTH-CARE PROVIDER LIENS ARE NOT SUBJECT TO SURCHARGES, FINANCE CHARGES, INTEREST, OR OTHER INCREASES TO THE AMOUNT OF THE HEALTH-CARE PROVIDER LIEN; AND

(d) THIS ARTICLE 27.5 IS INTENDED TO ENCOURAGE HEALTH-CARE PROVIDERS TO PROMPTLY TREAT PEOPLE WHO HAVE LIMITED OR NO HEALTH INSURANCE AND WHO HAVE BEEN INJURED AS THE RESULT OF THE NEGLIGENT OR WRONGFUL ACTS OF ANOTHER PERSON, PROVIDE INJURED PERSONS EQUAL ACCESS TO HEALTH CARE, AND PROTECT INJURED PERSONS FROM EXCESSIVE, UNREASONABLE, OR INFLATED HEALTH-CARE SERVICE CHARGES AND SURCHARGES ASSOCIATED WITH HEALTH-CARE PROVIDER LIENS.

38-27.5-102. Definitions. AS USED IN THIS ARTICLE 27.5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "HEALTH-CARE PROVIDER" MEANS A PERSON LICENSED OR CERTIFIED IN THE STATE TO PRACTICE MEDICINE, PHARMACY, CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY, DENTISTRY, OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING ARTS, OR AN ENTITY DIRECTLY

EMPLOYING SUCH PERSONS, AND ANY OTHER LICENSED HEALTH-CARE PROVIDER AS PERMITTED BY THE LAWS OF THE STATE.

(2) "HEALTH-CARE PROVIDER LIEN" MEANS A LIEN CREATED BY A HEALTH-CARE PROVIDER OR ITS ASSIGNEE RELATED TO CHARGES FOR HEALTH-CARE SERVICES GIVEN TO A PERSON INJURED AS A RESULT OF THE NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER PERSON, WHICH IS ASSERTED AGAINST MONEY RECEIVED AS A RESULT OF A CLAIM OR CLAIMS THAT THE INJURED PERSON ASSERTS AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY.

(3) "NET JUDGMENT, SETTLEMENT, OR PAYMENT" MEANS THE PROCEEDS RECEIVED BY AN INJURED PERSON ON THE INJURED PERSON'S CLAIM OR CLAIMS AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST POLICY, AFTER THE REDUCTION OF REASONABLE ATTORNEY FEES AND LITIGATION EXPENSES, IF ANY.

(4) "USUAL AND CUSTOMARY BILLED CHARGE" MEANS A HEALTH-CARE PROVIDER'S BILLED CHARGE IN THE ABSENCE OF INSURANCE FOR A SERVICE THAT IS SIMILAR TO THE BILLED CHARGES FOR LIKE SERVICES PROVIDED BY OTHER HEALTH-CARE PROVIDERS IN THE SAME GEOGRAPHIC AREA.

38-27.5-103. Assignment of health-care provider liens - not admissible as evidence. (1) A HEALTH-CARE PROVIDER CLAIMING A HEALTH-CARE PROVIDER LIEN UNDER THIS ARTICLE 27.5 MAY ASSIGN, IN WRITING, A HEALTH-CARE PROVIDER LIEN TO ANY OTHER PERSON OR ENTITY. AN ASSIGNEE OF A HEALTH-CARE PROVIDER LIEN HAS ALL THE RIGHTS AND REMEDIES OF THE HEALTH-CARE PROVIDER AND IS SUBJECT TO THE RESTRICTIONS AND OBLIGATIONS OF THE HEALTH-CARE PROVIDER UNDER THIS ARTICLE 27.5.

(2) EXCEPT IN AN ACTION UNDER THE "UNIFORM CONSUMER CREDIT CODE", ARTICLE 1 OF TITLE 5, ANY AMOUNT PAID BY AN ASSIGNEE OF A HEALTH-CARE PROVIDER LIEN FOR THE ASSIGNMENT, THE FACT OF THE ASSIGNMENT, AND THE TERMS OF THE ASSIGNMENT ARE NOT DISCOVERABLE OR ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION OR CLAIM THAT THE INJURED PERSON ASSERTS AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY FOR ANY PURPOSE, INCLUDING AS EVIDENCE OF THE REASONABLE VALUE OF A HEALTH-CARE

PROVIDER'S SERVICES.

(3) AN INJURED PERSON TREATED ON A HEALTH-CARE PROVIDER LIEN BASIS MAY NOT SEEK TO RECOVER, AS THE COST OF MEDICAL SERVICES OR TREATMENT, MORE THAN THE HEALTH-CARE PROVIDER'S USUAL AND CUSTOMARY BILLED CHARGES.

(4) AMOUNTS AWARDED FOR MEDICAL BILLS SUBJECT TO A HEALTH-CARE PROVIDER LIEN SHALL NOT BE SUBJECT TO OFFSET OR REDUCTION IN ANY POST-VERDICT PROCEEDING UNDER SECTION 13-21-111.6.

(5) THIS SECTION ONLY APPLIES TO A CLAIM OR CLAIMS AN INJURED PARTY ASSERTS AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY INVOLVING A MEDICAL LIEN AND HAS NO OTHER APPLICATION OR EFFECT REGARDING COMPENSATION PAID TO HEALTH-CARE PROVIDERS.

38-27.5-104. Health-care provider lien - disclosures to injured person. (1) BEFORE A HEALTH-CARE PROVIDER LIEN IS CREATED, A HEALTH-CARE PROVIDER OR ITS ASSIGNEE SHALL MAKE THE FOLLOWING DISCLOSURES AND ADVISEMENTS TO THE INJURED PERSON:

(a) THAT THE FOLLOWING ARE POTENTIAL METHODS FOR PAYMENT OF A HEALTH-CARE PROVIDER'S BILLED CHARGES:

(I) THE CREATION OF A HEALTH-CARE PROVIDER LIEN;

(II) THE USE OF BENEFITS AVAILABLE FROM ANY PAYER OF BENEFITS AS DEFINED IN SECTION 38-27-101 (9) TO WHICH THE INJURED PERSON IS A BENEFICIARY, INCLUDING THAT THE INJURED PARTY CAN OBTAIN INFORMATION ABOUT THE PAYER OF BENEFITS' NETWORK FROM THE PAYER OF BENEFITS OR THE HEALTH-CARE PROVIDER;

(III) ANY OTHER PAYMENT METHOD OR ARRANGEMENT AGREED TO IN WRITING BY BOTH THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE AND THE INJURED PERSON; OR

(IV) A COMBINATION OF THE PAYMENT METHODS SPECIFIED IN SUBSECTIONS (1)(a)(I) TO (1)(a)(III) OF THIS SECTION;

(b) THAT THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE IS NOT A HEALTH INSURER OR PAYER OF BENEFITS;

(c) THAT, EXCEPT IN THE EVENT OF FRAUD OR MISREPRESENTATION BY THE INJURED PERSON:

(I) IF THE INJURED PERSON DOES NOT RECEIVE A JUDGMENT, SETTLEMENT, OR PAYMENT ON THE INJURED PERSON'S CLAIM AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST POLICY, THE INJURED PERSON IS NOT LIABLE TO THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN FOR ANY PORTION OF THE HEALTH-CARE PROVIDER LIEN;

(II) IF THE INJURED PERSON RECEIVES A NET JUDGMENT, SETTLEMENT, OR PAYMENT THAT IS LESS THAN THE FULL AMOUNT OF THE HEALTH-CARE PROVIDER LIEN, THE INJURED PERSON IS NOT LIABLE TO THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN FOR ANY AMOUNT BEYOND THE NET JUDGMENT, SETTLEMENT, OR PAYMENT, AND THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN MAY NOT FILE A COMPLAINT OR COUNTERCLAIM AGAINST THE INJURED PERSON DIRECTLY TO BE REIMBURSED FOR ANY AMOUNT BEYOND THE NET JUDGMENT, SETTLEMENT, OR PAYMENT. NOTHING IN THIS SECTION PREVENTS A HEALTH-CARE PROVIDER OR ITS ASSIGNEE FROM INITIATING A DECLARATORY JUDGMENT ACTION OR PARTICIPATING IN AN INTERPLEADER ACTION OR CLAIM PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE, OR ANY OTHER SIMILAR ACTION OR CLAIM, TO DETERMINE THE HEALTH-CARE PROVIDER'S OR ITS ASSIGNEE'S SHARE OF THE INJURED PERSON'S NET JUDGMENT, SETTLEMENT, OR PAYMENT.

(III) THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE MAY NOT ASSIGN A HEALTH-CARE PROVIDER LIEN TO A COLLECTION AGENCY OR DEBT COLLECTOR;

(d) THAT A HEALTH-CARE PROVIDER'S ASSIGNEE'S COMPENSATION FROM THE INJURED PERSON IS BASED ON THE DIFFERENCE BETWEEN THE HEALTH-CARE PROVIDER'S USUAL AND CUSTOMARY BILLED CHARGE AND THE AMOUNT THAT THE ASSIGNEE PAYS TO PURCHASE THE HEALTH-CARE PROVIDER LIEN;

(e) OF ANY COMMON OWNERSHIP INTEREST BETWEEN THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN AND THE INJURED PERSON'S LEGAL

COUNSEL;

(f) OF ANY COMMON OWNERSHIP INTEREST BETWEEN THE ASSIGNEE OF A HEALTH-CARE PROVIDER LIEN AND ANY HEALTH-CARE PROVIDER WHO IS PROVIDING TREATMENT OR WHO MAY PROVIDE TREATMENT TO THE INJURED PERSON UNDER THE TERMS OF THE HEALTH-CARE PROVIDER LIEN; AND

(g) THAT IF THE INJURED PERSON HAS OBTAINED HEALTH INSURANCE EVEN AFTER A HEALTH-CARE PROVIDER LIEN HAS BEEN CREATED, AND THE INJURED PERSON OR THE INJURED PERSON'S LEGAL COUNSEL SO INFORMS THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN, ALL FUTURE CARE MAY BE BILLED TO THE HEALTH INSURANCE CARRIER AT THE INJURED PERSON'S DISCRETION.

(2) NOTHING IN THIS SECTION CHANGES ANY OBLIGATION OF THE HEALTH-CARE PROVIDER OR ITS AGENTS UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5.

(3) UPON REQUEST BY THE INJURED PERSON OR THE INJURED PERSON'S LEGAL COUNSEL, THE HOLDER OF A HEALTH-CARE PROVIDER LIEN SHALL PROVIDE IN WRITING TO THE INJURED PERSON AN ITEMIZED STATEMENT OF ALL THE BILLED CHARGES FOR TREATMENT COMPRISING THE TOTAL VALUE OF THE HEALTH-CARE PROVIDER LIEN AS THE BILLED CHARGES ARE ACCRUED, TO THE EXTENT PRACTICABLE, AND WHEN THE HEALTH-CARE PROVIDER LIEN IS FINAL. THE FINAL ITEMIZED STATEMENT MUST INCLUDE A SUMMARY OF ALL TREATMENTS PROVIDED, THE TOTAL AMOUNTS BILLED FOR EACH TREATMENT, AND THE TOTAL AMOUNT OF THE HEALTH-CARE PROVIDER LIEN DUE AND OWING.

38-27.5-105. Health-care provider lien - limitations. (1) THE AMOUNT OF A HEALTH-CARE PROVIDER LIEN MUST NOT EXCEED THE CHARGES FOR SERVICES PROVIDED TO THE INJURED PERSON BY THE HEALTH-CARE PROVIDER AT THE TIME OF SERVICE AT A RATE EQUAL TO THE HEALTH-CARE PROVIDER'S USUAL AND CUSTOMARY BILLED CHARGE.

(2) A HEALTH-CARE PROVIDER OR ITS ASSIGNEE SHALL NOT ADD A FINANCE CHARGE, AS DEFINED IN SECTION 5-1-301 (20), TO THE HEALTH-CARE PROVIDER'S USUAL AND CUSTOMARY BILLED CHARGES OR OTHERWISE INCREASE THE AMOUNT OF A HEALTH-CARE PROVIDER'S USUAL

AND CUSTOMARY BILLED CHARGE WHEN CREATING OR CLAIMING A HEALTH-CARE PROVIDER LIEN. THE INJURED PERSON IS ONLY OBLIGATED TO PAY THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE THE AMOUNT OF THE HEALTH-CARE PROVIDER LIEN.

(3) A HEALTH-CARE PROVIDER WHO CREATES, HOLDS, OR CLAIMS A HEALTH-CARE PROVIDER LIEN UNDER THIS ARTICLE 27.5, OR AN ASSIGNEE WHO PURCHASES THE HEALTH-CARE PROVIDER LIEN, DOES NOT PAY OR REIMBURSE HEALTH-CARE EXPENSES OR SERVICES AND IS NOT A PAYER OF BENEFITS.

(4) IN THE ABSENCE OF FRAUD OR MISREPRESENTATION BY THE INJURED PERSON:

(a) IF THE INJURED PERSON DOES NOT RECEIVE A JUDGMENT, SETTLEMENT, OR PAYMENT ON THE INJURED PERSON'S CLAIM AGAINST THIRD PARTIES OR UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY, THE INJURED PERSON IS NOT LIABLE TO THE HOLDER OF A HEALTH-CARE PROVIDER LIEN FOR ANY PORTION OF THE HEALTH-CARE PROVIDER LIEN;

(b) IF THE INJURED PERSON RECEIVES A NET JUDGMENT, SETTLEMENT, OR PAYMENT THAT IS LESS THAN THE FULL AMOUNT OF THE HEALTH-CARE PROVIDER LIEN, THE INJURED PERSON IS NOT LIABLE TO THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN FOR ANY AMOUNT BEYOND THE NET JUDGMENT, SETTLEMENT, OR PAYMENT, AND THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN MAY NOT FILE A COMPLAINT OR COUNTERCLAIM AGAINST THE INJURED PERSON DIRECTLY TO BE REIMBURSED FOR ANY AMOUNT BEYOND THE NET JUDGMENT, SETTLEMENT, OR PAYMENT. NOTHING IN THIS SECTION PREVENTS A HEALTH-CARE PROVIDER OR ITS ASSIGNEE FROM INITIATING A DECLARATORY JUDGMENT ACTION OR PARTICIPATING IN AN INTERPLEADER ACTION OR CLAIM PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE, OR ANY OTHER SIMILAR ACTION OR CLAIM, TO DETERMINE THE HEALTH-CARE PROVIDER'S OR ITS ASSIGNEE'S SHARE OF THE INJURED PERSON'S NET JUDGMENT, SETTLEMENT, OR PAYMENT.

(c) THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE SHALL NOT ASSIGN A HEALTH-CARE PROVIDER LIEN TO A COLLECTION AGENCY OR DEBT COLLECTOR.

(5) THIS SECTION DOES NOT DEEM A HOLDER OF A HEALTH-CARE PROVIDER LIEN TO BE A REAL PARTY IN INTEREST.

(6) (a) A HEALTH-CARE PROVIDER OR ITS ASSIGNEE MUST COMPLY WITH THE PROVISIONS OF THIS SECTION TO HAVE A VALID HEALTH-CARE PROVIDER LIEN UNDER THIS ARTICLE 27.5. IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT A HEALTH-CARE PROVIDER OR ITS ASSIGNEE KNOWINGLY FAILED TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE INJURED PERSON MAY SEEK A RULING FROM THE COURT CONCERNING WHAT PORTIONS OF THE HEALTH-CARE PROVIDER LIEN, IF ANY, THE HEALTH-CARE PROVIDER OR ITS ASSIGNEE MAY NOT RECOVER FROM THE INJURED PERSON DUE TO A WHOLLY OR PARTIALLY INVALID HEALTH-CARE PROVIDER LIEN.

(b) SUBSECTIONS (3), (4), AND (5) OF THIS SECTION CONTINUE TO APPLY TO A HEALTH-CARE PROVIDER LIEN DETERMINED TO BE WHOLLY OR PARTIALLY INVALID UNDER THIS SUBSECTION (6).

38-27.5-106. No impact on hospital liens. THIS ARTICLE 27.5 DOES NOT CHANGE, MODIFY, OR AMEND THE PROVISIONS OF SECTION 38-27-101.

38-27.5-107. Dispute resolution - standing. A PERSON OR ENTITY AGAINST WHOM THE INJURED PERSON ASSERTS A CIVIL ACTION OR CLAIM THAT INCLUDES A REQUEST FOR DAMAGES RELATED TO HEALTH-CARE SERVICES OR TREATMENT PROVIDED UNDER A HEALTH-CARE PROVIDER LIEN DOES NOT HAVE STANDING TO CHALLENGE A HEALTH-CARE PROVIDER'S OR ITS ASSIGNEE'S COMPLIANCE WITH THIS ARTICLE 27.5, WHETHER IN THE CIVIL ACTION OR CLAIM ASSERTED BY THE INJURED PERSON OR IN A SEPARATE CIVIL ACTION.

38-27.5-108. Priority of health-care provider liens. (1) THE HOLDER OF A HEALTH-CARE PROVIDER LIEN MAY FILE A RECORD OF ITS HEALTH-CARE PROVIDER LIEN BY FOLLOWING THE PROVISIONS SET FORTH IN THE "COLORADO STATUTORY LIEN REGISTRATION ACT", ARTICLE 9.7 OF TITLE 4, INCLUDING LISTING THE NAME AND ADDRESS OF THE INJURED PERSON, THE DATE OF THE ACCIDENT OR INCIDENT, THE NAME AND ADDRESS OF THE HOLDER OF THE HEALTH-CARE PROVIDER LIEN, AND THE NAME AND ADDRESS OF EACH HEALTH-CARE PROVIDER THAT RENDERED HEALTH-CARE SERVICES UNDERLYING THE HEALTH-CARE PROVIDER LIEN.

(2) IN THE EVENT MULTIPLE HEALTH-CARE PROVIDER LIENS ARE

ASSERTED AGAINST AN INJURED PERSON'S NET JUDGMENT, SETTLEMENT, OR PAYMENT, HEALTH-CARE PROVIDER LIENS FOR WHICH RECORDS WERE FILED PURSUANT TO ARTICLE 9.7 OF TITLE 4 SHALL HAVE PRIORITY FOR PAYMENT OUT OF THE INJURED PERSON'S NET JUDGMENT, SETTLEMENT, OR PAYMENT BEFORE PAYMENTS ARE MADE ON HEALTH-CARE PROVIDER LIENS FOR WHICH NO SUCH RECORDS WERE FILED. IN THE EVENT MULTIPLE RECORDS HAVE BEEN FILED PURSUANT TO ARTICLE 9.7 OF TITLE 4 FOR HEALTH-CARE PROVIDER LIENS RELATED TO A SINGLE ACCIDENT OR INCIDENT, PRIORITY FOR PAYMENT OUT OF THE INJURED PERSON'S NET JUDGMENT, SETTLEMENT, OR PAYMENT ON EACH SUCH LIEN SHALL BE DETERMINED BY THE DATES THE RECORDS WERE FILED, WITH THE HEALTH-CARE PROVIDER LIEN HAVING THE EARLIEST FILED RECORD RECEIVING PRIORITY OVER THOSE WITH SUBSEQUENTLY FILED RECORDS.

(3) FILING A RECORD OF A HEALTH-CARE PROVIDER LIEN UNDER THIS SECTION IS OPTIONAL AND THE SOLE PURPOSE THEREOF IS TO ESTABLISH THE PRIORITY OF PAYMENTS BETWEEN MULTIPLE HEALTH-CARE PROVIDER LIENS. FILING A RECORD OF A HEALTH-CARE PROVIDER LIEN PURSUANT TO ARTICLE 9.7 OF TITLE 4 DOES NOT WAIVE ANY OF THE STATUTORY PROVISIONS ESTABLISHED IN THIS ARTICLE 27.5.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

C.R.S. 38-27.5-101

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Colorado Revised Statutes Annotated **Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110)** **Liens (Arts. 20 – 27.5)** **Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)**

38-27.5-101. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) Residents of the state who are injured as the result of the negligence or wrongful acts of another person should receive timely medical services and care for their injuries, even if they have limited or no health insurance;

(b) Health-care providers sometimes provide medical services and care to injured persons and agree to delay payment for their services in exchange for a lien on any money received as a result of a claim or claims that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy;

(c) It is in the best interests of the residents of the state to ensure that:

(I) Compensation to an injured person is not reduced merely because a health-care provider assigns or sells such a lien to another person; and

(II) The charges underlying health-care provider liens are not excessive, unreasonable, or inflated and that health-care provider liens are not subject to surcharges, finance charges, interest, or other increases to the amount of the health-care provider lien; and

(d) This article 27.5 is intended to encourage health-care providers to promptly treat people who have limited or no health insurance and who have been injured as the result of the negligent or wrongful acts of another person, provide injured persons equal access to health care, and protect injured persons from excessive, unreasonable, or inflated health-care service charges and surcharges associated with health-care provider liens.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3388, § 1, effective September 7.

Colorado Revised Statutes Annotated

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Colorado Revised Statutes Annotated **Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110)** **Liens (Arts. 20 – 27.5)** **Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)**

38-27.5-102. Definitions.

As used in this article 27.5, unless the context otherwise requires:

- (1)** “Health-care provider” means a person licensed or certified in the state to practice medicine, pharmacy, chiropractic, nursing, physical therapy, podiatry, dentistry, optometry, occupational therapy, or other healing arts, or an entity directly employing such persons, and any other licensed health-care provider as permitted by the laws of the state.
- (2)** “Health-care provider lien” means a lien created by a health-care provider or its assignee related to charges for health-care services given to a person injured as a result of the negligence or wrongful acts of another person, which is asserted against money received as a result of a claim or claims that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy.
- (3)** “Net judgment, settlement, or payment” means the proceeds received by an injured person on the injured person’s claim or claims against third parties or under an uninsured or underinsured motorist policy, after the reduction of reasonable attorney fees and litigation expenses, if any.
- (4)** “Usual and customary billed charge” means a health-care provider’s billed charge in the absence of insurance for a service that is similar to the billed charges for like services provided by other health-care providers in the same geographic area.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3389, § 1, effective September 7.

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Colorado Revised Statutes Annotated Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110) Liens (Arts. 20 – 27.5) Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)

38-27.5-103. Assignment of health-care provider liens - not admissible as evidence.

- (1)** A health-care provider claiming a health-care provider lien under this article 27.5 may assign, in writing, a health-care provider lien to any other person or entity. An assignee of a health-care provider lien has all the rights and remedies of the health-care provider and is subject to the restrictions and obligations of the health-care provider under this article 27.5.
- (2)** Except in an action under the "Uniform Consumer Credit Code", article 1 of title 5, any amount paid by an assignee of a health-care provider lien for the assignment, the fact of the assignment, and the terms of the assignment are not discoverable or admissible as evidence in any civil action or claim that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy for any purpose, including as evidence of the reasonable value of a health-care provider's services.
- (3)** An injured person treated on a health-care provider lien basis may not seek to recover, as the cost of medical services or treatment, more than the health-care provider's usual and customary billed charges.
- (4)** Amounts awarded for medical bills subject to a health-care provider lien shall not be subject to offset or reduction in any post-verdict proceeding under section 13-21-111.6.
- (5)** This section only applies to a claim or claims an injured party asserts against third parties or under an uninsured or underinsured motorist insurance policy involving a medical lien and has no other application or effect regarding compensation paid to health-care providers.

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3389, § 1, effective September 7.

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Colorado Revised Statutes Annotated Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110) Liens (Arts. 20 – 27.5) Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)

38-27.5-104. Health-care provider lien - disclosures to injured person.

- (1)** Before a health-care provider lien is created, a health-care provider or its assignee shall make the following disclosures and advisements to the injured person:
- (a)** That the following are potential methods for payment of a health-care provider's billed charges:
- (I)** The creation of a health-care provider lien;
- (II)** The use of benefits available from any payer of benefits as defined in section 38-27-101 (9) to which the injured person is a beneficiary, including that the injured party can obtain information about the payer of benefits' network from the payer of benefits or the health-care provider;
- (III)** Any other payment method or arrangement agreed to in writing by both the health-care provider or its assignee and the injured person; or
- (IV)** A combination of the payment methods specified in subsections (1)(a)(I) to (1)(a)(III) of this section;
- (b)** That the health-care provider or its assignee is not a health insurer or payer of benefits;
- (c)** That, except in the event of fraud or misrepresentation by the injured person:
- (I)** If the injured person does not receive a judgment, settlement, or payment on the injured person's claim against third parties or under an uninsured or underinsured motorist policy, the injured person is not liable to the holder of the health-care provider lien for any portion of the health-care provider lien;
- (II)** If the injured person receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the injured person is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment, and the holder of the

health-care provider lien may not file a complaint or counterclaim against the injured person directly to be reimbursed for any amount beyond the net judgment, settlement, or payment. Nothing in this section

prevents a health-care provider or its assignee from initiating a declaratory judgment action or participating in an interpleader action or claim pursuant to the Colorado rules of civil procedure, or any other similar action or claim, to determine the health-care provider's or its assignee's share of the injured person's net judgment, settlement, or payment.

(III) The health-care provider or its assignee may not assign a health-care provider lien to a collection agency or debt collector;

(d) That a health-care provider's assignee's compensation from the injured person is based on the difference between the health-care provider's usual and customary billed charge and the amount that the assignee pays to purchase the health-care provider lien;

(e) Of any common ownership interest between the holder of the health-care provider lien and the injured person's legal counsel;

(f) Of any common ownership interest between the assignee of a health-care provider lien and any health-care provider who is providing treatment or who may provide treatment to the injured person under the terms of the health-care provider lien; and

(g) That if the injured person has obtained health insurance even after a health-care provider lien has been created, and the injured person or the injured person's legal counsel so informs the holder of the health-care provider lien, all future care may be billed to the health insurance carrier at the injured person's discretion.

(2) Nothing in this section changes any obligation of the health-care provider or its agents under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5.

(3) Upon request by the injured person or the injured person's legal counsel, the holder of a health-care provider lien shall provide in writing to the injured person an itemized statement of all the billed charges for treatment comprising the total value of the health-care provider lien as the billed charges are accrued, to the extent practicable, and when the health-care provider lien is final. The final itemized statement must include a summary of all treatments provided, the total amounts billed for each treatment, and the total amount of the health-care provider lien due and owing.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3390, § 1, effective September 7.

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Colorado Revised Statutes Annotated Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110) Liens (Arts. 20 – 27.5) Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)

38-27.5-105. Health-care provider lien - limitations.

- (1)** The amount of a health-care provider lien must not exceed the charges for services provided to the injured person by the health-care provider at the time of service at a rate equal to the health-care provider's usual and customary billed charge.
- (2)** A health-care provider or its assignee shall not add a finance charge, as defined in section 5-1-301 (20), to the health-care provider's usual and customary billed charges or otherwise increase the amount of a health-care provider's usual and customary billed charge when creating or claiming a health-care provider lien. The injured person is only obligated to pay the health-care provider or its assignee the amount of the health-care provider lien.
- (3)** A health-care provider who creates, holds, or claims a health-care provider lien under this article 27.5, or an assignee who purchases the health-care provider lien, does not pay or reimburse health-care expenses or services and is not a payer of benefits.
- (4)** In the absence of fraud or misrepresentation by the injured person:
 - (a)** If the injured person does not receive a judgment, settlement, or payment on the injured person's claim against third parties or under an uninsured or underinsured motorist insurance policy, the injured person is not liable to the holder of a health-care provider lien for any portion of the health-care provider lien;
 - (b)** If the injured person receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the injured person is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment, and the holder of the

health-care provider lien may not file a complaint or counterclaim against the injured person directly to be reimbursed for any amount beyond the net judgment, settlement, or payment. Nothing in this section

prevents a health-care provider or its assignee from initiating a declaratory judgment action or participating in an interpleader action or claim pursuant to the Colorado rules of civil procedure, or any other similar action or claim, to determine the health-care provider's or its assignee's share of the injured person's net judgment, settlement, or payment.

(c) The health-care provider or its assignee shall not assign a health-care provider lien to a collection agency or debt collector.

(5) This section does not deem a holder of a health-care provider lien to be a real party in interest.

(6)

(a) A health-care provider or its assignee must comply with the provisions of this section to have a valid health-care provider lien under this article 27.5. If a court of competent jurisdiction determines that a health-care provider or its assignee knowingly failed to comply with the provisions of this section, the injured person may seek a ruling from the court concerning what portions of the health-care provider lien, if any, the health-care provider or its assignee may not recover from the injured person due to a wholly or partially invalid health-care provider lien.

(b) Subsections (3), (4), and (5) of this section continue to apply to a health-care provider lien determined to be wholly or partially invalid under this subsection (6).

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3392, § 1, effective September 7.

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38-27.5-106. No impact on hospital liens.

This article 27.5 does not change, modify, or amend the provisions of section 38-27-101.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

Colorado Revised Statutes Annotated

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C.R.S. 38-27.5-107

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Colorado Revised Statutes Annotated **Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110)** **Liens (Arts. 20 – 27.5)** **Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)**

38-27.5-107. Dispute resolution - standing.

A person or entity against whom the injured person asserts a civil action or claim that includes a request for damages related to health-care services or treatment provided under a health-care provider lien does not have standing to challenge a health-care provider's or its assignee's compliance with this article 27.5, whether in the civil action or claim asserted by the injured person or in a separate civil action.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

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Colorado Revised Statutes Annotated **Title 38. Property - Real and Personal (§§ 38-1-101 – 38-53-110)** **Liens (Arts. 20 – 27.5)** **Article 27.5 Health-Care Provider Liens (§§ 38-27.5-101 – 38-27.5-108)**

38-27.5-108. Priority of health-care provider liens.

(1) The holder of a health-care provider lien may file a record of its health-care provider lien by following the provisions set forth in the "Colorado Statutory Lien Registration Act", article 9.7 of title 4, including listing the name and address of the injured person, the date of the accident or incident, the name and address of the holder of the health-care provider lien, and the name and address of each health-care provider that rendered health-care services underlying the health-care provider lien.

(2) In the event multiple health-care provider liens are asserted against an injured person's net judgment, settlement, or payment, health-care provider liens for which records were filed pursuant to article 9.7 of title 4 shall have priority for payment out of the injured person's net judgment, settlement, or payment before payments are made on health-care provider liens for which no such records were filed. In the event multiple records have been filed pursuant to article 9.7 of title 4 for health-care provider liens related to a single accident or incident, priority for payment out of the injured person's net judgment, settlement, or payment on each such lien shall be determined by the dates the records were filed, with the health-care provider lien having the earliest filed record receiving priority over those with subsequently filed records.

(3) Filing a record of a health-care provider lien under this section is optional and the sole purpose thereof is to establish the priority of payments between multiple health-care provider liens. Filing a record of a health-care provider lien pursuant to article 9.7 of title 4 does not waive any of the statutory provisions established in this article 27.5.

History

Source: L. 2021:Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

Colorado Revised Statutes Annotated

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