TENNESSEE HOSPITAL LIEN ACT

The THLA allows hospitals to file a lien for all reasonable and necessary charges upon all causes of action or claims the injured party may file which necessitated the hospital care. Hospitals in Tennessee must file this lien in the office of the clerk of the circuit court of the county in which the hospital is located, and in the county wherein the patient resides, if a resident of this state. The lien must be a verified statement containing the following information:

- name and address of the patient as it appears on the records of the hospital
- name and address of the operator
- dates of admission and discharge of the patient
- the amount claimed to be due for hospital care
- to the best of the claimant’s knowledge, the names and addresses of persons, firms or corporations claimed by such ill or injured person or the person’s legal representative, to be liable for damages arising from such illness or injuries.

All liens in the State of Tennessee must be filed with the information above within one hundred twenty (120) days after the patient’s date of discharge from the hospital.

Background

On December 19, 2014 the Tennessee Supreme Court issued a ruling which impacts all hospitals within the State of Tennessee. At issue was “whether Tennessee’s Hospital Lien Act… permits a hospital to enforce a hospital lien claiming one-third (1/3) of an individual’s personal injury settlement after the hospital accepted payment from an individual’s health insurance carrier…”. West v. Shelby County Healthcare Corp., No. CT-006339-07, 2014 WL 7242746, at *5 (Tenn. Apr. 9, 2014).

In simplified terms, a hospital in Tennessee treated patients involved in a car accident. Each of these patients had their own respective commercial health policies. In addition, neither of these patients was at-fault and each had filed an action against the at-fault driver. After the hospital received payment(s) from the commercial health plans, the hospital refused to release the original filed liens on the patients’ personal injury claims. The assumed intent on the part of the hospital was to collect a greater amount of its actual charges by maintaining the lien against the patients’ personal injury claims vs. the contractually discounted payment issued by the commercial health plans. The applicable ruling from the Court held that “except for the unpaid co-pays and deductibles which are a patient’s responsibility, neither the Tennessee Hospital Lien Act nor the hospital’s contracts with the patients’ insurance companies authorized the hospital to maintain its lien after the patients’ insurance company paid the…bill”. West v. Shelby County Healthcare Corp., 2014 WL 7242746, at *1.

What Happened in this Case?

The treating hospital in this particular case was attempting to bill and collect full gross charges via the THLA despite the patient having a commercial health plan which had a contractual relationship with the hospital. Interestingly, in this case, the hospital was diligent enough to actually ensure their payer contracts allowed for such lien billing practices. However, despite this contractual allowance with the commercial health plans, the Court still ruled that the provisions of the THLA disallowed billing the patient’s liability claim for the full charges after having already been paid the contractual payment amount by the commercial health plan.

The Supreme Court recently issued a ruling which impacts all hospitals within the State of Tennessee. At issue was whether Tennessee’s Hospital Lien Act (THLA) permits a hospital to enforce a hospital lien claiming a portion of an individual’s personal injury settlement after the hospital has accepted payment from an individual’s commercial health insurance carrier. As a result, Tennessee hospitals are now explicitly prohibited from pursuing hospital liens for patients covered by commercial health insurance, except for patient responsibility.

While penalties have yet to be assessed in this case, the potential exists for significant economic damages. In a similar case, a 100 bed hospital recently lost a $17 million Class-Action judgment for pursuing liens incorrectly. Tennessee hospitals should remain intensely focused on maintaining compliance for lien filing and liability billing of complex accident claims.

Medical Reimbursements of America (MRA) helps hospitals capture the full value for the services they deliver by focusing on optimizing reimbursement from complex accident claims. MRA’s accident claims management solution, AcciClaim™, is built on the company’s unparalleled expertise and best-practices developed from serving Tennessee hospitals for more than 15 years. Our team of specialized attorneys, revenue cycle experts, and account resolution specialists have shaped the motor vehicle and work comp industries, delivering results to leading health systems nationwide. MRA continues to proudly serve as the definitive source for interpreting the complex liability regulations that impact healthcare providers today.

MICHAEL FORD, J.D. Executive VP & Co-Founder, Medical Reimbursements of America

Mr. Ford is an attorney with a deep understanding of the relevant legal, operational, and compliance challenges related to complex accident claims. His broad experience includes leading MRA’s Operations, Product Development, Legal, and Relationship Management teams. He, along with the entire MRA legal team, offers counsel and insight related to the legislation that impacts healthcare providers.

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There were two critical factors driving the Supreme Court decision:

1. The lien law in Tennessee holds that when the underlying debt is extinguished (i.e., payment by the commercial health plan), so also is the basis for the lien. Note that co-payments and deductible amounts may be paid from the provisions of the settlement and liens may be filed and maintained for such proceeds.

2. The specific payers in this case had pre-agreed to discounts, thus the provider is not permitted to accept greater than that discounted rate via the THLA.

What Action Should Hospitals Be Taking?
MRA has long advocated a conservative stance related to lien filing and related liability billing. We have always focused on ensuring our clients avoid the potential economic damages and headline risks now facing this hospital. An overview of our proven best practices for liability billing, along with a summary of the nation’s recent Class Action lawsuits related to improper liability billing were included in our White Paper entitled “The Hidden Dangers of Liability Billing” published in early 2014. A copy of this White Paper is available upon request.

The good news is that hospitals should not be leery of filing liens to secure protection for patient accounts with no commercial health insurance. While there are some states that do not afford their medical providers such protection, the THLA is specifically designed for hospitals to benefit. We have outlined below the scenarios in which a valid hospital lien may be filed and successfully relied upon for lawful collection of debt. Note that each scenario requires that the hospital treat a patient who is pursuing an action, claim or demand of some kind against an alleged at-fault party which necessitated the hospital care.

Valid Tennessee Hospital Lien Scenarios
- the patient is otherwise self-pay
- the patient has some form of government insurance (Medicare or Medicaid)
- the patient has commercial health insurance which has an existing contract with the treating provider and the provider seeks to secure lien protection for only the co-payment and/or deductible amounts
- the patient has commercial health insurance which is not currently under an existing contract with the treating provider

In addition to the above, MRA suggests that providers set a minimum balance threshold for patient bills available for lien protection. Third party liability actions often take more than a year to successfully resolve. For small balance accounts, hospitals are typically better served by treating small claims through existing self-pay protocols. We typically suggest balance thresholds for lien filing be set at equal to or greater than $1,000.

A COMPLICATED FINANCIAL CLASS
Motor Vehicle Accident claims are extremely complicated. While they typically represent only 1-2% of Gross Charges, they generate significantly higher Net Revenue when managed correctly. The problem is these claims are 100% manual, fraught with compliance risk, and require dedicated resources to manage correctly. Given the lack of dedicated resources at many hospitals, these claims are often sent straight to either Health payers or Self-Pay vendors, resulting in less revenue, dissatisfied patients, and increased compliance risk. This ruling is only one of the many issues providers face when processing these complicated claims. Hospitals must remain extremely vigilant when processing accident claims to avoid serious compliance risk.

As with most lawsuits of this kind, there are a great many details which are specific to this case. The intent of this White Paper is not to provide a full legal brief of the issue and ruling with all relevant details. Rather, the intent here is simply to provide hospitals with a basic understanding of Tennessee’s Hospital Lien Act, a high level take-away of what they need to know about this case, and how to ensure they are compliant moving forward.