SENATE BILL 19-217

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill establishes requirements for the creation of a 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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters or bold & italic numbers indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.
act of another person, which is asserted against money the injured person may receive from a personal injury claim or uninsured motorist claim. A healthcare provider or healthcare provider's assignee creating a lien must advise the injured person of their options for payment, including the use of benefits from an insurance plan or other payer of benefits, before or at the time of creating the lien. The lien amount cannot include any additional amounts over the amount of the charges for services provided, billed at the provider's usual and customary rates.

A healthcare provider may assign a lien to another person or entity. The fact of the assignment, its terms, and the amount paid by the assignee is not discoverable or admissible as evidence in any third-party or first-party action.

The provisions of the bill do not apply to hospital liens.

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
Medical 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 the negligence or wrongful acts of another person should receive timely medical services for their injuries, even if they have limited or no health insurance;

(b) Healthcare providers sometimes provide medical services and care to injured persons and agree to delayed payment in exchange for a lien on any settlement funds received by the injured person from a personal injury claim asserted against the responsible party;

(c) It is in the best interests of the residents of the state to ensure that compensation to an injured party is not reduced
MERELY BECAUSE A HEALTHCARE PROVIDER ASSIGNS OR SELLS SUCH A LIEN TO ANOTHER PERSON;

(d) It is in the best interests of the residents of the State to ensure that the charges underlying healthcare provider liens are not excessive, unreasonable, or inflated and that healthcare provider liens are not subject to surcharges, finance charges, interest, or other increases to the amount of the healthcare provider lien; and

(e) This article 27.5 is intended to encourage healthcare providers to promptly treat people who have limited or no health insurance and who have been injured as the result of the negligence or wrongful acts of another person and to protect injured people from excessive, unreasonable, or inflated medical service charges and surcharges associated with healthcare provider liens.

38-27.5-102. Definitions. As used in this article 27.5, unless the context otherwise requires:

(1) "Healthcare 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, and any other licensed healthcare provider as permitted by the laws of the state.

(2) "Healthcare provider lien" means a lien created by a healthcare provider or its assignee related to charges for medical services and care given to a person injured as a result of the negligence or wrongful act of another person, which lien
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.

38-27.5-103. Healthcare provider lien - options for payments
- limitations. (1) (a) BEFORE A HEALTHCARE PROVIDER LIEN IS CREATED,
A HEALTHCARE PROVIDER OR ITS ASSIGNEE SHALL ADVISE THE INJURED
PARTY ORALLY AND IN WRITING OF THE AVAILABLE METHODS FOR
PAYMENT OF THE HEALTHCARE PROVIDER'S CHARGES FOR TREATMENT OF
THE INJURED PARTY. THESE OPTIONS MAY INCLUDE:

(I) THE CREATION OF A HEALTHCARE PROVIDER LIEN, INCLUDING
AN EXPLANATION OF THE LIENHOLDER'S POTENTIAL RIGHTS OF RECOVERY
AGAINST THE INJURED PARTY;

(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 HEALTHCARE PROVIDER;

(III) ANY OTHER PAYMENT METHOD OR ARRANGEMENT
AGREEABLE TO BOTH THE HEALTHCARE 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) (I) BEFORE AN INJURED PARTY SIGNS AN AGREEMENT
CREATING A HEALTHCARE PROVIDER LIEN, A HEALTHCARE PROVIDER OR
ITS ASSIGNEE SHALL ADVISE THE INJURED PARTY ORALLY AND IN WRITING:

(A) THAT THE HEALTHCARE PROVIDER OR ITS ASSIGNEE IS NOT A
HEALTH INSURER OR PAYER OF BENEFITS AS THAT TERM IS DEFINED IN
SECTION 10-1-135 (2)(c)(I):

(B) THAT EXCEPT IN THE EVENT OF FRAUD BY THE INJURED PARTY,

THE LIENHOLDER MAY ONLY ASSIGN TO A COLLECTION AGENCY OR DEBT

COLLECTOR AN AMOUNT EQUAL TO THE TOTAL AMOUNT ACTUALLY PAID

BY THE LIENHOLDER TO HEALTHCARE PROVIDERS;

(C) THAT, UNLIKE A HEALTH INSURER OR PAYER OF BENEFITS AS

DEFINED IN SECTION 10-1-135 (2)(c)(I), WHICH ARE NOT ENTITLED TO BE

REIMBURSED UNTIL AFTER THE INJURED PARTY IS FULLY COMPENSATED,

UNDER THE LIEN THE HEALTHCARE PROVIDER OR ITS ASSIGNEE HAS THE

RIGHT TO BE REIMBURSED FOR THE FULL AMOUNT OF THE LIEN EVEN IN THE

EVENT THAT THE AVAILABLE JUDGMENT, SETTLEMENT, OR INSURANCE

COVERAGE IS INSUFFICIENT TO FULLY COMPENSATE THE INJURED PARTY

FOR HIS OR HER INJURIES, DAMAGES, AND LOSSES;

(D) THAT THE HEALTHCARE PROVIDER OR ITS ASSIGNEE IS NOT

REQUIRED TO REDUCE THE AMOUNT OF ITS LIEN TO SHARE IN THE COSTS OR

ATTORNEY FEES EXPENDED BY THE INJURED PARTY IN PURSUIT OF HIS OR

HER CLAIM FOR DAMAGES;

(E) THAT THE LIENHOLDER'S COMPENSATION FROM THE INJURED

PARTY IS BASED ON THE DIFFERENCE BETWEEN THE TOTAL OF THE

MEDICAL BILLS AND THE NEGOTIATED AMOUNT;

(F) OF ANY BUSINESS INTEREST BETWEEN THE LIENHOLDER AND

THE INJURED PARTY'S LEGAL COUNSEL; AND

(G) OF ANY BUSINESS INTEREST BETWEEN THE LIENHOLDER AND

ANY HEALTHCARE PROVIDER WHO IS PROVIDING TREATMENT OR WHO MAY

PROVIDE TREATMENT TO THE INJURED PERSON UNDER THE TERMS OF THE

HEALTHCARE PROVIDER LIEN.

(II) A LIENHOLDER SHALL PROVIDE IN WRITING TO THE INJURED
PARTY AN ITEMIZED STATEMENT OF ALL THE BILLED CHARGES FOR TREATMENT THAT THE LIENHOLDER IS CLAIMING ARE SUBJECT TO THE HEALTHCARE PROVIDER LIEN AS THE BILLED CHARGES ARE ACCRUED, TO THE EXTENT PRACTICABLE, AND WHEN THE HEALTHCARE 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 HEALTHCARE PROVIDER LIEN DUE AND OWING.

(c)(1) If a healthcare provider or its assignee is informed during the course of treatment by the injured party or the injured party’s legal counsel that the injured party has obtained health insurance, all future care may be billed to the health insurance carrier at the injured person's discretion. Nothing in this section changes any obligation of the healthcare provider or its agents under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5.

(II) At or before the time a healthcare provider lien is created, a healthcare provider or its assignee shall advise the injured person of the option to bill future charges to a health insurance provider obtained during the course of treatment in accordance with subsection (1)(c)(I) of this section.

(2) Upon request by the injured party or the injured party’s attorney, a lienholder shall provide to the injured party or his or her attorney an itemized statement of all the billed charges for treatment that the lienholder is claiming are subject to the healthcare provider lien. The statement must include a summary of all treatments provided including the
AMOUNTS BILL ED FOR EACH TREATMENT AND THE TOTAL AMOUNT OF THE
HEALTHCARE PROVIDER LIEN DUE AND OWING.

(3) THE AMOUNT OF A HEALTHCARE PROVIDER LIEN MUST NOT
EXCEED THE CHARGES FOR SERVICES PROVIDED TO THE INJURED PERSON
BY THE HEALTHCARE PROVIDER TO THE PATIENT AT THE TIME OF SERVICE
AT A RATE EQUAL TO THE HEALTHCARE PROVIDER'S USUAL AND
CUSTOMARY FEE FOR THE SERVICES PROVIDED.

(4) (a) A HEALTHCARE PROVIDER OR ITS ASSIGNEE SHALL NOT ADD
FINANCE CHARGES AS DEFINED IN SECTION 5-1-301 (20) TO A
HEALTHCARE PROVIDER'S BILLED CHARGES OR OTHERWISE INCREASE THE
AMOUNT OF A HEALTHCARE PROVIDER'S USUAL AND CUSTOMARY BILLED
CHARGE WHEN CREATING OR CLAIMING A HEALTHCARE PROVIDER LIEN.
The injured person is only obligated to pay the healthcare
provider or its assignee the amount of the healthcare provider
lien.

(b) SUBSECTION (4)(a) DOES NOT APPLY TO A COLLECTION
AGENCY AS DEFINED IN SECTION 5-16-103 (3) OR A DEBT COLLECTOR AS
DEFINED IN SECTION 5-16-103 (9) WHO HAS BEEN ASSIGNED A
HEALTHCARE PROVIDER LIEN FOR THE PURPOSES OF COLLECTING A DEBT.

(c) EXCEPT IN THE EVENT OF FRAUD BY THE INJURED PARTY, THE
LIENHOLDER MAY ONLY ASSIGN TO A COLLECTION AGENCY OR DEBT
COLLECTOR AN AMOUNT EQUAL TO THE TOTAL AMOUNT ACTUALLY PAID
BY THE LIENHOLDER TO HEALTHCARE PROVIDERS.

(5) A HEALTHCARE PROVIDER OR ITS ASSIGNEE WHO CREATES,
HOLDS, OR CLAIMS A HEALTHCARE PROVIDER LIEN UNDER THIS ARTICLE
27.5 IS NOT A PAYER OF BENEFITS AS DEFINED IN SECTION 10-1-135 (2)(c).
(6) In the absence of fraud or misrepresentation, if the injured party does not receive a judgment, settlement, or payment on the injured party's claim against third parties or under an uninsured or underinsured motorist insurance policy, the injured party is not liable to the lienholder for any portion of the healthcare provider lien.

(7) This section does not deem a lienholder to be a real party in interest.

38-27.5-104. Assignment - not admissible as evidence. (1) A healthcare provider claiming a healthcare provider lien under this article 27.5 may assign, in writing, a healthcare provider lien to any other person or entity. An assignee of a healthcare provider lien has all the rights and remedies of the assignor and is subject to the restrictions and obligations of the assignor under this article 27.5.

(2) A healthcare provider lien which is subsequently assigned shall not be reduced pursuant to any post-verdict set-off or reduction as described in section 13-21-111.6.

38-27.5-105. Applicability. (1) This article 27.5 applies to healthcare provider liens created on or after the effective date of this article 27.5.

(2) This article 27.5 applies to a healthcare provider lien created before the effective date of this article 27.5 if the healthcare provider lien complies with section 38-27.5-103 (3) and (4)(a); except that section 38-27.5-103 (1)(a), (1)(b), (1)(c)(II), and (2) do not apply to such a lien.
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.

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 (August 2, 2019, if adjournment sine die is on May 3, 2019); 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 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.