

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-1019.01 Megan Waples x4348

SENATE BILL 19-217

SENATE SPONSORSHIP

Foote and Tate, Crowder, Fields, Smallwood

HOUSE SPONSORSHIP

Snyder,

Senate Committees
Health & Human Services

House Committees
Health & Insurance
Judiciary

A BILL FOR AN ACT

101 **CONCERNING HEALTHCARE PROVIDER LIENS RELATED TO CHARGES**
102 **FOR MEDICAL CARE PROVIDED TO A PERSON INJURED AS A**
103 **RESULT OF THE NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER**
104 **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.

HOUSE
Amended 2nd Reading
April 29, 2019

SENATE
Amended 3rd Reading
April 17, 2019

SENATE
Amended 2nd Reading
April 16, 2019

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.

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

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

4 **ARTICLE 27.5**

5 **Medical Provider Liens**

6 **38-27.5-101. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

8 (a) RESIDENTS OF THE STATE WHO ARE INJURED AS THE RESULT OF
9 THE NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER PERSON SHOULD
10 RECEIVE TIMELY MEDICAL SERVICES FOR THEIR INJURIES, EVEN IF THEY
11 HAVE LIMITED OR NO HEALTH INSURANCE;

12 (b) HEALTHCARE PROVIDERS SOMETIMES PROVIDE MEDICAL
13 SERVICES AND CARE TO INJURED PERSONS AND AGREE TO DELAYED
14 PAYMENT IN EXCHANGE FOR A LIEN ON ANY SETTLEMENT FUNDS RECEIVED
15 BY THE INJURED PERSON FROM A PERSONAL INJURY CLAIM ASSERTED
16 AGAINST THE RESPONSIBLE PARTY;

17 (c) IT IS IN THE BEST INTERESTS OF THE RESIDENTS OF THE STATE
18 TO ENSURE THAT COMPENSATION TO AN INJURED PARTY IS NOT REDUCED

1 MERELY BECAUSE A HEALTHCARE PROVIDER ASSIGNS OR SELLS SUCH A
2 LIEN TO ANOTHER PERSON;

3 (d) IT IS IN THE BEST INTERESTS OF THE RESIDENTS OF THE STATE
4 TO ENSURE THAT THE CHARGES UNDERLYING HEALTHCARE PROVIDER
5 LIENS ARE NOT EXCESSIVE, UNREASONABLE, OR INFLATED AND THAT
6 HEALTHCARE PROVIDER LIENS ARE NOT SUBJECT TO SURCHARGES,
7 FINANCE CHARGES, INTEREST, OR OTHER INCREASES TO THE AMOUNT OF
8 THE HEALTHCARE PROVIDER LIEN; AND

9 (e) THIS ARTICLE 27.5 IS INTENDED TO ENCOURAGE HEALTHCARE
10 PROVIDERS TO PROMPTLY TREAT PEOPLE WHO HAVE LIMITED OR NO
11 HEALTH INSURANCE AND WHO HAVE BEEN INJURED AS THE RESULT OF THE
12 NEGLIGENCE OR WRONGFUL ACTS OF ANOTHER PERSON AND TO PROTECT
13 INJURED PEOPLE FROM EXCESSIVE, UNREASONABLE, OR INFLATED MEDICAL
14 SERVICE CHARGES AND SURCHARGES ASSOCIATED WITH HEALTHCARE
15 PROVIDER LIENS.

16 **38-27.5-102. Definitions.** AS USED IN THIS ARTICLE 27.5, UNLESS
17 THE CONTEXT OTHERWISE REQUIRES:

18 (1) "HEALTHCARE PROVIDER" MEANS A PERSON LICENSED OR
19 CERTIFIED IN THE STATE TO PRACTICE MEDICINE, PHARMACY,
20 CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY, DENTISTRY,
21 OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING ARTS,
22 AND ANY OTHER LICENSED HEALTHCARE PROVIDER AS PERMITTED BY THE
23 LAWS OF THE STATE.

24 (2) "HEALTHCARE PROVIDER LIEN" MEANS A LIEN CREATED BY A
25 HEALTHCARE PROVIDER OR ITS ASSIGNEE RELATED TO CHARGES FOR
26 MEDICAL SERVICES AND CARE GIVEN TO A PERSON INJURED AS A RESULT
27 OF THE NEGLIGENCE OR WRONGFUL ACT OF ANOTHER PERSON, WHICH LIEN

1 IS ASSERTED AGAINST MONEY RECEIVED AS A RESULT OF A CLAIM OR
2 CLAIMS THAT THE INJURED PERSON ASSERTS AGAINST THIRD PARTIES OR
3 UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY.

4 **38-27.5-103. Healthcare provider lien - options for payments**

5 **- limitations.** (1) (a) BEFORE A HEALTHCARE PROVIDER LIEN IS CREATED,
6 A HEALTHCARE PROVIDER OR ITS ASSIGNEE SHALL ADVISE THE INJURED
7 PARTY ORALLY AND IN WRITING OF THE AVAILABLE METHODS FOR
8 PAYMENT OF THE HEALTHCARE PROVIDER'S CHARGES FOR TREATMENT OF
9 THE INJURED PARTY. THESE OPTIONS MAY INCLUDE:

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

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

18 (III) ANY OTHER PAYMENT METHOD OR ARRANGEMENT
19 AGREEABLE TO BOTH THE HEALTHCARE PROVIDER OR ITS ASSIGNEE AND
20 THE INJURED PERSON; OR

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

23 (b) (I) BEFORE AN INJURED PARTY SIGNS AN AGREEMENT
24 CREATING A HEALTHCARE PROVIDER LIEN, A HEALTHCARE PROVIDER OR
25 ITS ASSIGNEE SHALL ADVISE THE INJURED PARTY ORALLY AND IN WRITING:

26 (A) THAT THE HEALTHCARE PROVIDER OR ITS ASSIGNEE IS NOT A
27 HEALTH INSURER OR PAYER OF BENEFITS AS THAT TERM IS DEFINED IN

1 SECTION 10-1-135 (2)(c)(I):

2 (B) THAT EXCEPT IN THE EVENT OF FRAUD BY THE INJURED PARTY,
3 THE LIENHOLDER MAY ONLY ASSIGN TO A COLLECTION AGENCY OR DEBT
4 COLLECTOR AN AMOUNT EQUAL TO THE TOTAL AMOUNT ACTUALLY PAID
5 BY THE LIENHOLDER TO HEALTHCARE PROVIDERS;

6 (C) THAT, UNLIKE A HEALTH INSURER OR PAYER OF BENEFITS AS
7 DEFINED IN SECTION 10-1-135 (2)(c)(I), WHICH ARE NOT ENTITLED TO BE
8 REIMBURSED UNTIL AFTER THE INJURED PARTY IS FULLY COMPENSATED,
9 UNDER THE LIEN THE HEALTHCARE PROVIDER OR ITS ASSIGNEE HAS THE
10 RIGHT TO BE REIMBURSED FOR THE FULL AMOUNT OF THE LIEN EVEN IN THE
11 EVENT THAT THE AVAILABLE JUDGMENT, SETTLEMENT, OR INSURANCE
12 COVERAGE IS INSUFFICIENT TO FULLY COMPENSATE THE INJURED PARTY
13 FOR HIS OR HER INJURIES, DAMAGES, AND LOSSES;

14 (D) THAT THE HEALTHCARE PROVIDER OR ITS ASSIGNEE IS NOT
15 REQUIRED TO REDUCE THE AMOUNT OF ITS LIEN TO SHARE IN THE COSTS OR
16 ATTORNEY FEES EXPENDED BY THE INJURED PARTY IN PURSUIT OF HIS OR
17 HER CLAIM FOR DAMAGES;

18 (E) THAT THE LIENHOLDER'S COMPENSATION FROM THE INJURED
19 PARTY IS BASED ON THE DIFFERENCE BETWEEN THE TOTAL OF THE
20 MEDICAL BILLS AND THE NEGOTIATED AMOUNT;

21 (F) OF ANY BUSINESS INTEREST BETWEEN THE LIENHOLDER AND
22 THE INJURED PARTY'S LEGAL COUNSEL; AND

23 (G) OF ANY BUSINESS INTEREST BETWEEN THE LIENHOLDER AND
24 ANY HEALTHCARE PROVIDER WHO IS PROVIDING TREATMENT OR WHO MAY
25 PROVIDE TREATMENT TO THE INJURED PERSON UNDER THE TERMS OF THE
26 HEALTHCARE PROVIDER LIEN.

27 (II) A LIENHOLDER SHALL PROVIDE IN WRITING TO THE INJURED

1 PARTY AN ITEMIZED STATEMENT OF ALL THE BILLED CHARGES FOR
2 TREATMENT THAT THE LIENHOLDER IS CLAIMING ARE SUBJECT TO THE
3 HEALTHCARE PROVIDER LIEN AS THE BILLED CHARGES ARE ACCRUED, TO
4 THE EXTENT PRACTICABLE, AND WHEN THE HEALTHCARE PROVIDER LIEN
5 IS FINAL. THE FINAL ITEMIZED STATEMENT MUST INCLUDE A SUMMARY OF
6 ALL TREATMENTS PROVIDED, THE TOTAL AMOUNTS BILLED FOR EACH
7 TREATMENT, AND THE TOTAL AMOUNT OF THE HEALTHCARE PROVIDER
8 LIEN DUE AND OWING.

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

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

22 (2) UPON REQUEST BY THE INJURED PARTY OR THE INJURED
23 PARTY'S ATTORNEY, A LIENHOLDER SHALL PROVIDE TO THE INJURED PARTY
24 OR HIS OR HER ATTORNEY AN ITEMIZED STATEMENT OF ALL THE BILLED
25 CHARGES FOR TREATMENT THAT THE LIENHOLDER IS CLAIMING ARE
26 SUBJECT TO THE HEALTHCARE PROVIDER LIEN. THE STATEMENT MUST
27 INCLUDE A SUMMARY OF ALL TREATMENTS PROVIDED INCLUDING THE

1 AMOUNTS BILLED FOR EACH TREATMENT AND THE TOTAL AMOUNT OF THE
2 HEALTHCARE PROVIDER LIEN DUE AND OWING.

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

8 (4) (a) A HEALTHCARE PROVIDER OR ITS ASSIGNEE SHALL NOT ADD
9 FINANCE CHARGES AS DEFINED IN SECTION 5-1-301 (20) TO A
10 HEALTHCARE PROVIDER'S BILLED CHARGES OR OTHERWISE INCREASE THE
11 AMOUNT OF A HEALTHCARE PROVIDER'S USUAL AND CUSTOMARY BILLED
12 CHARGE WHEN CREATING OR CLAIMING A HEALTHCARE PROVIDER LIEN.
13 THE INJURED PERSON IS ONLY OBLIGATED TO PAY THE HEALTHCARE
14 PROVIDER OR ITS ASSIGNEE THE AMOUNT OF THE HEALTHCARE PROVIDER
15 LIEN.

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

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

24 =====
25 (5) A HEALTHCARE PROVIDER OR ITS ASSIGNEE WHO CREATES,
26 HOLDS, OR CLAIMS A HEALTHCARE PROVIDER LIEN UNDER THIS ARTICLE
27 27.5 IS NOT A PAYER OF BENEFITS AS DEFINED IN SECTION 10-1-135 (2)(c).

1 (6) IN THE ABSENCE OF FRAUD OR MISREPRESENTATION, IF THE
2 INJURED PARTY DOES NOT RECEIVE A JUDGMENT, SETTLEMENT, OR
3 PAYMENT ON THE INJURED PARTY'S CLAIM AGAINST THIRD PARTIES OR
4 UNDER AN UNINSURED OR UNDERINSURED MOTORIST INSURANCE POLICY,
5 THE INJURED PARTY IS NOT LIABLE TO THE LIENHOLDER FOR ANY PORTION
6 OF THE HEALTHCARE PROVIDER LIEN.

7 (7) THIS SECTION DOES NOT DEEM A LIENHOLDER TO BE A REAL
8 PARTY IN INTEREST.

9 **38-27.5-104. Assignment - not admissible as evidence.** (1) A
10 HEALTHCARE PROVIDER CLAIMING A HEALTHCARE PROVIDER LIEN UNDER
11 THIS ARTICLE 27.5 MAY ASSIGN, IN WRITING, A HEALTHCARE PROVIDER
12 LIEN TO ANY OTHER PERSON OR ENTITY. AN ASSIGNEE OF A HEALTHCARE
13 PROVIDER LIEN HAS ALL THE RIGHTS AND REMEDIES OF THE ASSIGNOR AND
14 IS SUBJECT TO THE RESTRICTIONS AND OBLIGATIONS OF THE ASSIGNOR
15 UNDER THIS ARTICLE 27.5.

16
17 (2) A HEALTHCARE PROVIDER LIEN WHICH IS SUBSEQUENTLY
18 ASSIGNED SHALL NOT BE REDUCED PURSUANT TO ANY POST-VERDICT
19 SET-OFF OR REDUCTION AS DESCRIBED IN SECTION 13-21-111.6.

20 **38-27.5-105. Applicability.** (1) THIS ARTICLE 27.5 APPLIES TO
21 HEALTHCARE PROVIDER LIENS CREATED ON OR AFTER THE EFFECTIVE DATE
22 OF THIS ARTICLE 27.5.

23 (2) THIS ARTICLE 27.5 APPLIES TO A HEALTHCARE PROVIDER LIEN
24 CREATED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 27.5 IF THE
25 HEALTHCARE PROVIDER LIEN COMPLIES WITH SECTION 38-27.5-103 (3)
26 AND (4)(a); EXCEPT THAT SECTION 38-27.5-103 (1)(a), (1)(b), (1)(c)(II),
27 AND (2) DO NOT APPLY TO SUCH A LIEN.

1 **38-27.5-106. No impact on hospital liens.** THIS ARTICLE 27.5
2 DOES NOT CHANGE, MODIFY, OR AMEND THE PROVISIONS OF SECTION
3 38-27-101.

4 **SECTION 2. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2020 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.