

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 199

Short Title: Amend Medical Providers' Liens.

(Public)

Sponsors: Representative Culpepper.

Referred to: Insurance, if favorable, Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO LIENS DUE MEDICAL PROVIDERS FOR MEDICAL SERVICES PROVIDED, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-49, 44-50, and 44-51 are repealed.

Section 2. Article 9 of Chapter 44 of the General Statutes is amended by adding the following new sections to read:

"§ 44-51.01. Definitions.

As used in this Article:

(1) 'Claimant' means an injured person or the injured person's personal representative, collector, guardian, or parent responsible for payment for medical services.

(2) 'Injured person' means any individual who has sustained personal injuries.

(3) 'Medical provider' means all of the following:

a. Any physician, nurse, chiropractor, dentist, optometrist, podiatrist, physical therapist, psychologist, pharmacist, or other individual licensed, registered, or certified by this State or any other state to provide medical services.

1 b. Any employer of any individual listed in sub-subdivision a. of
2 this subdivision, or any entity through which such an individual
3 renders medical services, that has the right to receive the
4 payment due for the individual's medical services to an injured
5 person.

6 c. Any hospital, health care facility, provider of ambulance
7 services, or similar provider of medical services that is licensed
8 or regulated under Chapter 58, 122C, 131D, or 131E of the
9 General Statutes, former Chapter 131 of the General Statutes, or
10 the equivalent law of any other state.

11 (4) 'Medical records' means all records, regardless of the form in which
12 these records are maintained, concerning patient-provided information,
13 observations, findings, treatment rendered, opinions, physician notes
14 and summaries, nursing notes, laboratory and radiological reports, and
15 any other health care records prepared by any health care professional or
16 other person.

17 (5) 'Medical services' means any services or supplies furnished to an
18 injured person for the purpose of treating the injuries.

19 (6) 'Person' means an individual, trust, partnership, professional
20 association, limited liability company, corporation, federal, state, or
21 local government, any political subdivision, agency, or institution of
22 those governments, or any other entity.

23 (7) 'Recovery' means any sums recovered, or to be recovered, as
24 compensatory damages for personal injuries in any civil action or other
25 proceeding in this State or by settlement. Recovery includes sums
26 recovered under uninsured and underinsured motorist coverage, but
27 does not include proceeds from any other insurance policy when the
28 injured person is also the insured.

29 (8) 'Responsible party' means an insurance company or any other person
30 responsible for paying a recovery.

31 **"§ 44-51.02. Creation and perfection of lien.**

32 (a) Creation of Lien. – Any medical provider not otherwise prohibited by law,
33 rule, or regulation from obtaining a lien shall, upon perfection in accordance with this
34 Article, have a lien upon any recovery for personal injuries for which the medical
35 provider rendered medical services to the extent the amount owed for these services has
36 not been paid. The lien attaches regardless of whether the party entitled to the recovery is
37 the injured person or another claimant.

38 (b) Perfection of Lien. – To perfect the lien, the medical provider shall comply
39 with all of the following:

40 (1) Before the recovery is paid pursuant to G.S. 44-51.04(a), send a written
41 notice of lien to:

42 a. The claimant's attorney.

1 b. If, and only if, the claimant's attorney is not known, to the
2 responsible party and the claimant.

3 (2) If requested by the claimant or the claimant's attorney, furnish without
4 charge one copy of an itemized statement and the medical records of the
5 medical provider with respect to the medical services rendered to the
6 injured person by reason of the personal injury. This subdivision does
7 not apply to charges for preparing a medical report that the medical
8 provider does not ordinarily create if the claimant or the claimant's
9 attorney specifically requests the medical provider to create that
10 particular report.

11 (c) Contents of Notice. – The notice of lien shall include all of the following:

12 (1) The name, address, and telephone number of the medical provider.

13 (2) The name and last known address of the injured person.

14 (3) The date of the injury.

15 (4) The date or dates during which the medical provider provided medical
16 services.

17 (5) The amount for which the lien is being asserted.

18 (6) If sent to an insurance company, the name of its insured or other person
19 allegedly responsible for the injury.

20 (7) A statement that the medical provider is claiming the lien provided for
21 by this Article.

22 The information required by this subsection may be contained in the written notice of lien
23 or any statement attached to and sent with the notice of lien.

24 (d) Methods of Sending Notice. – A notice of lien and any copies of a notice of
25 lien required by this Article to be sent to a claimant, a claimant's attorney, or a
26 responsible party shall be sent in any one of the following ways:

27 (1) Personal delivery to the recipient or the recipient's business address if
28 the recipient or other person at that address provides a receipt for the
29 copy.

30 (2) Certified mail, return receipt requested.

31 (3) Overnight delivery service that provides proof of delivery.

32 (4) Transmission by facsimile machine or other form of electronic
33 communication, if the recipient affirmatively transmits a written
34 confirmation of receipt. A statement of receipt automatically generated
35 by a machine shall not qualify as a confirmation under this subdivision.

36 (e) Additional Requirements for Notices to Insurance Companies. – A notice of
37 lien sent to an insurance company under subdivision (b)(1) of this section shall be sent to
38 any office designated by the insurance company as an office authorized to receive claims,
39 the principal office of the insurance company in this State, or the insurance company's
40 regional office or its home office.

41 "§ 44-51.03. Amended liens.

1 A medical provider may send an amended notice of lien at any time. An amended
2 notice of lien shall be sent by any of the methods set forth in G.S. 44-51.02(d) for a
3 notice of lien.

4 **"§ 44-51.04. Payment of recovery; limitations on liability for improper payment.**

5 (a) Payment of Recovery. – The responsible party, or the claimant's attorney
6 acting pursuant to subsection (c) of this section, shall pay the recovery in the following
7 order: any attorneys' fees due the claimant's attorney and the reasonable expenses
8 incurred by the attorney and the claimant in collecting the recovery; and any perfected
9 liens under this Article, subject to the limitations in subsection (b) of this section; and the
10 remainder of the recovery to the claimant.

11 (b) Limitations on Payment of Liens. – The total of all payments made to medical
12 providers under this section shall not exceed 50 percent (50%) of the recovery remaining
13 after payment of the amounts provided in subdivision (1) of subsection (a) of this section.
14 G.S. 28A-18-2 shall further limit payments to medical providers under this section.
15 Multiple liens shall be paid pro rata.

16 (c) Payments to Claimant's Attorney. – Notwithstanding any other provision of
17 this Article, the responsible party shall pay the recovery to the claimant's attorney, if
18 known, and the attorney shall pay the recovery as provided in subsections (a) and (b) of
19 this section. The responsible party is discharged of further liability under this Article to
20 medical providers if the responsible party sends the attorney a copy of any notice of lien
21 previously received by the responsible party, and the attorney actually receives the copy
22 or copies before or at the same time the attorney receives the payment. The responsible
23 party is not liable under this Article to any medical provider whose notice of lien is
24 received after the recovery is mailed or delivered to the claimant's attorney.

25 **"§ 44-51.05. Disputed liens.**

26 If the amount owed for medical services is in dispute, nothing in this Article shall
27 compel a responsible party or a claimant's attorney to pay the disputed amount until it is
28 fully established in the manner provided by law.

29 **"§ 44-51.06. Penalty for asserting false lien.**

30 Any person who asserts a lien under this Article when no amount is owed the person,
31 or in an amount greater than the person is owed, and who refuses without justification to
32 correct or update the lien after becoming aware of the error, is liable to the claimant for
33 all of the following:

34 (1) Liquidated damages in the amount of five thousand dollars (\$5,000) or
35 all damages proximately resulting from the assertion of the improper
36 lien, whichever is greater.

37 (2) Any reasonable attorneys' fees, court costs, and any other litigation and
38 investigatory expenses incurred as a result of the error before the error is
39 corrected.

40 **"§ 44-57.07. Exemptions and exclusions.**

41 (a) No person who pays a recovery pursuant to subsections (a) and (b) of G.S. 44-
42 51.04 is liable under this Article to any medical provider whose notice of lien is received

1 by that person after the recovery is paid, or whose lien is not perfected before the
2 recovery is paid, pursuant to these subsections.

3 (b) This Article does not apply to injuries resulting from an accident covered by
4 Chapter 97 of the General Statutes, the North Carolina Workers' Compensation Act.

5 (c) G.S. 44-48 does not apply to liens under this Article."

6 Section 3. A lien that was existing and valid under former G.S. 44-49 and G.S.
7 44-50 on the effective date of this act is a perfected lien under G.S. 44-51.01 through
8 G.S. 44-51.07, as enacted by this act, and shall be governed by this act. A medical
9 provider as defined in G.S. 44-51.01, as enacted by this act, that had not received, or had
10 received but not yet responded to, a request for medical records under former G.S. 44-49
11 and G.S. 44-50 before the effective date of this act, but had otherwise taken all necessary
12 steps to obtain a valid lien under those former sections before the effective date of this
13 act, shall provide medical records as required by G.S. 44-51.02, as enacted by this act, to
14 have a perfected lien under this act.

15 Section 4. This act becomes effective January 1, 1998.