

Liening Too Close To The Edge: Violating the Hospital Lien Statute Can Lead to Serious Consequences

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Practice Area: Health Law

The Wisconsin Court of Appeals ruled recently that a hospital could not file a hospital lien against an injured HMO patient's liability insurance settlement because, under her health insurance contract, the patient was not obligated to pay for the hospitalization. In the process, the court determined that the patient was entitled to a trial on a number of claims against the hospital – including fraud, violation of the Wisconsin Consumer Act, breach of contract and racketeering – which a lower court had dismissed. The court also let stand a claim for punitive damages and approved the lower court's ruling that found the hospital liable for conversion and tortious interference with contract.

Dorr v. Sacred Heart Hospital, No. 98-1772 (Ct. App. May 25, 1999), may be of significance to health care providers that file hospital liens against liability insurance settlements. The case sends an unsettling message about how far a hospital may go in maximizing reimbursement for services provided to HMO patients.

Background of the Case

In *Dorr*, Beverly Dorr was involved in an automobile accident that resulted in two hospitalizations at Sacred Heart. She provided the hospital documentation indicating that she had health insurance through Group Health Cooperative of Eau Claire, a local HMO that would pay all of the expenses associated with her care.

The hospital had a Provider Agreement with the HMO with per diem rates for care provided to persons enrolled in the HMO. Although the hospital's charges for Ms. Dorr's care totaled \$27,051.65, under the per diem rates in the Provider Agreement the hospital could bill the HMO only \$17,618.

The Provider Agreement also contained a "Hold Harmless" provision under which the hospital agreed it would not bill or attempt to hold a Group Health subscriber responsible for the costs of care provided under the Agreement. Instead, the hospital agreed to accept the per diem rates specified in the Provider Agreement as full payment for such care. The hospital also agreed that it would not exercise a right to opt out of the statutory immunity afforded HMO patients from liability for the costs of care covered by an HMO insurer. The hospital did not bill the HMO for the expenses of Ms. Dorr's care. Rather, it placed a lien on the proceeds of the liability insurance policy of the other driver involved in the accident, in the full amount of its charges. The Dorrs claimed the lien was improper and demanded unsuccessfully that the hospital withdraw it. Ultimately, the liability insurer paid \$27,051.65 to the hospital and the rest of its policy limits – \$22,948.35 – to the Dorrs.

The Dorrs then sued the hospital alleging that filing the hospital lien violated the Provider Agreement and the statutory immunity of HMO patients. The Dorrs claimed that, as a result, the hospital had committed conversion, tortious interference with contractual relations, fraud, unfair debt collection practices, breach of contract, racketeering activity, and conduct that warranted an award of punitive damages. The trial court determined that the hospital had converted the Dorrs' insurance settlement, and had tortiously interfered with their agreement with the HMO by refusing to bill the HMO for the expenses of Ms. Dorr's hospitalizations. The trial court dismissed all of the Dorrs' other claims. The Dorrs and the hospital both appealed these determinations, leading to the court of appeals' decision.

Rationales and Consequences

The Dorrs premised all of their claims on the alleged wrongful nature of the lien that the hospital placed on the Dorrs' liability settlement. The central issue on appeal, therefore, was whether the lien was proper. The rationale for the court's resolution of this issue may help other providers avoid the consequences that befell the hospital.

The court first reviewed the language of the hospital lien statute and ruled that in order to file a hospital lien, there must be a debt, and the debt must be owed by the person who received the medical services from the hospital. The court determined, however, that no debt exists when the patient is an HMO subscriber who is statutorily immune from liability for care that is covered by the HMO and the health care provider has not opted out of such immunity in the manner provided by statute. The court also determined that no debt exists when a contract between the insurer and the health care provider indicates that the provider would not bill or attempt to hold the HMO subscriber liable for the cost of care covered by the HMO. The court concluded that the Dorrs did not owe the hospital a debt, and the hospital's only recourse was against the HMO.

The court also determined that the "Hold Harmless" provision in the Hospital/HMO Provider Agreement negated the existence of any debt owed by the Dorrs to the hospital. Accordingly, the hospital lacked legal authority for the lien it placed on the proceeds of the Dorrs' settlement.

Having concluded that the hospital lien was improper, the court then reviewed and reinstated a claim that the hospital made false representations to the public in a commercial setting. The court ruled that a reasonable jury could find false representations in the hospital's violation of the "Hold Harmless" provision of the Provider Agreement, and its violation of its agreement to be bound by the HMO immunity statute. In addition, the court ruled that the trial court dismissed prematurely the Dorrs' claim of unfair debt collection practices. The court also held that the hospital breached the "Hold Harmless" provision of the Provider Agreement, which the court found was included in the contract expressly for the benefit of HMO subscribers. The court therefore reinstated the Dorrs' breach of contract claim as well.

The court next reinstated the Dorrs' claim that the hospital had engaged in racketeering activity. The court identified evidence of the "criminal intent" necessary to support this claim that it said the trial court overlooked, including the following:

- Hospital employees knew that as HMO subscribers, the Dorrs were immune from the hospital's collection efforts;
- Hospital employees also recognized that the Provider Agreement prevented the hospital from pursuing collection from the Dorrs; and
- One employee testified that by filing the lien, the hospital claimed the insurance settlement as collateral in the event the Dorrs did not pay the bill, and that if the Dorrs wanted to receive the settlement "free and clear," they had to pay the bill even though the hospital understood the Dorrs were not obligated to pay it.

The court also reinstated the Dorr's claim for punitive damages, concluding that there was "ample evidence" for a jury to consider whether the hospital acted in intentional disregard of the Dorr's rights. The court repeated the above facts, and stated that the hospital filed the lien as "purely a ploy to try to get as much money as possible." Finally, the court also approved the trial court's rulings that the hospital had converted the Dorr's insurance settlement, and that the hospital had tortiously interfered with the Dorr's HMO agreement by failing to bill the HMO for the cost of Ms. Dorr's hospitalizations, thereby preventing the HMO from fulfilling its contractual obligations to the Dorr's.

Lessons to Be Learned From *Dorr*

In the aftermath of the court's decision, hospitals should approach the use of hospital liens with care. Steps worth taking include:

- **Make sure there is a policy regarding hospital liens.** It should describe situations in which the institution will, and will not, pursue such a remedy.
- **Review collection policies with managers and the rank and file.** Everyone needs to be on the same page to ensure that liens are not pursued when the hospital is not entitled to do so.
- **Use hospital liens with respect to HMO patients only with extreme care.** The *Dorr* opinion suggests but does not state clearly – that health care providers may not file a lien with respect to an HMO patient's account unless (1) the provider properly has opted out of the HMO patient immunity provisions, in the manner provided by statute, and (2) the provider has not entered into any sort of agreement that prevents the provider from seeking payment from the HMO patient.
- **Consider a policy of accepting payment from the HMO under the circumstances described in *Dorr*.** Such a policy may be more efficient and financially safer in the long run.

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