Wisconsin Supreme Court Concludes that Charitable Hospitals May Enforce Hospital Lien on a Medicaid Recipient's Personal Injury Settlement as an Alternative to Billing Medicaid

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Practice Area: Health Law & Healthcare Billing and Collection

Today, the Wisconsin Supreme Court issued a decision in *Gister v. American Family Mutual Insurance Company*, 2012 WI 86. The case examined whether a charitable hospital may enforce a hospital lien pursuant to Wis. Stat. § 779.80 on a Medicaid recipient's personal injury settlement as an alternative to billing Medicaid.

In a declaratory judgment, the Dane County Circuit Court had ruled that the hospital could do so. The decision was reversed in the Court of Appeals, which relied on *Dorr v. Sacred Heart Hospital*, 228 Wis. 2d 425, 597 N.W.2d 462 (Ct. App. 1999). *Dorr* held that when the contract between an HMO and a hospital contains a hold harmless provision, the hospital may not file a hospital lien against an HMO's patient's property because the HMO patient is not indebted to the hospital for the medical services provided. Likewise, a Medicaid patient is not indebted to the hospital for the medical services provided, and therefore the lien provision is not available to the hospital in the present case.

On appeal, Saint Joseph's Hospital of Sheboygan argued that the Court of Appeals decision contravenes Congress's intent that Medicaid should be the payer of last resort. The hospital contended that (1) it is well-settled that hospitals may bill either Medicaid or file a lien on proceeds that may be paid by third party tortfeasors and (2) a debt does exist for which Medicaid benefits are not authorized because the settlement proceeds are available to pay for medical costs. Plaintiffs argued that neither federal nor state law permit the filing of a hospital lien in these circumstances and that the Court of Appeals reliance on the *Dorr* decision was correct. Plaintiffs contended that a hospital lien constitutes a direct charge imposed by the hospital on Medicaid-eligible patients, and therefore is inconsistent with state Medicaid law.

A majority of the Wisconsin Supreme Court reversed the Court of Appeals decision. The majority opinion, authored by Justice Gableman, harmonized "the complex state and federal framework surrounding Medicaid" with the state's hospital lien statute, Wis. Stat. § 779.80 to conclude that such liens are permitted. The court held that the hospital liens were fully consistent with federal Medicaid law, and thus, to the extent that Wis. Stat. § 49.49(3m)(a) incorporates federal law, the statute does not bar the liens and Wisconsin Medicaid is in compliance with the federal requirements. Further, the court held that to the extent the statute imposes an additional requirement to federal law, the statute also does not bar the liens. ¶¶ 2, 11.

Wis. Stat. § 49.49(3m)(a) provides, that "No provider may knowingly impose upon a recipient charges in addition to payments received for services under [Medicaid] or knowingly impose direct charges upon a recipient in lieu of obtaining payment under [Medicaid]" except under specific enumerated conditions. The majority determined that the lien was not a "direct charge" upon a Medicaid recipient, and therefore was not in violation of this section. Because the hospital was seeking money from the patient that would come from the tortfeasor's insurance company—and not the patient alone—this was not a "direct" charge. ¶¶ 27-34.

Further, the majority concluded that this interpretation was consistent with Wis. Admin. Code § DHS 106.03(8), which permits hospitals to either bill Medicaid or join personal injury lawsuits when a third party tortfeasor may have liability for the cost of hospital care. The majority reasoned that if it is permissible for a hospital to join a personal injury lawsuit to obtain payment from a tortfeasor, it should also be permissible for the hospital to obtain that payment through the use of a hospital lien. ¶¶ 35-37.

Finally, the opinion determined that this case is legally and factually distinguishable from *Dorr*, and explains how the court of appeals applied *Dorr* in too broad of a manner—and applies a narrower interpretation going forward. The majority holds "that a patient's debt to a hospital is extinguished for purposes of a hospital lien placed upon a settlement between a patient and an insurer covering a tortfeasor's liability, if it ever is, only when the following can be accurately said: that the hospital is legally barred from ever billing the patient, either directly or indirectly." ¶¶ 39-60.

The dissent, authored by Justice Walsh Bradley, concludes that the Gisters are entitled to a declaration that the hospital liens are invalid. The dissent takes issue with the majority's conclusion that seeking payment from a Medicaid patient through the use of a lien is not a "direct" charge and therefore is permissible under Medicaid regulations. ¶¶ 71-77 (dissent).

Further, the dissent points out that the Administrative Code provision that permits the hospital to join the personal injury lawsuit against a tortfeasor does not expressly authorize the hospital's lien. Medicaid gives hospitals two choices: (1) to seek reimbursement from Medicaid or (2) join the patient's personal injury action as a subrogated party. Unlike the majority, the dissent sees and articulates a notable difference between joining as a subrogated party and filing a lien. A party claiming subrogated rights is barred from recovery unless the plaintiff is made whole, or fully compensated for all the damage elements of the entire cause of action. In contrast, a hospital lien-holder has a priority right that will not be extinguished if the plaintiff is not made whole. ¶¶ 78-88 (dissent).

> By permitting the hospital to bow out of the litigation process and impose a lien on the Gisters' settlement money, the majority arguably allows the hospital to avoid the costs of engaging in litigation and common law principles such as the made whole doctrine. In a case like this where the hospital's charges are substantial and the available insurance proceeds are limited, the hospital could absorb a majority of the settlement, leaving the Gisters and other health care providers, such as doctors, without any recovery. ¶ 88 (dissent).

This decision permits hospitals to use liens to pursue payment from tortfeasors in lieu of claiming reimbursement through the Wisconsin Medicaid Program.

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