

HOSPITAL LIEN LAWS

I. Statutory Right to Lien.

- A. Every hospital in Idaho, whether non-profit or for-profit, is entitled to a lien for its reasonable charges for caring for an injured person. (I.C. §45-701).
- B. Nurses are also entitled to a lien (I.C. §45-704A), as are physicians (I.C. §45-704B).

II. Subject of Lien.

- A. Unlike medical indigency liens, the liens of hospitals, nurses, and doctors (“medical providers”) do not relate to assets, such as real property, owned by the injured person. Rather, medical provider liens are liens upon the causes of action, suits, claims, counterclaims, or demands which the injured person may have against an allegedly liable third party.
- B. Most commonly, medical providers perfect and seek enforcement of their liens when the allegedly liable third party has some type of liability insurance coverage.

III. Attachment of Lien.

- A. A medical provider’s statutory lien attaches the moment an injured person is admitted to a hospital or treatment commences by a doctor or nurse, as the case may be.

IV. Perfection of Lien (I.C. §45-702).

- A. In order to be enforceable, a medical provider’s lien must be perfected by the filing of a verified statement of claim with the appropriate county recorder.
- B. Hospital liens must be recorded in the county in which the facility is located.
- C. Nurse’s and doctor’s liens must be recorded in the county in which treatment was provided to the injured person.
- D. Hospital lien claims must be filed within 90 days of the injured person’s discharge from the facility, while nurse’s and doctor’s lien claims must be filed within 90 days of the end of treatment, similar to mechanic’s lien filings.
- E. The medical provider’s verified statement must list the injured party’s name and address, the dates hospitalization or treatment commenced and concluded, the amount claimed to be due, and to the best of the medical provider’s knowledge, the name and address of all persons claimed by the injured person to be liable for the injured person’s damages.
- F. A copy of the medical provider’s verified statement must be mailed to each allegedly liable third party within one (1) day of the recording of such statement.

V. **Recording of Lien Claim** (I.C. §45-703).

A. A medical provider's lien is not a lien against any real property owned by the injured party, although occasionally such liens incorrectly appear in title commitments.

B. County recorders are directed to maintain a hospital lien book in which all medical provider liens should be listed.

VI. **Release of Lien** (I.C. §45-704).

A. If a medical provider's lien is properly perfected within the applicable 90-day time frame, it is enforceable against any allegedly liable third parties.

B. If the third party attempts to settle with the injured party without the medical provider's consent and the release of its lien, the settlement is invalid and ineffectual.

VII. **Enforcement of Lien** (I.C. §45-704).

A. A medical provider with a properly perfected lien has an independent cause of action against the allegedly liable third parties, provided that suit to foreclose its lien is filed within two (2) years from the date its verified statement was recorded by the county recorder.

B. The foreclosure lawsuit is filed in the county where the lien was recorded, but the court can order the case removed to another county for cause. (For example, if an injured party was in an auto accident in Payette County but was transported to an Ada County hospital for treatment, it would not be unusual for the hospital's foreclosure action to be filed initially in Ada County and then subsequently removed to Payette County to be consolidated with the patient's personal injury action.)

C. The court hearing a medical provider's foreclosure action may award costs and reasonable attorney's fees to the prevailing party.

VIII. **Exclusion of Workers Comp. Cases** (I.C. §45-705).

A. Medical providers may not file or attempt to enforce liens related to treating injuries arising from job-related accidents covered by workers comp.

Practice Tips

1. In White v. St. Als, 136 Idaho 238, the Court of Appeals essentially applied the principle of "first in time, first in right" in deciding the priority of medical provider liens vis-à-vis attorney liens. In the case of an injured party's first hospitalization and treatment following an accident, it is virtually certain that a medical provider's lien will have arisen prior to an attorney lien (since the latter requires the filing or defense of an action). Medical provider lien laws in many states grant priority to some carve out of attorney fees prior to payment of medical expenses, but the lien laws in those states usually do not give medical providers

an independent cause of action against allegedly liable third parties, unlike in Idaho.

2. Also in White, supra, the Court of Appeals declined to apply the “common fund doctrine” to medical provider lien situations. The Supreme Court denied a review of the decision.
3. In the area of medical provider liens, it is the best practice to communicate early on with the medical provider and to keep the provider in the loop as a personal injury case proceeds. Sometimes an attorney will wait until he or she walks into a mediation with a liability insurer, and then call a medical provider seeking, say, a 75% discount on payment of outstanding medical bills. That approach will almost always fail. Many medical providers have established programs to consider charitable write-offs in appropriate circumstances, but most such programs require the injured party to provide written verification of income, expenses, and assets before the provider will consider any type of reduction.
4. These days, perhaps more often than not, even if an allegedly liable third party has liability insurance, the coverage limits may well be less than the medical costs. In such instances it is particularly important to keep in touch with the medical providers. Many times a settlement can be reached in which all interested parties agree to a pro rata reduction in order to fashion a settlement palatable to all parties. If that doesn’t work, then an insurance company may be left with no choice other than to file an interpleader action requesting a court to make the decision as to who will end up with a cut of the available insurance proceeds.
5. In addition, it has become more common for both insurers and governmental assistance programs (including Medicaid and Medicare) to include provisions (either in their contractual documents or in their administrative rules) allowing, or in some cases even requiring, medical providers to seek payment from potentially liable third parties before submitting a claim to the insurer or government agency, as the case may be.