

Watch Out for Liens When Settling Your Personal Injury Case

By Jason M. Pottenger, Attorney
The Pottenger Law Firm, Kansas City, MO

Watch Out for Liens When Settling Your Personal Injury

Liens Against Your Accident Settlement

After months or years of waiting, you're finally at the point of reaching a settlement for your personal injury claim. Don't let a surprise healthcare lien let your settlement come undone. If Medicare or Medicaid paid for medical bills resulting from a personal injury claim, you can expect those agencies to seek repayment from your settlement.

Why should I have to pay back my medical bills?

Clients are often surprised when a health insurance provider makes a claim for a portion of their settlement. But isn't your insurance provider supposed to pay your medical bills? Yes, it is, but when it comes to personal injury accidents, certain providers may be able or are legally entitled to reimbursement for those expenses.

For example, you were hurt through no fault of your own due to someone else's negligence. Your insurance provider agrees to pay for your treatment, as is its duty. But if not for the other person's negligence in the first place, you wouldn't have incurred these medical bills. Certain insurance providers, due to a subrogation agreement, have a right to be indemnified for the bills they pay on your behalf. Subrogation is a concept where an insurer can "step into your shoes" to go after the negligent party on your behalf.

The general rule is that health plans have no right of subrogation under Missouri law—however, there are exceptions to the rule.

Medicare (Federal Benefits)

The federal government has a statutory lien to recover Medicare payments for accidents or injuries. Medicare recipients who file personal injury lawsuits need to be aware by law that they will have to pay back Medicare from any judgment or settlement.

The recovery amount is not dollar for dollar, however. Medicare uses a formula that takes into account attorney's fees and expenses to determine how much they get paid back.

For example, if you were injured by one defendant who is entirely at fault and received a fair settlement, you would be required to repay the full amount of the Medicare lien reduced by the percentage you paid in attorney fees plus expenses. If you settled your case for less than its full value, Medicare will not reduce its lien. If you settled your case without an attorney, Medicare will only reduce its lien by the amount of expenses that you paid to prepare for the case, but you do not receive a reduction for the attorney's fees you avoided incurring.

You only need to repay Medicare for accident-related treatment. It's possible that Medicare may claim a lien for treatment it believes is related to the accident but really isn't (this usually happens based on a doctor's billing codes). That's why it's important to have your attorney make sure that all treatment Medicare has attributed to the accident is legitimate when he or she is submitting a request to reduce a lien for attorney's fees and costs.

Medicaid (State Benefits)

Medicaid also uses a formula for agreed upon subrogation amounts. The key difference from Medicare is that there is a statutory mechanism whereby a lawsuit may be filed against Medicaid, and an evidentiary hearing can be held in front of a judge. If evidence supports that the plaintiff is not being fully compensated for his or her injuries, the court has the ability to reduce Medicaid subrogation interest or eliminate it entirely.

State or Local Governmental Entity Governed by State Statute

These entities have the same rights as Medicaid, which means the statutory mechanism can be utilized to reduce or eliminate the repayment amount all together.

Self Funded Employer Plan Governed by the Employee Retirement Income Security Act of 1974 (ERISA)

ERISA-governed health plans are the most difficult to deal with. Because it is Federal legislation, it preempts Missouri Law. These often will not reduce or take into account attorney's fees or expenses, and often refuse to take into account whether the injured person has been fully compensated. Many agents of plans disingenuously claim that the plans are ERISA-governed when they are not. This is a constant battle fought by plaintiffs' lawyers to keep as much money going to their clients.

Why do I Need an Attorney?

Lien law is very complex, and you can find yourself in a difficult situation if you are not careful about allocating settlement money to repay potential liens. An experienced attorney can often negotiate with benefit providers to reduce the amount you owe. If you are a Medicaid recipient and need a significant reduction in your lien, you are best to hire an attorney who knows how to handle these court reduction hearings.

Contact Us

The most valuable asset to have on your side is a qualified and experienced Missouri personal injury attorney. The Kansas City personal injury lawyers at **The Pottenger Law Firm** can help protect your rights after an accident. Call **816.531.6006** or visit **www.pottengerlaw.com** today for a free consultation.