Provider Lien Law Statutory Changes

BITING THE HAND THAT HEALS

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I. THE OLD LAW

A. Eight Lien Acts

1. Hospital Lien Act
2. Physician's Lien Act
3. Emergency Medical Services Personnel Lien Act
4. Physical Therapist Lien Act
5. Home Health Agency Lien Act
6. Dentists
7. Optometrists
8. Clinical Psychologists

I. THE OLD LAW

<u>EACH</u> provided separately:

"[T]he total amount of all liens hereunder shall not exceed one-third of the sum paid or due to said insured person on said claim or right of action."

I. THE OLD LAW

Typically, trial courts would adjudicate all liens to one-third the total settlement or judgment.

I. THE OLD LAW

B. *Burrell v. Southern Truss,* 176 Ill. 2d 171 (1997)

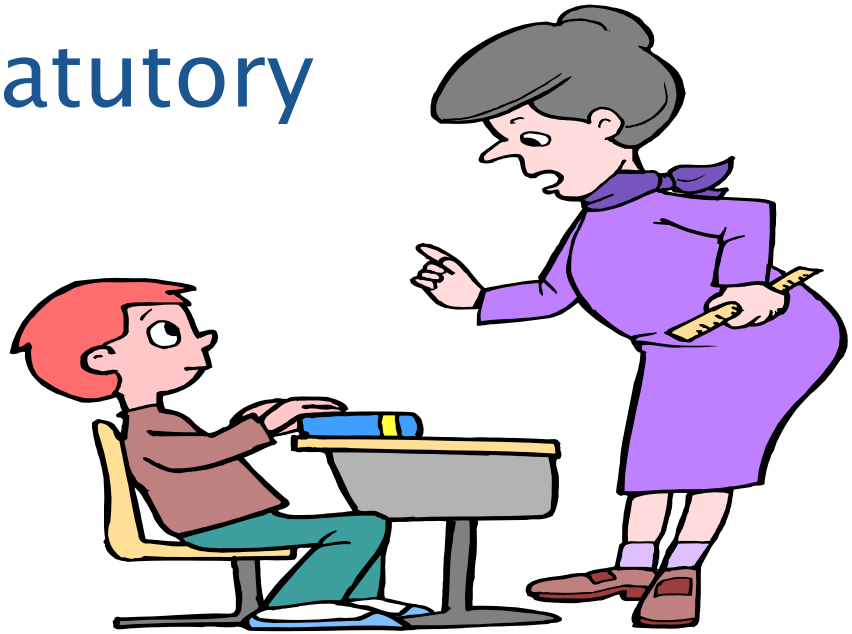
Illinois Supreme Court changes the outcome of lien disputes.

I. THE OLD LAW

- Plaintiff settled $8,500
- Three Liens which in total exceeded 1/3 settlement
- Trial court adjudicated liens to 1/3
- Appellate Court affirmed
- Supreme Court reversed

I. THE OLD LAW

- Liens brought under 2 separate Lien Acts (Hospital & Physicians)
- Strict statutory reading



I. THE OLD LAW

- "One-third" applied only to liens brought under each individual Lien Act
- Dissent pointed out chance for zero recovery by plaintiff

II. THE NEW LAW

"HEALTH CARE SERVICES LIEN ACT"

A. Effective for Liens perfected on or after July 1, 2003.

B. Repeals Eight Lien Acts

II. THE NEW LAW

C. Creates Two Categories

1. Health care professionals
(e.g., doctors)

II. THE NEW LAW

2. Health care providers
(e.g., hospitals)

II. THE NEW LAW

D. BOTTOM LINE

The total amount from both categories cannot exceed 40% of plaintiff's recovery

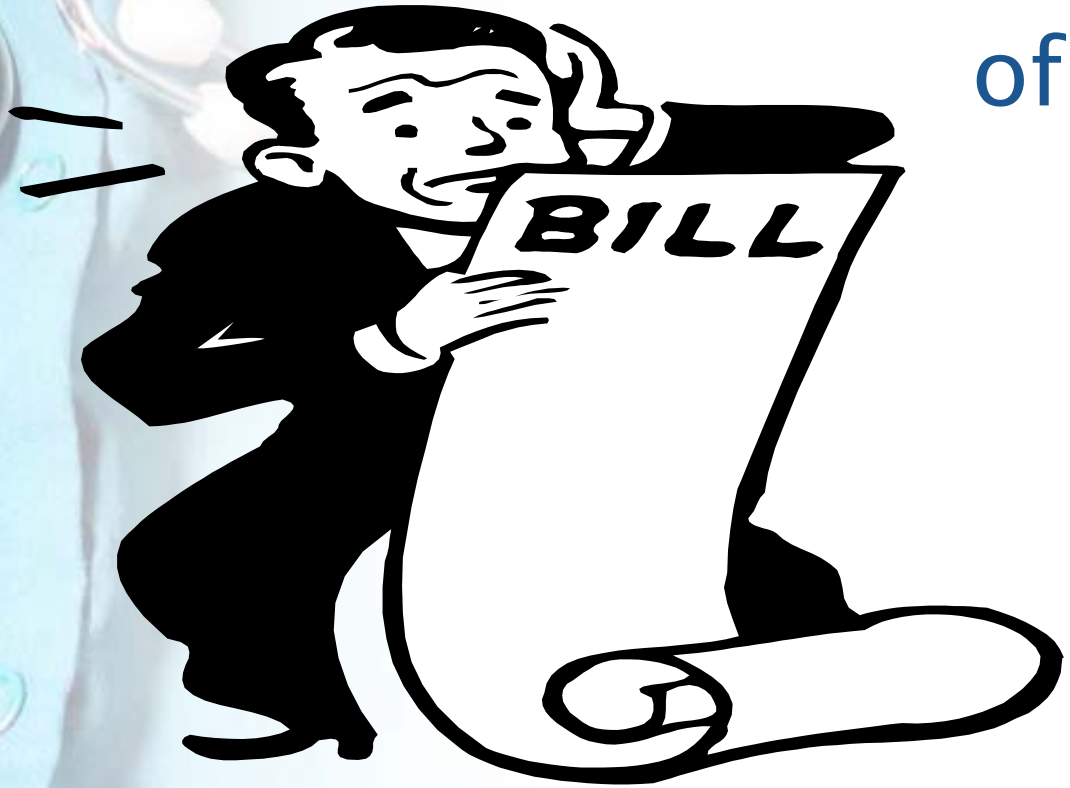
E. NO INDIVIDUAL CATEGORY CAN RECEIVE GREATER THAN 33%

II. THE NEW LAW

If total liens are >40%, then the two categories each are capped at 20% of plaintiff's recovery.

II. THE NEW LAW

If total liens are ≥ 40%, total amount of attorneys fees cannot exceed 30% of plaintiff's



III. WHAT THE LAW DOES NOT DO

A. Workers' Compensation Lien Excluded

B. Subrogation claims excluded from percentage limitation (e.g., med pay)

III. WHAT THE LAW DOES NOT DO

C. Nothing in Act limits health care provider/professional from pursuing collection of remaining amount

IV. FINAL NOTES

A. Keep tally on all liens

B. Look for whether lien perfected

1. Notice to Defendant/Insurer
2. Examination of Records Request - Can Wipe Out Lien

IV. FINAL NOTES

- Within 20 days of proper request, provider or professional must file or provide written statement of:
  - Nature & extent of injuries
  - Nature & extent of treatment rendered
  - Written statement of history of accident

IV. FINAL NOTES

- Failure or Refusal to provide such written statement renders lien null and void
- Remember HIPAA Compliance

IV. FINAL NOTES

C. Keep in mind Section 25 when pursuing settlement discussions

- knowing the cap is effective settlement tool.

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Presented by:

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When Results Count.

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