

## Injured patients discover hospitals seeking a piece of their accident settlements

*Liens often are much higher than what hospital would normally be paid for services, lawyers charge.*

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To this day, Jean Bogardus of Austin doesn't know what hit her.

She was walking in the parking lot of the Onion Creek Country Club on Feb. 7, 2007, when she was run over by a vehicle, leaving her right leg broken in three places.

"I think it was an SUV," Bogardus, 77, said recently, "but it all happened so fast."

At University Medical Center Brackenridge, she had surgery and went home two days later in a wheelchair with rods and pins in her leg. The hospital said her care cost \$31,115. Bogardus figured Medicare, her health insurer, would pay.

But instead of billing Medicare, the hospital filed a lien against Bogardus, staking a claim to part of any settlement she might seek from the driver's insurance company. That meant, if Bogardus was awarded a settlement, the hospital would get paid first.

Personal injury lawyers and some patient advocates say hospital liens — which have been permitted by Texas law since the 1930s — by themselves are not bad. It makes sense for hospitals to try to get paid, they said. But they see hospitals abusing liens by seeking drastically higher payments from accident victims than they would otherwise get.

The lien put Bogardus in the company of thousands of other accident victims in Central Texas who become embroiled in a tug-of-war over their settlements. UMC Brackenridge, Austin's only Level I trauma center, has filed more liens than any other hospital in Central Texas: 18,300 since 1999, according to Travis County property records. Four other hospitals, also operated by the Seton Family of Hospitals, have filed hundreds of liens each.

Many states have hospital lien laws to ensure payment of bills, especially when patients have no health coverage.

But Seton officials said they routinely file liens in cases where they anticipate an insurance settlement, regardless of the person's health coverage status. Spokeswoman Adrienne Lallo said the only time they don't automatically file liens is when the hospital bill is less than \$5,000.

Seton officials say they are only trying to recoup the cost of caring for the injured person. A hospital risks getting nothing, in some cases, if it doesn't file a lien, said Greg Hartman, president and CEO of UMC Brackenridge. It's especially important for a safety net hospital like UMC Brackenridge, which

because of its Level I trauma center sees a large number of accident victims — many of them uninsured. That's a worsening problem, Hartman said, in a state in which 25 percent of the population lacks health insurance.

Seton officials said they were unable to calculate how much they have collected from liens in the past two years. St. David's HealthCare stopped filing liens in early 2009, except in extraordinary circumstances, Chief Financial Officer David Wilson said. The liens "often created misunderstanding, and in some cases ill will with our patients" without bringing substantial financial benefit, he said.

When a patient like Bogardus has Medicare or Medicaid, the hospital is required to first seek payment from the person or party responsible for the accident, Seton officials said. Filing a lien is the most practical way to collect, Lallo said.

"If we fail to file a lien on, say, a motor vehicle accident settlement, we would preclude our ability to file for Medicare and Medicaid," Lallo wrote in an email.

Not so, federal officials said.

"In a liability situation where the liability insurance is in dispute, a hospital may bill Medicare conditionally," said Ellen Griffith, a spokeswoman for the Centers for Medicare & Medicaid Services. "Medicare will recover its conditional payments from the ultimate settlement, if any. This enables the hospital to be paid more promptly than if it had to wait until the liability dispute is resolved."

Hartman said that because the law requires hospitals to "do whatever you can to see if there's another payer" besides Medicare or Medicaid, "we feel it's our responsibility to get dollars that are awarded by the court to pay for medical care before we spend government tax dollars on care."

But a lien can bring the hospital more money.

Hospitals generally seek the full charges, or "list price," from accident victims, rather than the discounted rates that the government and other insurers negotiate for patients with Medicare, Medicaid and private insurance. For example, Seton gives managed care companies such as HMOs discounts from 10 to 55 percent, Lallo said, and uninsured patients get discounts ranging from 21 to 35 percent, depending on whether the person pays upfront for care.

Virtually no one pays the list price, hospital officials and lawyers agreed.

In Bogardus' case, Medicare would have paid \$10,866 — about 65 percent less than what the hospital actually charged her.

Under the state's lien law, hospitals may collect their "reasonable and regular rate," which personal injury lawyers say is often 60 percent less than the list price. That is why they object so strenuously when clients receive bills for the full charges, they said.

Glenda Owen, Seton's vice president of finance, said the list price is a starting point. "When we send that (bill) out the door, we're expecting to negotiate."

That's a smokescreen, said Mark Rukavina, executive director of the Access Project in Boston, a nonprofit interested in improving health and health care access.

"In a way the hospitals are shopping for the highest payer," Rukavina said. "It's excessive and unfair for them to be paid (full) charges."

Hal Bogardus, 80, Jean's husband and a retired semiconductor manager, scientist and engineer, said he had a word for it: "Egregious."

Resolution can take years

Hospitals often aren't the only lien filers after an accident. In settlement cases, it is common for the injured person's health and auto insurance carriers to file liens seeking repayment from the other party's insurance. Bogardus faced three other liens on the settlement, including one from her own auto insurance company, which was later waived, said her lawyer, Mike Davis.

Cases can take several years to resolve.

In February 2009, two years after the accident, Bogardus — whose right leg was  $\frac{3}{4}$  of an inch shorter than her left after the accident, causing her to limp — sued the driver's insurance company for the maximum amount of his policy, \$250,000.

Later that year, Davis also sued Seton and the company it uses to pursue its liens, Cardon Healthcare Network of The Woodlands, because the hospital "charges exceed the reasonable and regular rate for such services," the suit says.

Cardon offered to discount Bogardus' bill 15 percent, but Davis countered that the standard discount for her case at UMC Brackenridge would have been 60 percent off the list price.

Seton doesn't have a standard discount for Medicare and Medicaid but takes whatever those insurers pay, amounts that vary by diagnosis, Lallo said.

In the end, Bogardus paid Seton \$21,255, including \$14,255 from a medical plan that she had with Allstate, to settle the lien, about double what Seton would have gotten from Medicare. After paying her other expenses — including the other liens, medical expenses she incurred after her initial hospital stay and more than \$87,000 in attorneys fees and expenses — Seton estimated she was left with about \$60,000, an amount Davis would not confirm.

Bill would require notification

Often the injured person has no idea until months after their accident that a hospital has filed a lien against them. That's because Texas law doesn't require hospitals to tell them.

Because she had a lawyer, Bogardus found out about the hospital lien from him.

But Dianne Miller of Richardson said she didn't know for seven weeks that a lien had been filed after her accident. The car in which she was riding was struck head-on on her way to a Richardson City Council meeting on Nov. 19, 2007. Her leg was badly damaged in the accident, and the avid hiker, then 63, was told later she might be permanently disabled.

A few days after receiving that news, she received a letter from the hospital's lawyer informing her of the \$556 lien. Miller, who was covered by Blue Cross Blue Shield, thought the lien meant the hospital was trying to take her house.

"I was already in shock," said Miller. "It was not clear a hospital lien was a non-property lien."

She was furious, but because it was a relatively small amount, she decided to pay the lien, she said.

She testified this month in favor of Senate Bill 328, filed by Sen. John Carona, R-Dallas, which would require hospitals to send a notice to the injured person within five business days and explain the lien does not involve the person's house.

There is no penalty if a hospital fails to notify, Carona said, but he believes that "could place in question the collection" of the lien.

Lawyers object to liens' size

Judy Kostura, an Austin lawyer who is an expert on hospital liens, said, "It makes perfect sense to me that rather than write it off for charity, they (hospitals) might seek to recover some costs." But she objects to the size of the liens.

Lawyers don't like liens because they cut into what the lawyers get from a settlement, Hartman said. Lawyers dispute that claim, saying they typically get a third of the settlement and what is left is between the client and the hospital.

Austin lawyer Robert W. Lee said if he had not sued Seton and Cardon on behalf of Rosa Meza Aguirre, she would have been left with nothing.

Aguirre, who has six children and cleans houses for a living, was a passenger in her purple Neon on July 21, 2009, when it was struck by a tractor trailer changing lanes. The car spun out, crossing three lanes of traffic on southbound Interstate 35 and landing in the median near Wells Branch Parkway.

The impact forced her chest down onto the dashboard. Aguirre, 38, who did not have health insurance, underwent five CT scans at UMC Brackenridge, for which she was charged between \$3,097 and \$5,478 each. Her bill totaled \$31,368.

She had no broken bones, but two years later, her chest still hurts, and she also has pain radiating from her neck, Aguirre said.

"I don't have a quarrel with the diagnostic treatment," Lee said. "I think the real problem is when they charge a ridiculous amount \u2026 for three hours in the ER."

Doctors will reduce their fees for uninsured patients, Lee added, "but the hospital has this lien statute, and they've got all the power. You have no ability to negotiate until you file suit and go to court."

The hospital filed a lien for the full bill on Aguirre's settlement of \$57,500 from the trucking company. Lee had the charges analyzed by a California company that reviews medical bills; the company concluded that his client was overcharged \$22,915. Lee claimed her bill should have been \$8,453 and sued Seton, UMC Brackenridge and Cardon in May 2010.

Hartman said CT scans cost more at trauma centers because the centers are costly to operate, with specialists and sophisticated equipment. "It includes all of those overhead costs," he said.

The judge in the lawsuit said the hospital filed the lien too late, which gave Lee an advantage in negotiations. In the end, Aguirre paid \$10,000 to satisfy Seton's lien. After paying other bills and attorney's fees and expenses of \$19,166, her share was \$21,880.

"In the end, my goal is not to screw the hospital out of getting paid for their service, it's paying them what's reasonable," Lee said. "It seems like their goal is to make as much money as they can."

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