

ARIZONA COURT FINDS THAT HOSPITAL LIENS AGAINST TORT RECOVERIES OF MEDICAID PATIENTS EQUATES TO “BALANCE BILLING”



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Balance billing Medicaid subscribers has generally been forbidden by federal regulations. Despite this fact, Arizona providers have historically been entitled to file a hospital lien against an injured patient's tort recovery for the difference between any Arizona Health Care Cost Containment System (AHCCCS) payment and the provider's customary charge. A ruling by the Arizona Court of Appeals on April 3, 2018 in *Ansley v. Banner Health Network* held that federal regulations do not permit hospitals to file liens against a Medicaid subscriber's tort recovery action. The impact of this ruling is to effectively invalidate any such liens presently on file and stop providers from filing such liens in the future.

Liens Allowed on AHCCCS Non-Reimbursed Charges

Arizona's Medical Lien Statute states that a provider is entitled to a lien against an injured patient's tort claim for the provider's "customary charges." Further, if a patient has AHCCCS coverage, Arizona law permits a provider to collect, either from a third-party payer or in compliance with the Medical Lien Statute, any amount not paid by AHCCCS. Therefore, it has been interpreted that these Arizona statutes permit a hospital to file a lien against a patient's tort claim for any customary charge unpaid by AHCCCS.

Federal Rules Say No Balance Billing

Federal regulations require that a state Medicaid agency can contract only with providers who agree not to balance bill Medicaid patients. Contracted providers may only collect any patient cost share, such as

deductible, coinsurance, or copayment, from the patient. Under the Supremacy Clause of the U.S. Constitution, state laws that conflict with federal law are "preempted." Such preemption renders the state law unenforceable.

Federal Rules Preempt Arizona Statutes

The *Ansley* court reasoned that a tort award or settlement is a patient's property. Since federal regulations prohibit balance billing Medicaid subscribers, it follows that a hospital cannot impose a lien on that patient's property. It therefore held that federal law preempts Arizona's Hospital Lien statute, and liens against AHCCCS subscribers are invalid.

This holding was very narrow and only applies to the filing of liens in situations where the tort involves an AHCCCS subscriber; other Medical liens, not conflicting with federal Medicaid balance billing regulations, remain in force.

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