

POST MEDI-CAL LIENS;
PHYSICIAN AND ATTORNEY RIGHTS AND RESPONSIBILITIES

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Medical care providers need to be aware of their rights, and personal injury attorneys need to be aware of their responsibilities, when an accident victim covered by Medi-Cal pursues a personal injury action. All citations are to the California Welfare & Institutions Code.

1. **Notification of Medi-Cal and Medical Care Providers.** When an attorney brings a personal injury claim on behalf of a Medi-Cal eligible patient, the attorney must within 30 days notify (a) Medi-Cal of its right to reimbursement, and (b) each medical care provider of their right to file a lien on that personal injury claim. Notification is due 30 days after a claim is first made, not just when a lawsuit is filed. Notification of the providers must be made by personal service or by registered mail, and proof of service on those providers must be filed with the court. §§14124.73 and 14124.791(b).

2. **Liens for Repayment.** Medi-Cal has an automatic right to reimbursement from any award or settlement obtained. §§14124.72(c) and 14124.78. However, medical care providers need to file a lien with the attorney or the court to guaranty a right to payment. §14124.791(a). The law does not specify with whom or how this lien should be filed. I recommend that the lien should be filed with the patient's attorney immediately, and with the court if and when the case is filed.

3. **Reimbursement Limited to 75% of Billings.** After costs and reasonable attorneys' fees are paid from a settlement or award, Medi-Cal has a lien for up to 75% of the Medi-Cal payments made. §§14124.72(c) and (d), and 14124.74(a). However, Medi-Cal's total recovery cannot exceed 1/2 of the total recovery after deducting attorneys' fees, costs and related out-of pocket medical expenses (but not including lien payments to be made to medical care providers). §§14124.78, 14124.791(d).

Once the Medi-Cal lien is fully paid, medical care providers with liens are entitled to recover up to 75% of their respective fees (without interest) less all payments previously received from Medi-Cal. §14124.791(a). Payments are made pro-rata to the providers if there are insufficient funds to pay all the liens in full.

The remaining 25% must be written off by the providers. The write-off represents the lienholder's reasonable share of the patient's attorneys' fees and costs, and is treated as a partial refund on the attorneys' fees that the patient incurred in pursuing the action.

4. **Method of Deposit of Medi-Cal Payments, Subsequent Refunds to Medi-Cal, and Payment on Medical Provider Liens.** §14124.791(a) is unclear as to the timing and procedure by which Medi-Cal payments made to medical care providers should be refunded to Medi-Cal. Discussions with our local Medi-Cal Director and Medi-Cal officials in Sacramento yielded the following as the proper approach:

Medical Care Providers:

- (a)** Submit the patient's bill to Medi-Cal in the normal course of business. When Medi-Cal payment is received, deposit it in general funds. Medi-Cal should be billed immediately, even if you are aware that the patient has personal injury action pending.
- (b)** When the personal injury action is discovered, immediately file your lien with the attorney. File the lien whether or not the attorney has provided you the required notice, since the attorney may not be aware of his obligation to notify you. Once you discover the action has been filed in court, file your lien with the court and serve a copy of the lien as filed on the attorney. DO NOT refund the Medi-Cal payments already received; these will be refunded if and when payment on the personal injury action is made.

Personal Injury Attorneys:

- (a)** When you learn that your client's medical bills are (or will be) covered by Medi-Cal, notify the medical care providers and Medi-Cal as required of their rights to a lien on the action. Submit proof of service of that notice to the court if and when a lawsuit is filed.
- (b)** Upon successful resolution of the action, refund the providers' share of Medi-Cal payments directly to Medi-Cal as part of Medi-Cal's lien under §§14124.74(a) and 14124.72(d). After making the required payment to Medi-Cal, pay the providers the remaining amounts available on their respective liens under §§14124.791(c) and (d). If full payment on the liens cannot be made, identify and itemize the priority payments made, and itemize the pro-rata distribution made on the liens, when making payments to the providers.