MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Senator(s) Farris To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2736

AN ACT TO CODIFY SECTION 41-9-121, MISSISSIPPI CODE OF 1972, TO CREATE A LIEN UPON ALL CLAIMS AND CAUSES OF ACTION OF AN INJURED PERSON FOR THE AMOUNT OF ANY PORTION OF THE HEALTH CARE PROVIDER BILL THAT IS OWED BY SUCH PERSON; TO PROVIDE FOR PAYMENTS BY THIRD-PARTY PAYORS TO HEALTH CARE PROVIDERS IN SUCH SITUATIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following provision shall be codified as Section 41-9-121, Mississippi Code of 1972:

41-9-121. (1) **Definitions.** For purposes of this section:

(a) "Injured person" shall mean any natural person who has been injured or killed or has become sick or diseased under circumstances creating a cause of action in favor of the injured person against any person, firm or corporation third party.

(b) "Health care provider" means a licensed physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor.

(2) **Health care provider lien.** Each health care provider that renders service in the treatment, care and/or maintenance of an injured person shall have a lien upon all claims and causes of action of the injured person for the amount of any portion of the health care provider bill that (a) is unpaid and (b) the patient or his third-party payor is legally obligated to pay. The health care provider lienor shall be entitled to recover the unpaid amount of its bill for the treatment, care and/or maintenance of the injured person that the injured person is legally obligated to pay from the proceeds that may result from the exercise of any rights of recovery by or on behalf of the injured person. The injured person shall execute and deliver instruments and papers

and do whatever is necessary to secure the health care provider lienor's rights to such recovery and shall do nothing to prejudice the rights of the health care provider lienor. No judgment, award, settlement or compromise secured by or on behalf of an injured person shall be satisfied without the injured person or his or her authorized representative first (a) satisfying the health care provider lien from such monies received or to be received from such judgment, award, settlement or compromise and (b) securing a release from the health care provider lienor evidencing the payment or extinction of the lien.

No judgment, award, settlement or compromise received by or on behalf of the injured person shall be binding upon or affect the rights of the health care provider lienor against the third party unless the health care provider's lien is satisfied or extinguished. Any proceeds of any judgment, award, settlement or compromise received by or on behalf of an injured person in the absence of a release or instrument of satisfaction of lien executed by the health care provider lienor shall constitute conclusive evidence of the liability of the third party to the health care provider for the amount of the lien, and the health care provider lienor, in litigating its claim against the third party, shall be required only to prove the amount and correctness of its claim relating to its charges for the treatment, care and/or maintenance of the injured person that remain unpaid and that the injured person is legally obligated to pay.

The health care provider lien created under this section exists by virtue of the relation of the parties and the services rendered, and without any writing, or if in writing, without recording; and the rights and liens conferred may be asserted and enforced by the assigns and personal representatives of the lienor.

Notwithstanding anything in this section to the contrary, in no event shall the total amount a health care provider recovers as

a result of its lien under this section exceed one-third (1/3) of the amount of the verdict, judgment, award, settlement or compromise secured by or on behalf of the injured person on his or her claim or right of action.

As long as the charges for the treatment, care and/or maintenance of the injured person that the injured person or his third-party payor is legally obligated to pay are unpaid, nothing herein shall be construed to diminish or otherwise restrict the rights of the health care provider to pursue payment of those charges in its regular course of business.

Nothing in this section shall be construed to create a health care provider lien upon any limited benefit health insurance policy, nor to require satisfaction of the health care provider lien from monies received under any limited benefit health insurance policy.

(3) **Payments by third-party payors.** In the event an injured person has healthcare coverage with a third-party payor, and as a result of such coverage, such third-party payor is legally obligated to pay the health care provider for all or a portion of the treatment, care and maintenance delivered by the health care provider to the injured person, then in such event the third-party payor shall make such payment to the health care provider within the same time period it would otherwise make payment without taking into account the possibility of a monetary recovery by the injured person from the wrongdoer. In no event can a third-party payor withhold from the health care provider or the injured party monies that it is legally obligated to pay because of the anticipation of a verdict, judgment, award, settlement or compromise that may be secured by or on behalf of the injured person on his or her claim or cause of action.

SECTION 2. This act shall take effect and be in force from and after July 1, 2002.