

## WISCONSIN HOSPITALS MAY MAINTAIN A STATUTORY LIEN ON A MEDICARE-ELIGIBLE PATIENT'S PERSONAL INJURY CLAIMS AFTER THE MEDICARE BILLING PERIOD EXPIRES

In *Laska v. General Casualty Company of Wisconsin*, No. 2010AP2410, slip op. (WI App Mar. 14, 2013), the Wisconsin Court of Appeals held that charitable hospitals may, instead of billing Medicare for treatment of a patient, pursue payment by filing a statutory lien against any tort claims and any settlement or judgment resulting from the patient's claims, even if that lien is enforced after the Medicare billing period has expired.

In *Laska*, the patient ("Laska") was Medicare-eligible when treated by the Hospital in 2007. Instead of billing Medicare, the Hospital filed a lien under Wisconsin's hospital lien statute, Wis. Stat. § 779.80. Laska initiated a tort action against several defendants and joined the Hospital in the suit. The Hospital did not submit a bill to Medicare during the time period in which the Hospital could have billed Medicare for Laska's treatment. Relying on Medicare's "Provider Agreement" Statute, Laska argued that the Hospital was required to drop its lien and terminate billing efforts after the billing period expired because the claim had neither been paid nor settled prior to expiration of the billing period. The Hospital countered that the Medicare Secondary Payer ("MSP") Statute did not require the Hospital to withdraw its lien. The circuit court granted summary judgment to the Hospital, and Laska appealed.

The Court of Appeals noted that the Provider Agreement Statute is designed to protect the Medicare beneficiary and other persons from being charged for services if the beneficiary or person is "entitled" to have Medicare pay for those services. Similarly, as a way of lowering the cost burden on the Medicare program, the MSP Statute makes Medicare a secondary payer for services provided to a Medicare-eligible patient when "payment has been made or can reasonably be expected to be made under a worker's compensation law or plan . . . or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance." 42 U.S.C. § 1395y(b)(2)(A)(ii).

Relying on two federal court decisions, the Court of Appeals held that when a liability insurer has paid or could reasonably be expected to pay the provider, a Medicare beneficiary is not "entitled" to have services paid by Medicare. Here, because Laska did not argue that no liability insurer could be reasonably expected to pay in his case, he had not properly established that he was "entitled" to have Medicare pay for the services.

With regard to whether the Hospital could maintain its lien against Laska's tort claims after the billing period expired, the court cited federal law that provided the Hospital with the following choice: either bill Medicare before the billing period expires and withdraw its lien against Laska's claims or continue to maintain its lien against Laska's claims and forego payment from Medicare. The court noted that neither the statutory language nor the policy of the Provider Agreement Statute or the MSP Statute supported Laska's contention that the Hospital was required to withdraw its lien. Under state law, the court noted that the recent Wisconsin Supreme Court decision in *Gister v. American Family Mutual Insurance Co.*, 2012 WI 86, 342 Wis. 2d 296, 818 N.W.2d 880, supported the conclusion that the lien in Laska's case was permissible. The Court of Appeals recommended the decision for publication.

If you have questions regarding the decision or hospital liens in general, please contact:

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