

EXPLAINING HEALTHCARE LIENS IN PERSONAL INJURY SETTLEMENTS TO YOUR CLIENTS



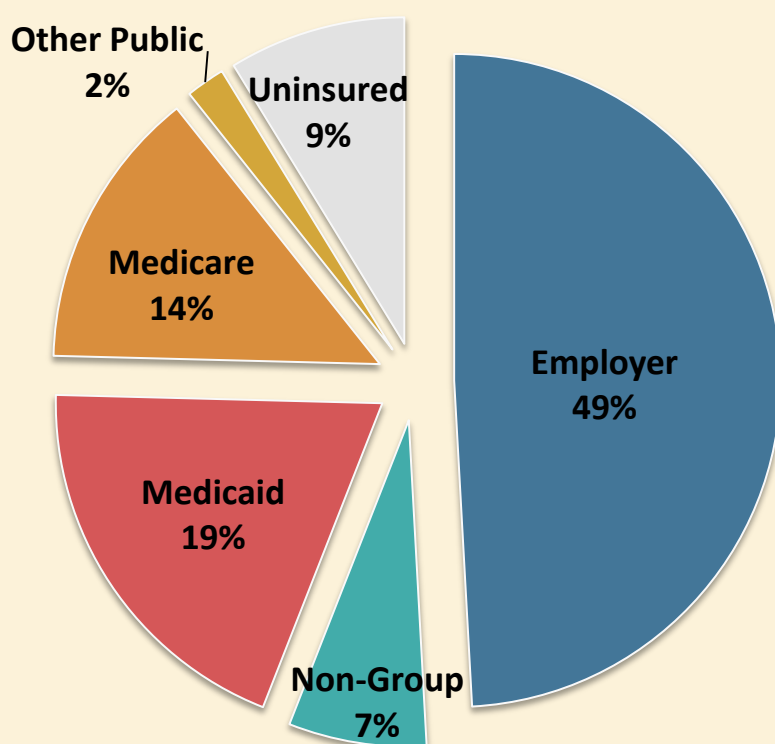
“What is a healthcare lien and why was money deducted from my settlement award?”

People commonly believe that healthcare coverage should pay for all of their medical care, no matter what the cause. However, **the concept behind healthcare liens in personal injury settlements is that the responsible or negligent party should pay the injured person’s medical bills.** Therefore, despite the fact that you have paid premiums, co-pays or deductibles, if a third party (that is, a “defendant” in a personal injury claim) is liable for your injury, then that party ultimately should pay your medical bills, not your healthcare plan. If your insurer pays for medical care that should have been paid for by the person or entity that caused your injury, then the insurer should be able to recover its expenses from any settlement award you receive from the responsible party.

Most healthcare plans—whether provided through federal or state government programs or by your employer—assert their right to place a claim (a lien) on any settlements when you become entitled to benefits and accept coverage. Typically, a healthcare lien focuses solely on recovering injury-related medical expenses the plan paid for from the date of injury through the date of settlement. This right of recovery is disclosed in the plan documents, but most consumers are not aware of this or even think about it; after all, most people never foresee themselves being the victim of a personal injury event.

Health Insurance Coverage in the U.S.¹

To understand healthcare liens, the first order of business is to have a strong grasp of the type(s) of medical coverage you currently have or expect to have in the future. In the United States, there are numerous ways to obtain coverage. The pie chart illustrates health insurance coverage of the total population.



GOVERNMENT PLANS

MEDICAID:

Medicaid is a joint federal and state program that provides healthcare coverage based on individual need. Each state administers its own program, but the federal government gives each state money for Medicaid expenses. Because each state runs its own program, the laws for each program vary. **Medicaid has a right of recovery that is similar but secondary to Medicare’s.**

MEDICARE PARTS A and B:

Medicare is the federal government’s healthcare program, which provides coverage for people 65 or older and those under 65 who are disabled, suffer from permanent kidney failure (or end-stage renal disease), or are diagnosed with Lou Gehrig’s disease. **If Medicare has paid for any treatments related to an injury covered by a settlement, federal law gives Medicare the first right to recover some or all of its payments.**

OTHER GOVERNMENT PLANS:

Programs such as TRICARE, Veterans Affairs (VA), CHAMPVA and Indian Health Service (IHS) are federally administered by the U.S. government. TRICARE benefits are provided to all active military service members, their families, and retirees. VA benefits are provided to all eligible and enrolled veterans for outpatient and inpatient services at VA facilities. CHAMPVA is a federal healthcare program for the spouses or children of veterans who are permanently disabled or deceased because of a service-connected disability. Indian Health Service is a federal health program for American Indians and Alaska Natives; the program provides benefits and healthcare at IHS facilities operated by the federal government.

PRIVATE INSURANCE

PRIVATE INSURANCE:

Private health insurance plans are administered by many different insurance companies. Most Americans on private insurance get their coverage through their employer. Such plans are often referred to as ERISA plans because they are subject to the rules established under the Employee Retirement Income Security Act. This federal law sets minimum standards for most voluntarily established pension and health plans in private industry, to ensure that the plans provide protection for participating individuals. **Under private insurance plans, lien obligations most often arise from a contract between the plan member and the plan, which takes effect when the member accepts coverage.**

One type of private insurance, called *Medicare Part C*, is a replacement for Medicare Parts A and B. Medicare Part C plans are typically provided by a private insurer. Although the specific rights of Part C payers to recover is a matter of some debate, many settlements require that Part C interests be identified and resolved.

What Law Firms Need to Do

Be aware that, depending on personal circumstances (employment, income, health status, military service, etc.), any one of your clients may be covered by a combination of healthcare plans, both governmental and private. Early in the settlement process, you should gather information about your client’s healthcare coverage. To obtain the most favorable lien resolution terms and avoid surprises, this information needs to be as complete as possible.

Want to know more? Download our free e-books!

- *Does Your Retainer Agreement Still Cut it?* contains helpful tips for updating your case intake process to collect healthcare information upfront.
- *The Complete Guide to Healthcare Liens in Personal Injury Settlements* is a guide for claimants, written to help them understand how healthcare liens factor into settlements

¹ Source: [Henry J. Kaiser Family Foundation, Health Insurance of the Total Population](#)