

2019 SUMMARY OF HEALTHCARE LIEN RIGHTS IN CONNECTICUT

Medicare Part A and B - a/k/a Original Medicare	
What is it?	Traditional Medicare for Inpatient (Part A) and outpatient (Part B) care.
Valid Lien?	Yes, but only for related benefits. If future related treatment is likely, you also must consider Medicare's interests.
Should I notify?	Yes, whenever client is Medicare eligible. If you don't, you, your client(s), defendant(s) and/or insurer can be held liable. Contact Center for Medicare Services (CMS) to request summary.
Any legal arguments to reduce lien?	Yes, by costs of procurement, calculated as $\frac{\text{Atty fees+costs}}{\text{gross settlement}}$ x amount Medicare paid. Also can request hardship waiver or compromise from CMS.
Medicare Part C - a/k/a Medicare Advantage Plans (MAP)	
What is it?	Subsidized HMO program for those eligible for Medicare that is offered in lieu of Parts A, B & D.
Valid Lien?	Probably although unsettled in U.S. Second Circuit. Be aware of 42 C.F.R. §422.108(f).
Should I notify?	Maybe. You should consider: a) Obtaining MAP policy and confirm that it contains subrogation rights (if not, no lien); and b) Defendants/insurers will likely require hold harmless language in release and may have liability for double damages to the MAP ipso facto, so may your client. <i>See, e.g., In re Avandia</i> , 685 F.3d 353 (3rd Cir. 2012); <i>Aetna v. Guerrero</i> , No. 3:17-CV-621 (US Dist Ct CT) (March 13, 2018).
Any legal arguments to reduce lien?	Yes. At a minimum they must reduce by same procurement cost formula for Medicare A & B above. Also, can negotiate based on uncertainty in existing law. <i>See e.g., Primax v. Yarmosh</i> , No. 3:03-CV-1931 (AWT) (Sept. 7, 2006)
Medicare Part D - a/k/a Medicare Prescription Drug Plans (PDP)	
What is it?	Extra prescription coverage for Medicare A & B.
Valid Lien?	Probably, although like Part C unsettled in U.S. Second Circuit.
Should I notify?	Maybe. See same consideration as for Medicare Part C above.
Any legal arguments to reduce lien?	Yes. Same as Medicare Part C. Courts have generally applied same rights for Part C insurers to Part D Insurers.



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Medicaid - a/k/a Husky A, C and D	
What is it?	Need-based federally funded insurance administered by the State.
Valid Lien?	Yes, but only for related benefits paid.
Should I notify?	No, unless client tells you to. However, client is likely required to pursuant to agreement to obtain benefits and should be advised of his/her responsibilities if not notifying.
Any legal arguments to reduce lien?	It depends. Where there is limited coverage, liability challenges or other reasons plaintiff is not fully compensated, Medicaid must reduce its lien by same percentage as plaintiff. <i>See Arkansas v. Ahlborn</i> , 547 U.S. 268 (2006) and progeny.
ERISA Self-Funded Insurance Plans and Labor Union Self-Funded Plans	
What is it?	Employer and Union health plans funded by Unions, which may be administered by others.
Valid Lien?	Yes, if plan language provides for lien rights against specific proceeds and truly self-funded (Review Plan and IRS Form 5500).
Should I notify?	No, unless informed client tells you to. But client is likely required to notify pursuant to plan documents and failing to address contractual obligations may impact clients rights including future benefits..
Any legal arguments to reduce lien?	Sometimes. Demand full plan and summary plan documents. Plan language must: a) identify a specific source (i.e. settlement funds) for recovery; b) specifically contain rights for particular claim (e.g., UM/UIM claim; specifically contract away all equitable remedies like make whole or common fund doctrine.
ERISA Private Health Plans, Obama Care - a/k/a ACA Plans, and all other Private Health Insurance	
What is it?	All employer sponsored health plans or individuals that purchase private insurance.
Valid Lien?	No. Prohibited by Connecticut's Anti-Subrogation statute, C.G.S. §52-225c.
Should I notify?	There is no valid lien in Connecticut.
Any legal arguments to reduce lien?	There is no valid lien in Connecticut.

Remember, if there is a valid lien there is no collateral source reduction pursuant to Marciano v. Jimenez, 324 Conn. 70 (2016), and defendant is liable for entire medical bills, even where lienholder plays less than full amount.



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