

Nationwide UCC Lien Statute Helps Providers to Collect in Trauma Cases... and Patients to Receive Care From Wherever They Choose

What This Nationwide Lien Statute Could Mean for Health Care

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Publisher's Note: The following paper, originally made available by Tipology.net, has been submitted to various health care groups and organizations for review. If you wish to republish this article in whole or in part, please contact Tipology. In this article, Mr. Pendleton encourages readers to verify the UCC Lien Law for themselves, and also to speak with corporate counsel on the topic.

Providers and staff – there is, I believe, a highly-valuable body of law which can help you and your patients. This body of law has been developed over the past sixty years. In the last ten years, however, the law has been amended in every State to apply specifically to health care practitioners.

The law is so significant -- and actually has been so impactful -- that any creditor is encouraged to exercise care in the way it is used. Please consider speaking with corporate counsel before incorporating it into your procedures.

A copy of my company's most current "[Model Assignment & UCC Lien Document](#)" – a related resource – is also posted at Tipology along with this article.

1. Quick Intro to the UCC Lien Law

The law I'm referring to is Article 9 of the Uniform Commercial Code (UCC) entitled, "Secured Transactions." Aka, "UCC Lien Law." The UCC Lien Law is different from the medical lien statute which may exist in your State. It is an *alternative* lien law. It is quick, easy, and has few limitations. It also does not discriminate as between health care practitioners. What's more, every State (including YOUR State) has one.

For those of you who have never heard of this law, the UCC Lien Law is all about how creditors (such as health care providers) may obtain a “security interest” with respect to debts owed to them by debtors (such as patients).

In other words, it’s about how health care providers can potentially obtain fundamental rights with respect to many types of payers including: The right to be paid *directly*; the right to receive pertinent information when claims are delayed or denied; the right to appeal.

The UCC Lien Law is about enhancing your ability to get paid.

More importantly, it’s about helping patients to receive care from the providers of their own choosing.

2. Why is the UCC Lien Law Relatively Unknown in the Health Care Context?

Very few health care providers, staff, and organizations have known about the UCC Lien Law. There may be many reasons for this, but here are just three to illustrate. First of all, while the UCC Lien Law specifically mentions health care providers, such references are buried deep within the law. The UCC is about *commerce in general*. It does not relate *exclusively* to health care enterprises.

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Secondly, the UCC uses terms that are not commonly used in the health care context. Instead of “payers” and “insurance companies,” in the UCC we hear phrases like “account debtors.” Instead of insurance benefits and settlement proceeds, in the UCC we hear phrases like “health-care-insurance receivables,” “payment intangibles” and “collateral.” These are strange phrases to most of us, at least when it comes to insurance and settlements. One of the reasons that the UCC Lien Law is not well-known boils down to a “language barrier” factor.

Thirdly, it was only ten years ago that the UCC lien statute was amended to specifically mention health care providers as legitimate creditors. Ten years may sound like a lot of time, but for those of you who have kids, think of how time has flown with them. Ten years is actually not that much time.

The purpose of this article is to help disseminate information regarding the UCC Lien Law and also to make it more accessible to small and medium-sized practices throughout the health care industry.

I myself learned about the UCC Lien Law in 2002. I learned about it from another attorney when the law was amended to specifically refer to health care providers. Even though I am a health care attorney, and even though I am in the business of dispensing reimbursement information, I did not get around to introducing and teaching the UCC Lien Law until 2005. Personally, I wanted to learn as much about the law as I could, to see it in action, to receive input, etc. Moreover, as with all resources of this nature, it simply takes time to cultivate educational templates. It was only recently that I began to bring this information to the attention of various health care groups and organizations.

All good things in time, right?

The purpose of this article is to help disseminate information regarding the UCC Lien Law and also to make it more accessible to small and medium-sized practices throughout the health care industry. It will continue to take time for this type of information to filter out and get to where it needs to go. The UCC Lien Law may also need to go through a period of debate, experimentation, and use before it reaches “steady state” throughout the health care industry.

3. Why is the UCC Lien Law So Potentially Beneficial?

So why do I believe that the UCC Lien Law is so potentially valuable to you and your patients? Two main reasons. First of all, on July 1, 2001, the UCC began to provide lien protection nationwide to all health care practitioners, including chiropractors, without prejudice or

discrimination.¹ Basically, each and every State has now declared that the right to receive the insurance **proceeds** shall be *freely transferable* by *any* patient to *any* health care provider regardless of network participation. As a general rule, any restrictions in a policy, plan, or agreement that prohibits doctor “liens” or “assignments” are no longer permitted.² **“Free transferability” of insurance proceeds is a key component to the ability of the health care provider to get paid as a creditor.** Simultaneously, the UCC’s stance on “free transferability” helps patients to receive the care they need from the providers they choose, and it does so without prejudice or discrimination.

I’ll come back to these points in just a moment.

Secondly, the UCC effectively calls for Congress to follow its example when it comes to “free transferability.” Unfortunately, the UCC by its very terms only applies to certain types of insurance plans and payers. It does not apply to insurance coverages or benefit plans governed by contrary federal law. Nonetheless, the legislatures in all fifty States have spoken. Specifically, every single State Legislature has asked Congress to follow their example by adopting a similar policy of “free transferability.” Specifically, the UCC states: *“[While the UCC] does not override federal law..., it does reflect an important policy judgment that should provide a template for future federal law reforms.”*³

4. Experience Bears Out What the UCC Lien Law Mandates – “Free Transferability” is Key to Getting Paid

Over the past 10 years, I’ve documented over thirty scenarios where assignments and UCC liens have helped health care providers substantially improve their collections in trauma cases. In this brief section, I’ll explain just a few. As time progresses, I will be publishing the various scenarios under separate cover.

¹ See, e.g., UCC Section 9-309(5); See, also, [“U.C.C. Revised Article 9. Secured Transactions: 1998 Annual Meeting Draft with Prefatory Note and Reporter’s Notes,”](#) Summary of Revisions, p. 2, The National Conference of Commissioners on Uniform State Laws (NCCUSL), available at the Biddle Law Library, University of Pennsylvania Law School, as of 02-10-11; [“Why States Should Adopt the Uniform Commercial Code - Revised Article 9 \[Effective as of the Uniform Effective Date, July 1, 2001\]: Concerns for a State that Fails Timely to Enact Revised Article 9: The Choice of Law Problem,”](#) NCCUSL, September 15, 2000, as of 02-10-11; [“The Uniform Commercial Code Survey: Introduction,”](#) by Robyn L. Meadows, Carl S. Bjerre, and Stephen L. Sepinuck, Business Lawyer, August 1, 2001, as of 02-10-11;

² See, e.g., UCC Section 9-408, Comment 2

³ See, e.g., UCC Section 9-408, Comment 9

The success of providers in getting paid depends first and foremost upon the transfer of two main rights: the right to be paid *directly* and the right to receive *pertinent information* as to why the claims have been delayed or denied. *Recall that the transfer of such rights is what assignment and lien laws – such as the UCC Lien Law -- are all about.*

a. The Right to Direct Payment

Ask any provider who treats trauma cases and that provider will tell you. It's not uncommon for a personal injury and worker's compensation attorney to ask for a reduction of 50% or more. In some cases, a request for voluntary reduction does not accompany partial payment. In such cases, the partial payment comes with the restriction, "payment in full." While some providers may see this as the "cost of doing business," many that I've encountered have felt challenged enough by this practice that in some instances, they opt not to treat trauma care cases. Yet, what many providers don't know is that through an assignment, UCC Lien Law, and/or other means, they are able to "plug the loophole" which enables the unilateral reduction of charges without the provider's consent. In other words, they are able to establish a *right to direct payment*... and effectively require legal counsel to afford to the provider the same level of duty of loyalty as the attorney owes to the patient. This gives provider *choice*. It gives the provider the ability to decline part or all of a reduction request if, as, and when the situation requires.

Assignments and UCC Liens, however, do not just help to create a right to direct payment with respect to attorneys. *They also help to create a right to direct payment with respect to the accident policies themselves, such as automobile and worker's compensation policies in unrepresented cases.* So for example, in instances where the patient "fires" the attorney, or the attorney "drops" the patient, or where the patient never retains an attorney, the provider is still able to be paid directly by the accident insurance payer. Payers who breach such rights do so at their own peril, potentially obligating themselves to have to pay the provider even though they may have already paid out the proceeds to the patient.

b. The Right to Pertinent Information – The Case of Dr. Howard Fidler

Side-by-side with the right to direct payment is the right to receive "pertinent information," that is, the right to know why payment is being delayed or denied. In fact, the right to receive pertinent information is as important, if not more important, than the right to direct payment itself. It should be noted that the right to pertinent information doesn't just apply to the accident insurance policies; it also applies to attorneys as well. Oftentimes, when a payer is delaying claims -- or has denied claims -- a few simple questions followed by a few simple answers are

usually sufficient to get the claims paid. By the same token, the ability to ask and expect answers from attorneys plays a fundamental role in improving insurance collections in trauma cases.

Recently, I published a News Alert about how Dr. Howard Fidler, a chiropractor who practices in St. Louis Park, MN, recently “freed up” \$7,300 of payments that were being withheld the automobile no-fault payer. You can read this story [here](#), but to make a long story short – the payer in this case was not issuing payment because the patient had never submitted the Application for Benefits. This is totally understandable. If you were the payer in this case, you most likely would have withheld payment as well. But that’s not what this story is really about. What this story is *really* about is what happened when Dr. Fidler called the payer to discover why payments were being withheld. “*We can’t tell you that,*” was the response. “*We can only tell the patient and the patient’s attorney.*” That’s when Dr. Fidler explained his assignment and UCC lien, and how they transferred to him the very same rights that the patient has, including the right to receive pertinent information. At that point, Dr. Fidler pulled out a copy of the Assignment and UCC Lien Document which the patient had signed, and read to the adjuster from the section entitled, “Disclosure Directives.” The adjuster didn’t even ask Dr. Fidler to send a copy of the document to her. At that point, she explained to Dr. Fidler that the patient had never signed an Application for Benefits. Needless to say, the Application for Benefits was signed and submitted that very day and two weeks later, Dr. Fidler received his payment.

[T]he right to receive pertinent information is as important, if not more important, than the right to direct payment itself.

This case may sound very simple. Yet, this type of scenario occurs every day in trauma care practices. The right to receive pertinent information plays a fundamental role in the ability of the health care provider to get paid.

As stated previously, over the past 10 years, I’ve documented over thirty such scenarios where assignments and UCC liens have helped health care providers substantially improve their collections in trauma cases. As time progresses, I will be publishing these scenarios under separate cover.

5. Some Responses to the UCC Lien Law

As more and more providers begin to utilize the UCC lien statute, I am beginning to see payers at the corporate or legal counsel level formally acknowledge the law.

Just recently, for instance, two major automobile insurance payers recognized the law in writing. Legal counsel for one of these payers wrote: "[Our auto insurance carrier] acknowledges [the provider's] UCC lien" and "[The provider's] UCC lien requires that [our auto insurance carrier] direct any payment made, pursuant to the applicable policy, to [the provider] instead of [the patient]."

Quite understandably, not all attorneys share the same view of the UCC Lien Law. Some will admittedly tell you that the UCC falls outside their area of expertise. Others have elected to push back on the law, at least in the health care context. For example, one personal injury attorney, who was presenting to a group of chiropractors reportedly said, "*I don't care what any attorneys say, if you file for a lien, you're going to jail.*" Others have stated that the UCC Lien Law does not particularly concern them because they're "*not really into 'messing' with the doctors anyhow or patient choice.*" On a different occasion altogether, when the topic of the UCC Lien Law arose, an attorney who represents both personal injury and corporate clients exclaimed, "*I LOVE the UCC lien statute, it's awesome!*"

So in other words, if you're going to utilize the UCC Lien Law, make sure to become well informed on the topic.

6. What If My State Already Has an Existing Medical Lien Statute Which Applies to Me?

Interestingly, in some States, providers are actually beginning to use such alternative remedies to bypass the "downsides" inherent in their existing medical lien statutes (including the filing fees associated with such liens).

"[Our auto insurance carrier] acknowledges [the provider's] UCC lien" and "[The provider's] UCC lien requires that [our auto insurance carrier] direct any payment made, pursuant to the applicable policy, to [the provider] instead of [the patient]."

Letter from Legal Counsel of Major Automobile Insurance Payer
[Names Redacted]

For instance, in Virginia, there is a \$750 cap in the lien statute for physicians, chiropractors, physical therapists and other designated providers.⁴ Nonetheless, I know of practitioners in Virginia who have been using alternative approaches to protect their *full* bills for almost ten years now despite the \$750 cap. While I've not had a chance to do a comprehensive, systematic review of existing medical lien statutes (that's coming), the ones that I have reviewed contain a handful of limitations and gaps that limit them in one or more ways. Some of the existing medical lien statutes entail substantial filing fees which can also potentially be avoided.

Some may argue that the UCC does not permit this, i.e., that existing medical lien statutes "trump" the UCC Lien Law. For instance, I had a discussion with one personal injury attorney who said that, in his opinion, the medical lien statute in his State represents the *exclusive* lien remedy for providers in his State. In other words, the UCC Lien Law (in his opinion) does not cover or protect health care providers when there is a medical lien statute already adopted by the State legislature.

My advice? Consider speaking with your corporate counsel before coming to any conclusions.

7. Conclusion

In my honest opinion, what makes the UCC Lien Law most potentially powerful is that now, the interests of providers in securing their bills – and of patients receiving care from providers of their own choosing – are part of a national, uniform, non-discriminatory framework which has been well developed over time. Not only might the UCC help you collect on your bills, it could also help you to position your A/R should you later need to obtain a loan. It could also help you to sell your A/R should you so choose. It provides these potential benefits in a nationally-

⁴ Virginia Civil Remedies and Procedure Code, Section 8.01-66.2

recognized, uniform, non-discriminatory fashion. Once you know how to file in one State, you pretty much know how to file in any State.

Undoubtedly, questions will arise regarding the scope and effect of the UCC Lien Law. The law may have to go through a period of debate, use, and experimentation before its true value is well understood.

Based on what I've seen over the years, however, my guess is that Article 9 of the UCC is likely to play an increasingly important role in the health care industry.

This will become especially true, I believe, as patient choice in the selection of their health care providers becomes the prevailing standard. ■

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