



## ALASKA HOSPITAL LIEN PROCEDURE IS EXCLUSIVE

### Supreme Court Says Statutory Procedure Must Be Followed

*Mat-Su Regional Medical Center, LLC v. Burkhead*, 2010 WL 572522 (Alaska 2010)

On February 19, 2010, the Alaska Supreme Court issued a decision with broad ramifications for health care providers wishing to attach and perfect their health care liens under Alaska law. Mat-Su Regional Medical Center tried to assert a direct claim against a motor vehicle driver who allegedly injured Brandi Burkhead, to whom Mat-Su then provided medical services. At Mat-Su's request, Burkhead assigned to Mat-Su all her rights and claims against Meg Voss, the tortfeasor. The trial court denied Mat-Su's motion to intervene in Burkhead's personal injury lawsuit against Voss. In S-13326, we consider whether Mat-Su may bring a direct action, based on Burkhead's assignment of her personal injury claim, against Voss. The Alaska Supreme Court held that the hospital could not intervene into the patient's personal injury suit and that Mat-Su's only remedy was provided by the Medical Lien Statute, § 34.35.475, which provides:

**Alaska Stat. § 34.35.450. Hospital's, physician's, and nurse's lien.** (a) *An operator of a hospital in the state, a licensed special nurse in a hospital in the state, or a physician who furnishes service to a person who has a traumatic injury has a lien upon any sum awarded to the injured person or the personal representative of the injured person by judgment or obtained by a settlement or compromise to the extent of the amount due the hospital, nurse, or physician for the reasonable value of the service furnished before the date of judgment, settlement, or compromise, together with costs and reasonable attorney fees that the court allows, incurred in the enforcement of the lien. Alaska Stat. §§ 34.35.450-34.35.480 do not apply to a claim, right of action, or money accruing under Alaska Stat. § 23.30 (Workers' Compensation Act).*

(b) *When the person receiving hospitalization has a contract providing for indemnity or compensation for the sum incurred for hospitalization, the hospital has a lien upon the amount payable under the contract. The party obligated to make reimbursement under the contract may pay the sum due under it directly to the hospital, and this payment is a full release of the party making the payment under the contract in the amount of the payment.*

Alaska Stat. § 34.35.460 deals with notice and the procedures needed to perfect a lien:



**Alaska Stat. § 34.35.460. Notice of lien.** (a) *To perfect the lien described in Alaska Stat. §§ 34.35.450-34.35.480, the hospital or the owner or operator of the hospital, or the physician or licensed special nurse, shall, not later than 90 days after the date of injury, or in no event later than 90 days after the discharge of the injured person from the hospital or the provision of the physician's services, file a notice of lien substantially in the form prescribed in Alaska Stat. § 34.35.465, containing a general description of the services rendered and a statement of the amount claimed, with a recorder's office, and shall, after the 90-day period, before the date of judgment, settlement, or compromise, serve a copy of the notice of lien by registered mail, at the last known address, upon the person alleged to be responsible for causing the injury and from*

*whom damages are claimed, and upon the insurance carrier that has insured against the liability, if the insurance carrier is known.*

*(b) A hospital or the owner or operator of a hospital, or a physician or licensed special nurse who files a notice of lien under (a) of this section for hospitalization or services provided to a recipient of medical assistance under Alaska Stat. § 47 shall mail a copy of the notice of lien to the unit of the Department of Health and Social Services that administers medical assistance for needy persons under Alaska Stat. § 47. The copy must be sent by certified mail no later than 30 days after the filing of the notice of lien under (a) of this section.*



Mat-Su argues that the statutory lien procedure set out in Alaska Stat. § 34.35.475(b) was not its exclusive remedy for recovering its medical lien, especially considering the assignment it received. Mat-Su contended that it does not need statutory authorization to obtain common law contract-based assignment rights, but that the “relevant statutory framework” nevertheless permits it to proceed directly against Voss. According to Mat-Su, the “relevant statutory framework” includes a federal bankruptcy statute, the Alaska Exemptions Act, the Employee Retirement Income Security Act (ERISA), Alaska’s treatment of insurance companies’ subrogation rights, state Medicaid law, and federal

Medicare law. It argued that those bodies of law provide instructive, analogous examples in which creditors, providers of governmental services, or possessors of subrogation rights may pursue claims directly against third-party tortfeasors, and argued it had a right to intervene in the patient’s personal injury action and wasn’t bound by the strict procedures set forth in the statute above for attaching and perfecting its statutory lien. The Supreme Court disagreed.

The Supreme Court pronounced that the hospital lien enforcement procedure set out in the statute provides Mat-Su’s exclusive remedy against Voss and that permitting Mat-Su to proceed directly against Voss would “eviscerate the careful tripartite balance” the Alaska legislature established between the “patient/plaintiff, health care provider, and tortfeasor/insurer.”



This decision underscores the importance of having subrogation counsel promptly take efforts to comply with the statutory framework of hospital lien laws in all 50 states, thereby attaching and perfecting its lien to avoid its defeat later in third-party litigation.

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