BLINDSIDED (AGAIN): IOWA HOSPITALS’ ABUSE OF THE HOSPITAL LIEN STATUTE AND WHAT HAS BEEN DONE TO CORRECT IT

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I. INTRODUCTION

Imagine driving home after a long day of work. You have so much running through your mind: you were late this morning because you had to drive your daughter to school and she was running behind, the presentation that you had this morning went well and the boss was really impressed, you hope that the kids will have dinner ready when you get home like they always do on Thursdays, and there is an enormous semi-truck jackknifed and crossing the center line, coming right at you. A semi-truck coming right at you? The next thing you know, you wake up in a hospital bed, ribs sore, unable to open your left eye, but with your right eye you see your family running over to you to embrace you with tears in their eyes. You know that you are going to miss work and you are in a lot of pain, but all of that is temporary, and at least you have insurance to cover the hospital stay. Additionally, your brother is a lawyer, and he will make sure that the truck driver will be paying for any other expenses that you incur as a result of him not being able to control his vehicle.

Little do you know that the semi-truck is not the only thing bearing down on you in connection with this accident. The hospital that took you in and is caring for you is going to be limiting the amount that you will receive for other damages. Instead of accepting payment from the insurance carrier to whom you have been paying heightened rates over the years, the hospital will be placing a lien on the lawsuit that you could file against the truck driver.¹ Who knew that hospitals could do this?

¹See, e.g., David Elbert, Hospitals Accused of Misuse of Lien Law, DES MOINES REG., July 15, 2004, at 1D (describing a practice in which hospitals place liens on potential lawsuits pursuant to the Iowa Hospital Lien Statute instead of collecting payments from patients’ health insurance companies).
Hospitals knew, and they did this to many patients in Iowa who had been involved in accidents, which caused innocent victims to have to be treated in Iowa hospitals.\textsuperscript{2}

Charlene Parker encountered a situation very similar to the one described above when she was involved in a car accident in 2004.\textsuperscript{3} Parker had health insurance and assumed that her insurance company would pay for her hospital visit and that she would collect a settlement from the negligent driver's insurance company.\textsuperscript{4} However, the hospital from which she received care, Iowa Methodist Medical Center in Des Moines, recorded a lien on Parker's claim against the negligent driver for $150,000.\textsuperscript{5} Methodist filed the lien and never billed Parker's insurance company.\textsuperscript{6} In addition, when the hospital filed the lien, it did not give Parker the discount that it would have given the insurance company.\textsuperscript{7} The hospital charged her the full rate for her stay at the hospital.\textsuperscript{8} As a result, the insurance settlement that Parker actually received from the negligent driver was reduced substantially because a larger amount of the money had to go to the hospital than would have if the hospital would have billed her health insurance provider a discounted rate for her visit.\textsuperscript{9}

Iowa Methodist Medical Center is not the only hospital that engaged in such a practice; another large hospital in Des Moines, Mercy Medical Center, did the same thing to its patients, and many other Iowa hospitals employed similar practices in order to collect their fees.\textsuperscript{10} Mercy Medical Center alone is alleged to have engaged in this practice against an estimated 1,200 patients between 1994 and 2006.\textsuperscript{11}

This Note will examine the progression of Iowa's hospital lien statute and the recent controversy surrounding the hospitals' misuse of it. Part II of this Note will analyze the general construction of liens in order to

\begin{itemize}
\item \textsuperscript{2} Id.
\item \textsuperscript{3} David Elbert, \textit{Lawyer Says Accident Offers View of Problem}, \textsc{Des Moines Reg.}, July 15, 2004, at 2D.
\item \textsuperscript{4} Id.
\item \textsuperscript{5} Id.
\item \textsuperscript{6} Id.
\item \textsuperscript{7} Id.
\item \textsuperscript{8} Id.
\item \textsuperscript{9} Id.
\item \textsuperscript{10} Tony Leys, \textit{D.M. Hospital Agrees to End Contested Billing Practice}, \textsc{Des Moines Reg.}, June 7, 2006, at 1B.
\item \textsuperscript{11} Id.
\end{itemize}
provide a background from which to analyze issues that occur specifically with the use of hospital liens. It will then discuss Iowa Code chapter 582, Iowa’s hospital lien statute, as it existed prior to 2007, and will discuss its origins and structure prior to its recent amendment.

Part III of this Note will provide a brief analysis of the evolution of the nation’s healthcare system and how it has substantially reduced hospitals’ profit margins. This analysis will establish a background for why hospitals are trying to collect their full charges from patients’ tort recoveries as opposed to billing the patients’ insurance providers at reduced rates. Part IV is a general discussion of certain areas of the American legal system that have an important impact on this subject and that provide an explanation as to why the hospitals’ practice of filing these liens is such a controversial issue.

Next, this Note will discuss the disputes that occurred between the patients and the hospitals prior to the 2007 amendments to the law. For example, one of the most highly-contested issues was the fight over the meaning of the phrase “reasonable and necessary charges.” Hospitals contended that the reasonable cost of care should have been defined as the full charges for care; patients contended that it should have been what the hospital would have charged the insurance provider at a reduced rate. In addition to discussing the “reasonable and necessary charges” debate, this Note will also examine a high-profile class action lawsuit involving several patients alleging that many Iowa hospitals misused the hospital lien statute.

Finally, Part VI of this Note will discuss the changes that were made to Iowa Code chapter 582 during the 2007 Iowa legislative session, including a consideration of the various options that the legislature had for amending the law and an analysis of whether the legislature went far enough with its changes.

II. IOWA’S HOSPITAL LIEN STATUTE: PRE-2007

A. Liens in General

A lien is generally understood to be a charge upon property of one person for the payment of a debt owed to another.12 A lien does not create title rights in the property for the lienholder.13 In order for a lien to legally

exist and attach to property, there must first be an underlying debt. Only the property of a person who is responsible for the debt may be subject to the lien.

Liens can come into existence through a contract with the property owner, by statute, or through the common law. When no right to a lien exists at common law, legislatures may create a statutory lien and may also define and place limits on statutory liens. When a legislature decides to enlarge, limit, or change a statutory lien, the later statute supersedes the former implications of the statute, and the courts must be consistent with its enforcement according to the most recent version of the statute. Statutory liens are generally strictly construed because they are in derogation of the common law; however, when the statutory lien is considered a remedial measure, it is usually liberally construed to further the remedy that the legislature intended.

Statutory liens require privity of contract between the person claiming the lien and the party bound by it. However, the contract between the parties does not need to create the lien; the lien is created as a result of the contract between the two parties, even though the possibility of a lien may not be expressed in the contract itself.

B. The Purpose and History of Iowa’s Hospital Lien Statute

1. Original Enactment and Purpose of the Statute

Iowa’s hospital lien statute was enacted in 1935, around the same time that many other states in the nation were passing similar laws.

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15. Id. § 19.
16. Id. § 11.
18. Id.
19. Id. § 14.
21. See Barber Lumber Co., 674 N.W.2d at 66; Calder, supra note 20, at 343.
22. Leys, supra note 10, at 1B.
23. See id. (“Critics say the [Iowa] law . . . was intended to ensure hospitals were compensated for treating uninsured people.”); see also Darien J. Covelens, Note, The California Hospital Lien Act and “Balance Billing”: Protecting Innocent Patients’ Right to Limit a Medical Care Provider’s Recovery by Statutory Lien, 56 HASTINGS L.J. 319, 324 (2004) (“During the Great Depression Era of the 1930s, state legislatures
Today, some form of a hospital lien statute exists in forty-two states. The primary purpose of these statutes is to encourage hospitals to treat patients injured through the negligence of others or by accident even though the patients may not have the ability to pay their hospital bills. While the legislative history of Iowa Code chapter 582 is not expressly stated, many courts throughout the United States have detailed the purpose behind their states’ enactment of the hospital lien law. In the 1930s especially, hospitals incurred the heavy burden of treating many patients who were insolvent. Many legislatures saw the potential problem that hospitals would turn away indigent patients because of the fear that the facility would incur too many losses if an abundance of non-paying patients were given care. The states determined that if hospitals were given some mechanism with which to collect unpaid treatment costs, they would be more willing to accept patients who did not have the means to pay for their own medical treatment. One state court explains this proposition, writing: “[Arkansas’ hospital lien statute] was enacted for the very humane purpose of encouraging physicians, hospitals and nurses to extend their services and facilities to indigent persons who suffer personal injuries through the negligence of another, by providing the best security available to assure compensation for services and facilities.” Simply put, these statutes were throughout the country began to enact hospital lien statutes to mitigate the losses incurred when hospitals treated insolvent patients.”


26. E.g., Baylor Univ. Med. Ctr. v. Travelers Ins. Co., 587 S.W.2d 501, 504 (Tex. App. 1979) (citing 1933 Tex. Gen. Laws 182, which explains that Texas hospitals were losing significant amounts of money by having to admit patients and care for them without the opportunity to determine whether the patient had the ability to pay for the services rendered).

27. See, e.g., Bergan Mercy Health Sys. v. Haven, 620 N.W.2d 339, 347 (Neb. 2000) (explaining that the purpose of the hospital lien legislation “was to ensure that medical care remained available to indigent persons by supplying health care providers with a means for eventually securing some compensation for the potentially charitable act of providing care to an injured party who is unable to pay”).

28. Id. (“The clear public purpose of the law, as stated in the legislative history, is to protect health care providers so that they can continue to provide care, particularly trauma care, to those who require such care without regard to a patient’s ability to pay.”).

29. Buchanan v. Beirne Lumber Co., 124 S.W.2d 813, 815 (Ark. 1939); see
implemented for the purpose of giving hospitals comfort in knowing that if they accepted these patients, they would be able to make claims on some sort of payment. Additionally, these statutes were enacted to give individuals within the hospital lien states (for they are all potential patients at these hospitals) the comfort of knowing that if they are injured in an accident, they theoretically should be taken in without any questions asked regarding their ability to pay for hospital care.

2. The Statute Immediately Prior to the 2007 Amendments

The 2005 version of Iowa's hospital lien statute provided that any entity in the state maintaining a hospital that provided medical or any other services to a patient that had been injured in an accident may have asserted a lien against any tort recovery from another arising out of the injuries that put the patient in the hospital. The lien was not to be applied in cases that fell under Iowa's workers' compensation act. The hospitals could obtain a lien “upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by the patient’s heirs or personal representatives in the case of the patient’s death, whether by judgment or by settlement or compromise” of the value of the hospital care given to the patient.

Of great importance was the fact that the hospitals' liens were valued at the amount of “reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital” that occurred through the date of the payment of damages by the alleged tortfeasor. The definition of the term “reasonable and necessary charges” as used in the statute was a contentious point between the patients and the hospitals who asserted the liens. Additionally, the hospital's lien was considered inferior to the attorney’s claim on fees for handling the claim against the alleged tortfeasor on behalf of the patient.

also Satsky v. United States, 993 F. Supp. 1027, 1029 (S.D. Tex. 1998) (“The [Texas hospital lien] statute’s purpose is to promote the ability of hospitals to recover payment for emergency services in order to induce them to render emergency care to patients without regard to ability to pay.”).

31. Id.
32. Id.
33. Id.
34. See infra Part V.
35. IOWA CODE § 582.1 (2005) (amended 2007) (“[T]his lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient
While this proposition had been specifically laid out in Iowa’s hospital lien statute, the Iowa Supreme Court also ruled that granting the attorney’s fees priority over the hospital lien was a sound policy.\textsuperscript{36}

In order to maintain an effective lien, the hospital had to first file written notice that it would be asserting the lien against an injured party’s tort recovery.\textsuperscript{37} The hospital had to file this notice in the district court of the county in which the hospital was located and provide information such as the name and address of the injured party, the date of the accident, the name and location of the hospital where care was given, and the name of any alleged liable party.\textsuperscript{38} The hospital also had to mail a copy of this filing to the alleged liable party and the insurance company that insured the alleged tortfeasor for such liability.\textsuperscript{39} However, the hospital was not required to notify the injured patient that such a lien was being asserted.\textsuperscript{40} All of this had to be completed before any payment was made to the injured party by any party who provided compensation for such injuries; otherwise, the lien was not considered effective against the amount that had already been paid.\textsuperscript{41}

After the hospital filed and mailed the notice as described above, if the liable party made any payment to the patient or the patient’s attorneys, heirs, or legal representatives as compensation for the injury sustained without paying the hospital the amount of the lien or at least the amount that could be collected as a result of any judgment, settlement, or other compromise, that party would remain liable to the hospital for the amount of the lien for one year.\textsuperscript{42} The hospital may have enforced the lien through a lawsuit against the person responsible for making such payment to the

\textsuperscript{36}. See State ex rel. Univ. of Iowa Hosps. & Clinics v. Hunter (\textit{In re Hunter}), 442 N.W.2d 94, 97–98 (Iowa 1989) (“By protecting the claims of attorneys, these lien statutes encourage the pursuit of the patient’s claims against third parties responsible for the patient’s injuries.”). For a more detailed explanation on the subject, see infra Part VI.


\textsuperscript{38}. \textit{Id}.

\textsuperscript{39}. \textit{Id}.


\textsuperscript{41}. IOWA CODE § 582.2 (2005) (amended 2007).

\textsuperscript{42}. \textit{Id}. § 582.3.
injured person.\footnote{Id.} Furthermore, if the tortfeasor only made payment to the injured party and not to the hospital, the tortfeasor may have had to pay the amount of the lien twice because the party was liable for the damages and also for the lien that the hospital had properly established.\footnote{Id.} Practically speaking, however, this situation probably did not occur very often because the liable party’s lawyer could easily determine if a lien existed on the payment to be made to the injured person due to the various notification mechanisms built into the statute.\footnote{Id.}

III. HOSPITALS’ LOSS OF PROFITABILITY

A. Differing Pricing Arrangements

The idea that not everyone pays the same rate for hospital services is not a new concept in this country.\footnote{See Christopher P. Tompkins et al., The Precarious Pricing System for Hospital Services, 25 HEALTH AFF. 45, 46 (2006) (summarizing the history of health insurance programs in the United States).} Many patients in Iowa have their medical care provided for them by a third party: “Medicare, Medicaid, workers’ compensation, Wellmark Blue Cross Blue Shield, commercial insurance companies, health maintenance organizations, self-funded employer health plans or other similar entities [are] obligated by contract to pay for health services of another party.”\footnote{I OWA HOSP. ASS’N., PROFILES 47 (23d ed. 2007), available at http://www.ihaonline.org/publication/profileserv/profileserv.shtml.} Typically, the payments that hospitals receive from health insurance providers are at discounted rates.\footnote{One analogy is comparing the two types of medical care rates to rates that hotels charge. Covelens, supra note 23, at 322. For example, only the unprepared traveler (like the uninsured in this case) pays the rates listed on hotels’ internal price schedules. Id. at 322–23. Those that are prepared and have planned ahead—the insured—pay much lower rates. Id. at 323.} These discounts can be rather substantial; for example, in Iowa in 2006, the rate charged for Medicare patients was discounted 55.3\% from the normal rates that these hospitals were charging patients without health insurance.\footnote{I OWA HOSP. ASS’N., supra note 47, at 67. However, the Iowa Hospital Association attributes this particular dramatic discounted rate to the fact that Medicare is under-funded. Id.}
While the exact rate of discount that patients who have health insurance provided by private insurers receive is unknown, many experts estimate that the typical range of discounts nationally is between forty-five and fifty percent.50 A 2004 nationwide study suggests that patients who are labeled as “self-pay,” which includes the uninsured, pay 2.5 times the amount that health insurance providers pay for the same treatment.51

The reason there is such disparity between what hospitals bill uninsured patients and what they bill patients who have some sort of insurance is the difference in bargaining power between these two groups.52 Many third-party payers began consolidating in the early 1990s; with these mergers, the payers became able to negotiate with hospitals for rates below the traditional charges that were being assessed by the hospitals.53 Traditionally, the amount that hospitals charged patients was based primarily on the costs that hospitals actually incurred for the care and treatment of each patient—that is, what patients were charged directly reflected what it cost the hospital to care for them.54 As the bargaining power of these consolidated insurers grew, however, fewer and fewer patients were being charged rates based on the hospitals’ costs, and a greater number were simply being charged negotiated or fixed rates.55 As a result, the disparity between gross revenues (billed charges) and net revenues (actual payments) of hospitals began to grow substantially.56 Another factor that increased this gap between the net and gross revenues of the hospitals was that “payments from public programs and many private third-party payers were increasingly below what hospitals believed to be appropriate for the services provided.”57 This growing disparity led

50. Julie Appleby, Hospitals Sock Uninsured with Much Bigger Bills, USA TODAY, Feb. 25, 2004, at 1B.
52. See Tompkins et al., supra note 46, at 47.
53. Id.
54. Id. at 45.
55. Id. at 47.
56. Id.
57. Id. at 48.

The employer-sponsored insurance market shifted in favor of managed care, giving those health plans volume and clout to obtain greater discounts from hospitals. Medicaid enrollment grew significantly, providing more stable revenues than the uninsured, but nevertheless paying rates much lower than actual costs. The enactment of the Balanced Budget Act (BBA) of 1997
hospitals to resort to trying to obtain funds from other sources—namely, by raising the billed charges.\textsuperscript{58} Many argue that increased profitability of hospitals is not a valid justification for charging those who are not covered by health insurance two to three times the amount of those who have health insurance.\textsuperscript{59}

Parties without the power to negotiate payments—the uninsured—are forced to pay the most for their hospital stays.\textsuperscript{60} Some argue that perhaps the uninsured should try negotiating discounted rates, much like big health insurance providers do.\textsuperscript{61} However, this position has obvious shortcomings: price negotiations will seldom occur during the midst of emergency care or during a hospital stay, and trying to negotiate discounted rates with a hospital could result in being denied admission to the hospital.\textsuperscript{62} In some instances, the uninsured are able to negotiate discounts of up to thirty percent on a case-by-case basis, but this usually occurs only when the patient meets certain financial need requirements—generally measured by the patient’s relation to the Federal Poverty Level.\textsuperscript{63}

\begin{quote}
 lowered the growth in Medicare payments, resulting in a cut of roughly $70 billion, or 9.1 percent in hospital payments, over the five-year period 1998–2002 from the pre-BBA Medicare baseline.
\end{quote}

\textit{Id.} at 47–48.

\textsuperscript{58} \textit{Id.} at 48.

\textsuperscript{59} \textit{See}, e.g., Anderson, \textit{supra} note 51, at 785.

\textsuperscript{60} Tompkins et al., \textit{supra} note 46, at 52.

\textsuperscript{61} \textit{See}, e.g., Anderson, \textit{supra} note 51, at 784.

\textsuperscript{62} One commentator astutely notes, “[P]atients arriving at a hospital are not usually in a position to bargain and do not tend to ‘comparison shop’ the cost of hospital services at various community hospitals, like they would for any other big purchase, due to the urgency of their medical need.” Leah Snyder Batchis, Comment, \textit{Can Lawsuits Help the Uninsured Access Affordable Hospital Care?: Potential Theories for Uninsured Patient Plaintiffs}, 78 TEMP. L. REV. 493, 501 (2005).

\textsuperscript{63} Anderson, \textit{supra} note 51, at 789 n.23. (“Hospital Corporation of America’s Web site states that HCA ‘provides free care for any patient who receives non-elective treatment and whose household financial resources and/or income is at 200 percent or below the Federal Poverty Level.’ Some patients above 200 percent of poverty will qualify for ‘a managed care like discount.’”); \textit{see also} Lucette Lagnado, \textit{Anatomy of a Hospital Bill}, WALL ST. J., Sept. 21, 2004, at B1 (describing a Virginia man’s ordeal with a hospital in which he was charged substantially inflated rates compared to insurance providers, but noting that he was able to negotiate the charges of one of his doctors from $6,800 to $3,800).
B. Medicare’s Enormous Impact

In Iowa, Medicare is by far the largest third-party payer for hospital services and is the largest source of overall revenue for hospitals.\(^64\) The basic Medicare payment system works as follows: hospitals receive a payment determined in advance of providing patient care.\(^65\) The payment is determined by the diagnosis-related group (DRG) into which the patient fits multiplied by an average standardized amount that is adjusted by the applicable wage index.\(^66\) “Iowa Medicare beneficiaries receive the third lowest Medicare payment per beneficiary of any state in the nation, despite the fact that Iowa has the third largest percentage of population over the age of 85 (and the fourth highest over the age of 65) of any state in the country.”\(^67\) As a result of this reduced payment per beneficiary, Iowa hospitals are paid $588 less per Medicare case than other Midwestern states and $1,020 less per Medicare case than the national average.\(^68\)

These numbers, along with the fact that other third-party payers are negotiating and paying rates lower than what hospitals would charge when taking cost of care into account, suggest that hospitals may not be as profitable as they could be under a different fee structure, especially in Iowa. As noted before, hospitals try to increase their profit margins by charging the uninsured more than others for identical hospital care.\(^69\) However, in 2005, 8.7% of the Iowa population was uninsured.\(^70\) Because of such a low rate of uninsured people throughout the state, it would seem to make sense that hospitals would look for a way to collect higher cost-based charges from people other than the uninsured. With the enactment of the previous version of Iowa Code chapter 582, health care providers had an alternative to utilize in cases involving patients who likely had viable causes of action to assert against the people who wrongfully injured them and caused them to have to seek medical care.

\(^64\) IOWA HOSP. ASS’N, supra note 47, at 47. In Iowa, Medicare accounted for 43.7% of gross revenue in Iowa hospitals. Id.

\(^65\) Id. at 49.

\(^66\) Id.

\(^67\) Id. at 51.

\(^68\) Id. at 57.

\(^69\) Tompkins et al., supra note 46, at 52.

\(^70\) IOWA HOSP. ASS’N, supra note 47, at 75. Compare Iowa’s 8.7% uninsured rate in 2005 with the average uninsured rate in the United States, which is 15.3%, and to the most uninsured state in the nation, Texas, at 24.0%. Id.
IV. TORT RECOVERY FOR INJURED PATIENTS

A. Subrogation

Even if hospitals in Iowa and around the country had not been asserting liens against the tort recoveries of their patients, the patients would not simply have been free to do whatever they pleased with the money that they would have recovered from the tortfeasors. Even if hospitals in Iowa and around the country had not been asserting liens against the tort recoveries of their patients, the patients would not simply have been free to do whatever they pleased with the money that they would have recovered from the tortfeasors. “The doctrine of subrogation has been firmly rooted in the legal structure of the United States for well over a century.” Subrogation arose out of equity in order to reimburse a person or entity that paid an obligation of another. This concept is particularly important in the insurance industry because the insured pays the insurance company premiums in order to be covered in the event of injury or loss; if such loss or injury occurs, then the insurer must pay certain sums of money to or on behalf of the insured for covered losses that the insured incurs. The insurer then becomes “subrogated in a corresponding amount to the insured’s right of action against any other person responsible for the loss.” Subrogation is allowed so that the insured does not receive a windfall for being injured by having the insurance company cover the loss while at the same time collecting a tort recovery against the negligent party for the same injury. While subrogation obviously benefits the insurance companies in many regards, it is also useful to the public and the insured because it allows those injured to recover their costs immediately as opposed to having to wait for the legal system to work its course.

71. See 73 AM. JUR. 2D Subrogation § 2 (2001) (explaining that one of the goals of subrogation is to reimburse the subrogee for payments that it made).
72. RONALD C. HORN, SUBROGATION IN INSURANCE THEORY AND PRACTICE 3 (1964).
74. See, e.g., Barberton Rescue Mission, Inc. v. Ins. Div., 586 N.W.2d 352, 354 (Iowa 1998) (explaining that an insurance contract is one that involves one party accepting compensation known as a premium from another party in exchange for assuming risks of the other party and agreeing to pay certain sums of money if certain contingencies occur).
75. Heiken, 675 N.W.2d at 824 (quoting 6A JOHN ALAN APPLEMAN & JEAN APPLEMAN, INSURANCE LAW AND PRACTICE § 4051, at 103 (rev. ed. 1972)).
76. HORN, supra note 72, at 25.
77. Id. at 5. It is also important to note that an insured party may proceed directly against the tortfeasor, but many times it is in his or her best interest simply to be paid by the insurer, get over the incident as quickly as possible, and allow the insurer to worry about going after the tortfeasor. See id.
1. **Patients’ Claims in Addition to Their Medical Expenses**

Although the injured parties in many cases are not able to experience a windfall and have the insurance company pay for hospital care while recovering that same money for the hospital expenses from the negligent party, often times, the insureds had other claims against the tortfeasors that resulted in the injured parties’ compensation from the negligent party. For example, the injured parties could have had claims for property damage, lost wages, pain and suffering, and other forms of damages. By not having liens asserted against them at the discounted rates negotiated by insurance companies, injured parties received less money through the same settlement or damages because of the hospitals’ use of Iowa Code section 582.

For example, if a tortfeasor’s insurance was only $100,000 and the hospital asserted a lien in the same amount, then the injured party would not have any funds from which to draw damages for pain and suffering, property damage, and lost wages, especially if the only funding available from which to draw a judgment or a settlement was the tortfeasor’s insurance coverage. While many law students may be taught that there are two elements to any tort recovery—liability and damages—in reality there is an additional element that lies at the heart of any lawsuit: the defendant’s ability to pay those damages. One attorney put it simply: “I was taught on my first day of practice there are three things: liability, damages, collectability. I need collectability first. I need damages second. I’m a good lawyer, I’ll prove liability.” In many cases, the only way that a plaintiff will actually collect damages is if the defendant possesses liability insurance. Plaintiffs’ attorneys know this and many times will avoid filing

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78. See Ludwig v. Farm Bureau Mut. Ins. Co., 393 N.W.2d 143, 146 (Iowa 1986) (implying that losses not covered by insurance are not subject to subrogation). “Often a subrogated amount is not coextensive with the claim against a third party; it usually involves only one element of damage as opposed to several.” Id.

79. See Editorial, Stop Unfair Billing After Car Crashes, DES MOINES REG., June 14, 2006, at 12A (stating that if medical bills are substantial and the hospital lien is asserted against them, victims will have reduced compensation for property damage or lost wages).

80. See id.


even the strongest of claims on the basis that the defendant possesses little or no insurance. 84

2. Not Pursuing Recovery Against the Tortfeasor

Several factors other than the merits of a potential lawsuit are considered when determining whether a potential plaintiff will file suit against an alleged tortfeasor. 85 For example, it often takes a substantial sum of money to resolve legal disputes, both for the plaintiff and the defendant. 86 Often, plaintiffs must make the decision whether the potential benefits from filing the lawsuit or pursuing a claim are worth the costs of filing and litigating such a dispute. 87 As discussed above, if the plaintiff knows that a hospital is going to file a lien against the judgment or settlement amount from an alleged tortfeasor for the full price of hospital care, and he also knows that there is a limit to the defendant’s liability insurance, then he may decide that the difference between the full hospital bill and the insurance coverage of the defendant is overshadowed by, or at least so minimally over the amount of, the cost of litigation that the tortfeasor will be free from prosecution of the claim, regardless of the merits of the case against him.

Even though the American judicial system allows for contingent fees to be paid to plaintiff’s lawyers instead of traditional hourly rates, an attorney may not want to pursue a case on behalf of a potential client because of the possibility the settlement or judgment amount recovered would be comparably insufficient to compensate the attorney for the time expended on the case. 88 As Jonathan Molot put it:

An attorney will be willing to accept a case for a contingent fee only if he expects his fee of one-third of the recovery to exceed his opportunity cost. If the likely verdict in a case does not exceed three times the value of the time it would take the attorney to litigate the case, the attorney could not hope to

84. Id.
86. Id. at 70.
87. Id.
88. See id. at 82–83.
profit from a trial.\textsuperscript{89}

Thus, an important issue when the hospital files a lien against a patient’s tort recovery is a determination of how the settlement or judgment amount is to be distributed between an attorney who has successfully made a claim against an alleged tortfeasor and a hospital that hopes to collect from the party that put the patient in the hospital in the first place.\textsuperscript{90} Iowa’s hospital lien statute addressed the issue on its face and provided in part that “this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or the patient’s heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, the patient’s heirs, or personal representatives . . . .”\textsuperscript{91} The Iowa Supreme Court interpreted this phrase to mean that a plaintiff’s attorney who seeks a recovery from an alleged tortfeasor in connection with an accident for which the hospital is asserting a lien will receive his fees before the lien is assessed against the judgment or settlement.\textsuperscript{92} The court found that “granting hospital liens priority over the claims of an attorney to funds received in legal actions would impermissibly interfere with the pursuit of the patient’s claims and would be contrary to the express terms of the statute.”\textsuperscript{93} If hospitals were given priority over attorney’s fees and other litigation expenses, there would be no incentive for many patients and their attorneys to pursue an action against the tortfeasor because they would not have any funds from which to pay litigation expenses.\textsuperscript{94} While the statute ensured that an attorney would be paid, it did not guarantee any recovery for an injured party, which could have resulted in a failure to pursue the claim.

\textsuperscript{89}Id. at 83 (footnote omitted).

\textsuperscript{90}See, e.g., Broadlawns Polk County Hosp. \textit{ex rel.} Fenton v. Estate of Major, 271 N.W.2d 714 (Iowa 1978) (involving a declaratory judgment to determine the comparative rights to the amount of a settlement received by an estate in a wrongful death action).

\textsuperscript{91}\textsc{Iowa Code} § 582.1 (2005) (amended 2007).

\textsuperscript{92}\textit{In re} Hunter, 442 N.W.2d 94, 98 (Iowa 1989) (ruling that the attorney would receive the one-third contingency fee and that certain litigation expenses would also be paid out of the settlement amount).

\textsuperscript{93}Id.

\textsuperscript{94}See Calder, \textit{supra} note 20, at 366 (describing the Florida hospital lien laws, some of which do not place a priority on attorney’s fees, and arguing that “[t]he present situation, which depends on the largess of the hospital, can discourage worthy claimants from seeking any sort of recovery whenever there is an insufficiency of funds to cover litigation expenses and claimant disability compensation. This permits liable tortfeasors to avoid payment.”).
B. The Impact of Settlements and Liability Insurance

Once a claim is filed against a defendant, both parties proceed as if the case will reach a jury, but in most instances, both fully expect the case will either be disposed of by the court or settled.\footnote{Robert A. Sachs, Getting a Witness to “Walk the Line”: Accident Demonstrations at Videotaped Discovery Depositions, 30 AM. J. TRIAL ADVOC. 487, 511–12 (2007).} While there are many estimates to the exact percentage nationwide, one source indicates that about two percent of civil filings go to the jury.\footnote{Samuel R. Gross & Kent D. Syverud, Don’t Try: Civil Jury Verdicts in a System Geared to Settlement, 44 UCLA L. REV. 1, 63 (1996).} Almost every case in which an agreement is reached between the parties settles within the policy limits of the insurance company who supplies the defense for the alleged tortfeasor.\footnote{Baker, supra note 81, at 6–7.} In fact, one scholar went so far as to state that “the insurance policy limit functions as a de facto ‘cap’ on the defendants’ tort liability.”\footnote{Id. at 6.}

Even when the defendant has assets other than the liability insurance policy, payments that are above the policy limits are very rare in cases in which there are individual defendants.\footnote{Id.} The same scholar concludes that various factors contribute to this phenomenon:

\begin{quote}
the existence of a cause of action for breach of the insurer’s ‘duty to settle,’ the anchoring effect of the policy limit during settlement negotiations, the liability insurer’s power to control settlements within the policy limits but not beyond the policy limits, and the related development of settlement norms within the tort litigation bar.\footnote{Id. at 7.}
\end{quote}

Whatever the reasons, it appears that, as a practical matter, tort litigation was simply a matter of going after the limits of liability insurance companies and not worrying about collecting damages from the personal assets of the defendants.\footnote{Id.} What this meant for plaintiffs pursuing recovery from defendants in cases in which hospital liens were asserted was that the settlement amount—which was capped at the liability insurance limits of the defendant—would not fully compensate them because the “full charges” hospital lien would constitute a larger portion of the settlement amount than the negotiated rate that the plaintiff’s insurance
provider would have been liable for under the policy and would have had a subrogation interest in as a result of litigation.\textsuperscript{102}

Assuming many of the cases in which hospital liens were filed against patients’ tort recoveries were auto accident cases, much like the case of Charlene Parker, many of the potential plaintiffs would be dealing with automobile liability insurance, which is required in Iowa.\textsuperscript{103} The minimum limits of these policies in Iowa are $20,000 of coverage for bodily injury or death for one person in an accident and $40,000 of coverage for bodily injury or death of two or more persons in an accident, as well as a total of $15,000 for injury to or destruction of property of others in any accident.\textsuperscript{104} Substantially inflated costs of hospital care asserted against the tort recovery of the patient severely limited the amount of damages recoverable in these actions under the old hospital lien statute in this state.

V. DISPUTES ARISING UNDER THE PREVIOUS STATUTE’S FRAMEWORK

A. Determining What Are “Reasonable and Necessary Charges”

Prior to the 2007 changes to Iowa’s hospital lien statute, hospitals were entitled to the “reasonable and necessary charges” for patient care.\textsuperscript{105} However, the statute did not define “reasonable and necessary,” leaving it up to the parties to argue about what this phrase meant.\textsuperscript{106} Insured patients who were injured obviously wanted the phrase to mean the discounted rates for services typically charged under their health insurance policies.\textsuperscript{107} Hospitals, on the other hand, argued that it was appropriate to collect the full, non-discounted charges because they were not billing the insurance companies but were billing the patients directly.\textsuperscript{108}

\begin{itemize}
\item \textsuperscript{102} See Stop Unfair Billing After Car Crashes, supra note 79, at 12A (stating that if medical bills are substantial and the hospital lien is asserted against them, victims will have reduced compensation for property damage or lost wages).
\item \textsuperscript{103} IOWA CODE § 321A (2007).
\item \textsuperscript{104} Id. § 321A.21(2)(b).
\item \textsuperscript{105} Id. § 582.1.
\item \textsuperscript{106} See id.
\item \textsuperscript{107} See, e.g., Elbert, supra note 1, at 1D (reporting that Iowa hospitals were allegedly misusing the hospital lien statute to overcharge victims of accidents).
\item \textsuperscript{108} See, e.g., Tony Leys, Accident Victim Fights Hospital’s Billing Practices, DES MOINES REG., Apr. 15, 2002, at 1A (quoting Iowa Methodist Medical Center Vice President Jim Zahnd: “On the other hand, should we settle for 60 percent of our charges when a court settlement has been reached based on 100 percent of our charges?”).
\end{itemize}
The Iowa Supreme Court considered a similar issue and determined that it was improper to limit by default the recovery for “reasonable and necessary” costs to the amount that the insurance company is charged by the medical provider. In a tort cause of action in which a party is physically injured, the plaintiff may only recover reasonable and necessary medical expenses, which is the same language that was used in the pre-2007 version of chapter 582. In physical injury cases that require an amount of medical expenses to be determined, Iowa courts have ruled that more evidence is necessary than simply showing the amount charged to determine the reasonableness of the charges through means such as, testimony from an expert witness or evidence that the patient actually paid the amount charged. In fact, the Iowa Supreme Court specifically stated: “We have consistently held that evidence of the amount charged will not, in the absence of proof of the reasonableness of the billed sum, support recovery of medical expenses.” Ultimately, it is the responsibility of the jury to decide whether the billed amount accurately represents the reasonable charges when calculating the damages to be awarded to a successful plaintiff.

It is logical to argue that because patients were not automatically limited to the amount billed to their insurance companies in determining their recovery against a tortfeasor for medical expenses, hospitals filing liens likewise should not have been limited to the amount that they customarily charged insurance companies for patient care. In other words, hospitals argued that it would have been unfair to limit their recoveries through the hospital lien statute to an amount that represented lower, negotiated rates of care when those same patients could have reached a settlement with the tortfeasor or received a judgment in their cases based upon what the hospital would have charged at the non-reduced rates. However, what the Iowa Supreme Court determined in Pexa v. Auto Owners Insurance Co. was not that the reasonable cost of care is the full

112. Pexa, 686 N.W.2d at 156.
113. Id.
114. See id.
115. Leys, supra note 108, at 1A (quoting Iowa Methodist Medical Center Vice President Jim Zahnd: “On the other hand, should we settle for 60 percent of our charges when a court settlement has been reached based on 100 percent of our charges?”).
charge of care; it concluded that the reasonable cost of care could be
determined by looking at the amount billed, among a host of other factors,
to determine on a case-by-case basis what the proper cost of care should be.116 In fact, the court in Pexa found that without other evidence, the
reasonable amount of medical expenses could not be determined solely on
the basis of the amount charged.117 Thus, even relying on an analysis from
a closely related area of Iowa law, it was not clear what measure of hospital
charges represented “reasonable and necessary” charges according to the
hospital lien statute, and it seems that a determination could only have
been made on a case-by-case basis by the finder of fact.118

B. Patients Filing Actions Against the Hospitals

With the help of attorneys, some patients fought the hospitals’ use of
the hospital lien statute to collect their full charges in cases in which the
patients were insured. Ultimately, it was a class action suit filed by patients
represented by LaMarca & Landry, P.C. that brought this practice to the
public’s attention.119 The named plaintiffs in that case included Joseph
Hay, Jacob Hobbs, Charlene Parker, and Jodi Welder.120 The suit named
various hospitals as defendants, including Mercy Hospital Medical Center,
Iowa Methodist Medical Center, and Iowa Lutheran Hospital.121 In Hay v.
Iowa Health System, the Polk County District Court ruled on a cross
motion for summary judgment partially for the plaintiffs and partially for
the defendants.122 Currently, the case is on appeal to the Iowa Supreme
Court,123 but one of the defendants, Mercy, chose to settle the case instead
of pursue an appeal.124 Many of the causes of action that the plaintiffs in

court has also stated that the jury is not bound by the testimony of an expert with
respect to the reasonable value of medical services, but ‘may use and be guided by their
own judgment in such matters.’” (quoting Ege v. Born, 236 N.W. 75, 82 (Iowa 1931))).
117. Id.
118. See id. (stating that the jury is guided by its own judgment in determining
the reasonable cost of medical care).
119. See, e.g., Elbert, supra note 1, at 1D.
120. Id.
121. Id. Also named as defendants were Catholic Health Initiatives, the parent
of Mercy, and Central Iowa Health Corporation, the parent of Iowa Methodist and
Iowa Lutheran. Id.
123. Hay v. Catholic Health Initiatives, No. 05-1851 (Iowa filed Nov. 9, 2005).
124. See Leys, supra note 10, at 1B.
Hay asserted against the defendant hospitals dealt with various contractual provisions applicable to the individual patients; however, the plaintiffs also claimed that the hospitals misused the hospital lien statute by asserting an abuse of process claim against the defendants.\footnote{Hay, No. CL 96101, slip op. at 2.}

1.  

Abuse of Process for Misuse of Iowa Code Chapter 582

The Hay plaintiffs claimed that filing liens for the full charge of hospital care against the patients’ tort recoveries was an abuse of process because these liens violated the “reasonable and necessary” charges provision of the 2005 version of Iowa Code chapter 582.\footnote{Hay, No. CL 96101, slip op. at 21.} An abuse of process claim is defined as “‘the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed.’”\footnote{Fuller v. Local Union No. 106, 567 N.W.2d 419, 421 (Iowa 1997).} The three elements of an abuse of process claim include: “(1) the use of a legal process (2) in an improper or unauthorized manner (3) that causes the plaintiff to suffer damages as a result of that abuse.”\footnote{Fuller, 567 N.W.2d at 421.} The plaintiffs claimed that this violation occurred when the hospital filed liens for amounts above the discounted rates in the provider agreements.\footnote{Hay, No. CL 96101, slip op. at 21.} The contentious issue in this case was whether the second element of the cause of action had been proven.\footnote{Hay, No. CL 96101, slip op. at 21.} In order to prove this element in these cases, the plaintiff must show “‘that the defendant used [a] legal process primarily for an impermissible or illegal motive.’”\footnote{Wilson v. Hayes, 464 N.W.2d 250, 266 (Iowa 1990)).} Because the Iowa Supreme Court does not want to discourage the filing of meritorious lawsuits, there is a very high burden on the plaintiff to prove the second element of this tort.\footnote{Johnson v. Farm Bureau Mut. Ins. Co., 533 N.W.2d 203, 209 (Iowa 1995).} Even if the hospitals possessed bad intentions in asserting the lien, they cannot be found liable if they have “‘done no more than carry the process to its authorized conclusion.’”\footnote{Wilson, 464 N.W.2d at 267.} The Hay court relied heavily on the Pexa decision to determine that the full charge can be considered in determining the reasonable and necessary cost of care.\footnote{Hay, No. CL 96101, slip op. at 22–23.}
Because of this, the court noted that “it cannot be an abuse of process to file liens for the full charges under the hospital lien statute” and found that the hospitals were entitled to summary judgment on that issue.135

2. Contractual Claims

In almost all instances, contractual agreements exist between the parties involved in these hospital lien disputes: the insured patient, the insurer, and the hospitals.136 For example, agreements usually exist between the hospitals and the insurance providers because the providers have previously negotiated discounted rates with the hospitals and require that their patients go to one of the hospitals covered under the insurance agreement.137 Additionally, the insured patient obviously has a contract with the insurance provider through some arrangement in order for the insurance company to pay for qualified care.138 Finally, patients usually must sign a contract upon being admitted to a hospital.139 The Hay court spent a good deal of time analyzing the contractual provisions applicable to each plaintiff in determining whether the hospitals were liable to the patients for damages.140

a. Payment-in-Full Clause Between the Hospital and the Healthcare Provider. Many healthcare providers and insurance carriers negotiate contracts that contain payment-in-full clauses.141 While no published Iowa case has dealt specifically with this issue, the California Supreme Court stated that when there is a payment-in-full provision in the contract between the hospital and the insurance provider and such payment is made to the hospital, there is no underlying debt owed to the hospital and, thus, a

135. Id. at 23.
137. See Tompkins et al., supra note 46, at 47.
138. See, e.g., Barberton Rescue Mission, 586 N.W.2d at 354 (explaining that an insurance contract involves one party accepting compensation, known as a premium, from another party in exchange for assuming risks of the other party and agreeing to pay certain sums of money if certain contingencies occur).
139. See, e.g., Wheeler, 133 Cal. Rptr. at 783–84 (discussing that the admission agreement signed by patients upon admission is a contract of adhesion).
141. See, e.g., Parnell v. Adventist Health Sys., 109 P.3d 69, 72 (Cal. 2005) (discussing the effect of a payment in full clause and whether a hospital could effectively file a lien under California’s hospital lien statute).
hospital lien cannot be filed.\textsuperscript{142} Other courts have extended this proposition to say that a hospital may file a lien in the presence of a payment-in-full provision if the provider agreement reserves the right to recapture the difference between the negotiated reduced rate and the full cost of care.\textsuperscript{143} The issue in Iowa, though, was not whether the hospital could file a lien subsequent to accepting payment from a health insurance provider, but whether a hospital could file a lien instead of accepting payment from the provider.\textsuperscript{144} Arguments can be made on both sides of the issue as to whether these payment-in-full provisions should have barred a lien from being filed. Hospitals could have argued that the healthcare provider had to first accept the payment in order for the payment-in-full provision to be triggered. Patients argued that the payment-in-full provision would require that a hospital accept payment from the insurance provider in exchange for the services provided. The strength of these arguments depended in large part on the construction of the contractual language.\textsuperscript{145}

In \textit{Hay}, the court considered the plaintiffs’ argument that the presence of a payment-in-full provision barred the hospitals’ ability to assert a lien against the patients’ tort recovery for an amount higher than the discounted rates negotiated with insurance companies.\textsuperscript{146} Judge Eliza Ovrom concluded that because the provider agreements contained provisions specifically allowing the hospital to file hospital liens for the full amount of the charges, the payment-in-full provisions in the provider agreements did not preclude the hospitals in that case from being able to file hospital liens for their full charges.\textsuperscript{147} She found that debts still existed

\begin{itemize}
  \item \textsuperscript{142} \textit{Id.} at 79.
  \item \textsuperscript{143} \textit{See} Andrews v. Samaritan Health Sys., 36 P.3d 57, 61 (Ariz. Ct. App. 2001) (finding that the legislature had provided hospitals with a way to assert liens against plaintiffs’ tort recoveries).
  \item \textsuperscript{144} \textit{See} Leys, \textit{supra} note 10, at 1B.
  \item \textsuperscript{145} \textit{See} Bruhl v. Thul, 134 N.W.2d 571, 573–74 (Iowa 1965) (“It is the court’s duty to give effect to the language of the contract in accordance with its plain and ordinary meaning . . . .”).
  \item \textsuperscript{146} \textit{Hay} v. Iowa Health Sys., No. CL 96101, slip op. at 18–20 (Iowa Dist. Ct. Oct. 10, 2005).
  \item \textsuperscript{147} \textit{Id.} Examples of these clauses preserving the hospital’s right to file a lien for the full charges of care include provisions that state that the hospital “‘shall be entitled to assert a hospital lien for the full amount of its charges under chapter 582 of the Iowa Code, and to retain the difference between its charges and amounts otherwise payable under [the provider agreement] if paid pursuant to the lien,’” and, “‘In the event Provider is entitled to assert a lien upon any recovery or sum had or collected or
for the patients’ care and that “it [was] not an abuse of process for the Hospitals to file liens when applicable provider agreements contain payment-in-full provisions.”

b. Hold Harmless Provisions. Some provider agreements contain hold harmless provisions, which essentially provide that the hospital agrees that patients are not liable for the costs of treatment. Courts from other jurisdictions have ruled that the hold harmless agreements provide that the patient owes no debt to the hospital, and therefore, it would be inappropriate for a hospital lien to attach. A Wisconsin court ruled, “We conclude that . . . when a contract between an HMO and hospital contains a hold harmless provision, no hospital lien can be filed against an HMO patient’s property because the HMO patient is not indebted to the hospital for the medical services provided.” In many cases, these hold harmless provisions are included in contracts between hospitals and HMOs only because they are required by law, as is the case in Iowa.

In Hay, Judge Ovrom considered the effect that these hold harmless provisions had on the hospitals’ lien filing practices and ultimately came to the same conclusion as the Wisconsin Appellate Court in Dorr v. Sacred Heart Hospital. Judge Ovrom held that the administrative rules requiring hold harmless provisions—and the hold harmless provisions themselves—negated the debt by the patient to the hospital and that, without such debt, a hospital lien could not be maintained. The hospitals to be collected by a Covered Person . . . Provider shall furnish Company with a copy of any lien filed within thirty (30) days of the filing.”

148. Id. at 20, 23.
149. See, e.g., Dorr v. Sacred Heart Hosp., 597 N.W.2d 462, 472 (Wis. Ct. App. 1999) (describing a typical hold harmless agreement applicable to contracts between hospitals and HMOs).
150. See id. at 470.
151. Id. at 469.
152. See, e.g., id. at 472; IOWA ADMIN. CODE r. 191-40.18 (2007). For a general discussion of HMOs, as compared to other health insurance providers, see Gayle L. Holland, Health Maintenance Organizations: Member Physicians Assuming the Risk of Loss Under State and Federal Bankruptcy Laws, 15 J. LEGAL MED. 445 (1994).
154. Hay, No. CL 96101, slip op. at 16. The Dorr court came to the following conclusion:

This contractual requirement, that the hospital hold harmless a patient to whom services are rendered when the patient is an HMO subscriber,
tried to get around the hold harmless language by arguing that they were not seeking any compensation from patients, but that the liens were asserted against the tortfeasors.\textsuperscript{155} However, Judge Ovrom dismissed this argument, noting that the statute stated that the lien is “‘upon that part [of the tort recovery] going or belonging to such patient.’”\textsuperscript{156} Judge Ovrom found that “[a]lthough a lien collection action would not name the patient as a party, it is the patient who would be directly affected.”\textsuperscript{157} Therefore, the plaintiffs in \textit{Hay} that had provider agreements containing a hold harmless provision were successful on their motion for summary judgment at the district court level.\textsuperscript{158}

c. \textit{Patients' Subscriber Agreements with Insurance Companies}. Those patients with insurance have a written agreement with the insurance provider that the provider will pay for services that the hospital supplies to the patient.\textsuperscript{159} Nearly all insurance agreements include such a provision because the point of paying for the insurance and having coverage is for an unexpected event, like hospitalization. In \textit{Hay}, the plaintiffs asserted a cause of action for tortious interference with contractual relations between themselves and their insurers.\textsuperscript{160} Wisconsin recognized that an insured patient could have a tortious interference with contractual relations claim. In \textit{Dorr}, the hospital refused to submit the bill to the insurer and instead filed a hospital lien pursuant to that state’s statute and ignored the contract between the insurer and the insured that provided that the insurer would pay for all of the services the hospital supplied to the patient.\textsuperscript{161}

In Iowa, a plaintiff has to show five elements in order to prove a claim for tortious interference with contractual relations: “(1) plaintiff had a
contract with a third-party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third-party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted.”162 These elements are based on the Second Restatement of Torts definition of interference with contractual relations.163 In many cases, it would be obvious that the first two elements of this tort are met: that the plaintiff had a contract with a third party—the insurer—and that the defendant knew of the contract. In many of these cases, patients will provide the hospital with their insurance information, satisfying the element that the defendant must know of the contract between the plaintiff and the third party.164 The contested issue for this claim in many cases is whether the hospitals intentionally and improperly interfered with the contractual relations of the plaintiff. Iowa courts look at certain factors to determine this element of the tort:

(a) the nature of the actor’s conduct, (b) the actor’s motive, (c) the interests of the other with which the actor’s conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interest in protecting the freedom of action of the actor and the contractual interest of the other, (f) the proximity or remoteness of the actor’s conduct to the interference, and (g) the relations between the parties.165

The court in Hay addressed this issue and came to the conclusion that the plaintiffs did not generate a genuine issue of material fact as to whether the hospitals acted with improper motives.166 Judge Ovrom noted that the hospitals filed liens based on their interpretation of the hospital lien statute and that they “were not primarily motivated by a desire to affect the plaintiffs’ rights under the subscriber agreements.”167

d. Admissions Contracts. The final documents that the plaintiffs
relied on in Hay were the admissions contracts between the patients and the hospitals. The plaintiffs claimed “that the Hospitals breached their admissions contracts by filing liens for the full amount of their charges.” 168 The plaintiffs cited language in the admissions papers in which the patients requested the hospitals to seek payment from the health insurance provider. 169 Judge Ovrom ruled, however, that the admissions contracts allowed the hospitals to seek payment from the insurers but did not require them to do so. 170 Therefore, she concluded that the defendants were entitled to summary judgment for the breach of contract claims arising under the admissions contracts. 171

As illustrated by this discussion, much of the Hay case centered on the contractual agreements between the various parties to these disputes. While some patients were successful in pursuing claims against the hospitals according to these contractual provisions, others may not have been as successful. Therefore, the hospital lien statute as it stood in the 2005 version of the Iowa Code would have to be amended in order to cease the hospitals’ use of Iowa Code chapter 582 for collecting full charges from insured patients.

VI. 2007 LEGISLATION ADDRESSING THE ISSUE

Early in 2007, the Iowa legislature officially began the process of amending the previous version of the hospital lien statute to address the concerns that had been raised in the debate of whether the practices of Iowa hospitals were appropriate. The big concern for many state legislators and supporters of the bill was to put a mechanism in place that would prevent the hospitals from being able to place liens against insured patients over the amount of money rightfully owed to the hospital. 172 By the time Governor Chet Culver signed the bill into law on May, 11 2007, 173 other changes were made to the existing statute, but a majority of the changes related to establishing a clear procedure that hospitals are required to follow in order to file liens against patients’ tort recoveries. 174

168. Id. at 29.
169. Id. at 31.
170. Id.
171. Id.
172. See Hospitals Required to File with Insurance Companies, STATEHOUSE NEWS (Iowa House of Representatives, Des Moines, Iowa), Apr. 12, 2007, at 3.
173. 2007 Iowa Legis. Serv. 465 (West).
174. Id. at 463–65.
A. Other States’ Approaches

1. Statutes Addressing Contractual Agreements for Indemnity

The Iowa legislature was given some guidance from other states on how to address the issue of ensuring that injured patients are able to secure adequate tort recovery when hospitals assert liens against the patients’ property. Three states’ hospital lien statutes mention a mechanism for determining the amount of the lien in relation to any contractual agreement for indemnity or compensation for the cost of hospitalization. Oregon’s hospital lien statute provides that when the injured person who receives medical care has an insurance policy—including a personal injury protection policy or similar no-fault medical policy but excluding standard health insurance policies—that provides for payment of such medical care, the hospital has a statutorily defined lien in the amount that is due under the insurance policy. As noted from the language of the statute, however, that provision does not apply to health insurance policies. Thus, Oregon patients with health insurance who are injured because of the fault of another are left to the same fight that similarly situated Iowans had been engaged in: determining whether the “reasonable value of such medical treatment” is depicted by negotiated rates between hospitals and insurers or by the full and customary charges.

Alaska’s hospital lien statute provides for essentially the same, but is written in more general terms:

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.

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175. See ALASKA STAT. § 34.35.450 (2006); IND. CODE ANN. § 32-33-4-3(c) (LexisNexis 2002); OR. REV. STAT. ANN. § 87.555(2) (West 2003).
176. OR. REV. STAT. ANN. § 87.555(2).
177. Id. (“When the injured person receiving hospitalization or medical care from a physician is the beneficiary of an insurance policy, . . . excluding a health insurance policy, . . . both the hospital and physician shall have liens upon the amount payable under the insurance policy.”).
178. ALASKA STAT. § 34.35.450(b).
This approach, unlike Oregon’s statute, arguably presents an easy way for the parties to determine the correct amount of the hospital’s lien. There are no published decisions in Alaska in which a healthcare provider and a patient were in dispute about the amount of the medical lien, which suggests that parties to a lawsuit in Alaska are not disagreeing about the interpretation of the statute and that the law is relatively clear.

Indiana’s statute seems to be the most clear in stating the obligations of the hospital wanting to assert the lien. The statute provides that the hospital must first make all reasonable efforts to ensure that the patient’s insurance provider will be billed, and that if any amount remains to be paid for the care, then it may be asserted as a lien.

2. States that Impose Specific Restrictions on the Amount of the Lien

To ensure that patients receive a certain amount of damages in cases in which a hospital or medical lien is asserted, many states have included language in their hospital lien statutes that places a cap on the amount that may be recoverable by the hospital or other health care provider. One state court noted that the purpose of including these caps on hospital liens “was to secure part of the patient’s recovery from liable third persons to pay his or her hospital bill, while ensuring that the patient retained sufficient funds to address other losses resulting from the tortious injury.” In many cases, these statutes simply determine that the lien shall not exceed a certain percentage of the judgment, award, settlement, or

179. Alaska Native Tribal Health Consortium v. Settlement Funds Held for or to Be Paid on Behalf of E.R. ex rel. Ridley, 84 P.3d 418, 425 (Alaska 2004) (stating that the Alaska hospital lien statute “allows the hospital a lien on the amount that an insurer has contracted to pay for ‘the sum incurred for hospitalization’ of its insured” (quoting ALASKA STAT. § 34.35.450(b))).

180. See id.

181. IND. CODE ANN. § 32-33-4-3(b)(5) (LexisNexis 2002) (“The lien . . . must first be reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient.”).

182. 770 ILL. COMP. STAT. ANN. 23/10 (West Supp. 2007); IND. CODE ANN. § 32-33-4-3(c); KAN. STAT. ANN. § 65-406 (2002); MD. CODE ANN., COM. LAW § 16-601 (LexisNexis 2005); MASS. GEN. LAWS ANN. ch. 111, § 70A (West 2003); MO. ANN. STAT. § 430.230 (West 1992); N.J. STAT. ANN. § 2A:44-38 (West 2000); TENN. CODE ANN. § 29-22-101(b) (2000); VT. STAT. ANN. tit. 18, § 2251 (2002); VA. CODE ANN. § 8.01-66.2 (Supp. 2006); WASH. REV. CODE ANN. § 60.44.010 (West 2004).

other disbursement. Indiana has a structure for cases in which there is either a settlement or a compromise that provides that if the patient would recover less than twenty percent of the full amount of the settlement if all of the liens under the statute were paid in full, the liens have to be reduced proportionately to the extent that the patient is able to recover twenty percent of the settlement amount. The policy behind such provisions seems clear: preserve a certain level of damages that the tortfeasor must pay to be collected by the injured patient.

Some states choose to impose definite limits on the amount of the hospital lien by methods other than percentages of the settlement amount. For example, Virginia hospitals are allowed to place a lien for the “just and reasonable charge for the service rendered, but not exceeding $2,000.” Kansas law provides that the lien shall be fully enforceable up to $5,000, and the part of the lien that exceeds $5,000 is “enforceable to the extent that its enforcement constitutes an equitable distribution of any settlement or judgment under the circumstances.” Both Massachusetts and New Jersey provide that the amount of the lien shall not exceed the ward rates of the hospital. Missouri has an interesting hybrid structure in which the amount of the lien shall not “exceed twenty-five dollars per day and the reasonable cost of necessary X-ray, laboratory, operating room and medication service” at the hospital, but the statute further limits the amount of the recovery to fifty percent of the amount due to the patient.

184. CAL. CIV. CODE § 3045.4 (West 1993) (limiting claims to what can be satisfied out of fifty percent of the proceeds due under the judgment or settlement agreement, as interpreted by Newton v. Clemens, 1 Cal. Rptr. 3d 90 (Ct. App. 2003)); 770 ILL. COMP. STAT. ANN. 23/10 (stating that claim shall not exceed forty percent of the injured party’s recovery); MD. CODE ANN., COM. LAW § 16-601 (the hospital “has a lien on 50 percent of the recovery or sum which the patient . . . collect[s] in judgment, settlement, or compromise of the patient’s claim against another for damages on account of the injuries”); TENN. CODE ANN. § 29-22-101(b) (stating that the lien may not exceed one-third of the damages recovered by the patient); VT. STAT. ANN. tit. 18, § 2251 (stating that the lien does not attach to one-third of the recovery or $500, whichever is less, leaving that amount to be recovered by the patient); WASH. REV. CODE ANN. § 60.44.010 (stating that lien shall not exceed twenty-five percent of the recovery).
185. IND. CODE ANN. § 32-33-4-3(c).
186. VA. CODE ANN. § 8.01-66.2.
after taking out attorney fees and other recovery expenses. 190 Utah takes a
different approach whereby the hospital lien simply does “not apply to any
judgment, settlement, or compromise where the amount is $100 or less”;
when the amount is greater than this threshold, the only limitation is that
the lien must be for the “reasonable, usual, and necessary hospital charges”
of the patient. 191

3. **Limiting the Amount of the Lien to a Certain Time Period**

Another approach taken by state legislatures attempts to limit the
amount of the lien by imposing a restriction on the time period for which
the hospital can assert the lien. For example, under Texas law, the amount
of the lien is limited to the hospital’s charges for services provided for the
first 100 days of the person’s hospitalization. 192 Also included in the Texas
statute is a provision outlining the amount of time within which the patient
must be admitted to the hospital in order for the hospital lien to apply in
that particular case. 193 Other states have similar provisions; for example, in
Alabama, the patient must enter the hospital within one week of receiving
injuries as the result of the negligence of another in order for the hospital
to be able to file a lien. 194

4. **Patients’ Ability to Dispute the Amount of the Lien**

If patients feel that the amount of the lien asserted against their tort
recovery relating to an accident is too high, they have the opportunity in
many states to demand that the hospital produce documentation of the
amount of the charges. 195 A further step required by many state statutes is
that the court may have jurisdiction or even be required to engage in a

190. *Id.* § 430.225(3) (Supp. 2007).
192. **TEX. PROP. CODE ANN.** § 55.004(b) (Vernon 2007).
193. *Id.* § 55.002(a) (within 72 hours of the accident).
195. See, e.g., **COLO. REV. STAT.** § 38-27-104 (2006) (stating that the hospital
must, within ten days after a written request is mailed to the hospital, “furnish [the
requesting person] with an itemized statement of all charges for which the lien is
claimed”); **N.C. GEN. STAT.** § 44-49 (2005) (providing that no claim is valid unless the
entity claiming “the lien furnishes, without charge to the attorney as a condition
precedent to the creation of the lien, upon request to the attorney representing the
person in whose behalf the claim for personal injury is made, an itemized statement,
hospital record, or medical report for the use of the attorney in the negotiation,
settlement, or trial of the claim” against the tortfeasor).
hearing to judicially determine the reasonable amount of the charges.\textsuperscript{196} Even when the statute does not expressly provide for a judicial determination of the reasonableness of the charges, it is clearly something that can be litigated, and for which suit has been brought in Iowa.\textsuperscript{197}

5. Resolving Disputes About Attorneys’ Fees and Other Costs of Litigation

Some states expressly grant priority to attorneys’ liens over hospital liens, presumably to encourage attorneys to actually pursue their clients’ cases zealously with the hope that they will be paid for the time they invest in the case.\textsuperscript{198} Thirty states’ hospital lien statutes have language that provides that the lien can only attach after the attorneys’ fees and various court costs have been paid or that the healthcare provider lien is subordinate to the attorneys’ liens.\textsuperscript{199} As discussed earlier, the 2005 version of Iowa’s hospital lien statute contained a provision giving priority to the attorney’s claim for fees.\textsuperscript{200}

Some jurisdictions allow hospitals to recover costs and attorney fees incurred in enforcing the lien.\textsuperscript{201} However, courts in several jurisdictions have held that hospitals asserting liens against their patients’ tort recoveries could have their liens reduced in an amount to account for their

\begin{itemize}
\item \textsuperscript{196} See, e.g., N.Y. LIEN LAW § 189(6-a) (McKinney 1993) (providing that if there is a dispute about the amount of the lien between the parties, then an immediate hearing before the court and a jury, or if waived, before just the court or referee, must take place to determine the amount of the reasonable charges of the hospital for the patient’s treatment). Virginia law provides that if the injured person disputes the reasonableness of the charges, he may file a petition in court providing the facts of the dispute. VA. CODE ANN. § 8.01-66.7 (Supp. 2006). Then, the court must decide “the matter in a summary way after five days' notice to the other party in interest.” Id.\
\item \textsuperscript{197} See, e.g., Hay v. Iowa Health Sys., No. CL 96101, slip op. at 21 (Iowa Dist. Ct. Oct. 10, 2005). In Hay, the plaintiffs argued that the hospitals' lien amounts should be determined by their discounted rates that apply to the patients' insurance companies. Id.\
\item \textsuperscript{198} See, e.g., IND. CODE ANN. § 32-33-4-2 (LexisNexis 2002) (stating that the hospital’s lien “is junior and inferior to all claims for attorney's fees, court costs, and all other expenses contracted for or incurred in the recovery of claims or damages for personal injuries as described in this chapter”).\
\item \textsuperscript{199} Alaina N. Stout, Statutory Liens for Health Care Providers: The Effectiveness of Laws Allowing Providers to Assert Liens on Settlements of Judgments from Third Party Tortfeasors, HEALTH LAW., Aug. 2006, at 10, 10.\
\item \textsuperscript{200} IOWA CODE § 582.1 (2005).\
\item \textsuperscript{201} E.g., ALASKA STAT. § 34.35.450 (2006).
\end{itemize}
pro-rata share of the patients’ attorneys’ fees in their actions against the tortfeasors.\textsuperscript{202} These courts have found that it is only fair that the health care providers have to pay the attorneys who ensured the recovery of the funds from the tortfeasor.\textsuperscript{203}

B. Changes in the Iowa Statute

The Iowa legislature took into consideration many of the issues raised by other states’ hospital lien laws, as well as the litigation in Iowa regarding hospitals’ practices, when enacting the new version of the hospital lien law.\textsuperscript{204} While the sections addressing notification procedures and priority of attorneys’ fees remain unchanged, there were other very important amendments to chapter 582.\textsuperscript{205} The most dramatic changes were the amendments to section 582.1, which now requires a hospital to submit all of its charges to the patient’s insurance plan prior to filing a notice of the lien if a patient provides proof of health insurance.\textsuperscript{206} This is very similar to the requirement in Indiana.\textsuperscript{207}

Under the new version of the statute, the patient’s health insurance provider has a few duties, including the duty not to deny payment for the hospital services based on the fact that a third party or another insurance provider is liable for the injuries suffered by the patient.\textsuperscript{208} Further, if the health insurance plan denies coverage for any other reason, it must “provide the hospital and the patient with a statement detailing the amount

\begin{itemize}
\item \textsuperscript{202} E.g., Alaska Native Tribal Health Consortium v. Settlement Funds Held for or to Be Paid on Behalf of E.R. ex rel. Ridley, 84 P.3d 418, 431 (Alaska 2004); Martinez v. St. Joseph Healthcare Sys., 871 P.2d 1363, 1366–67 (N.M. 1994) (“[I]t would be fundamentally unfair to allow the Hospital to collect on its lien without paying its prorated share of the legal expenses.”).
\item \textsuperscript{203} E.g., Alaska Native Tribal Health Consortium, 84 P.3d at 431 (“[T]he situation is analogous to the [health care provider] filing suit itself, making a full recovery, and then paying its attorneys their fees.”).
\item \textsuperscript{204} See 2007 Iowa Legis. Serv. 463–65 (West) (detailing the changes made to Iowa’s hospital lien statute). Many of the changes respond directly to issues raised in the \textit{Hay} case and build upon provisions that various jurisdictions have established for their lien laws. \textit{See supra} Parts V.B, VI.A.
\item \textsuperscript{205} See 2007 Iowa Legis. Serv. 463–65.
\item \textsuperscript{206} \textsc{Iowa Code} § 582.1A(2) (2007).
\item \textsuperscript{207} See \textsc{Ind. Code Ann.} § 32-33-4-3(b)(5) (LexisNexis 2007) (“The lien . . . must first be reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient.”).
\item \textsuperscript{208} \textsc{Iowa Code} § 582.1A(2).
\end{itemize}
the health plan would have paid for the hospital services provided and the amount the patient would have been responsible for had the claim not been denied." 209 This is done because when coverage is denied, the amount of the lien is limited to the amount that would have been covered under the patient’s insurance. 210 If, however, the health insurance provider fails to provide the statement, the lien remains the same amount as it would have been if the health insurance provider submitted the documentation, but determining the proper amount of the lien becomes more complicated. 211 Additionally, in all cases, including cases in which the patient has insurance, the hospital can still file notice of a lien for the amount that the hospital was owed directly from the patient for payments such as deductibles, co-payments, and coinsurance. 212 If a hospital has already filed notice of a lien pursuant to the Iowa Code and then receives the patient’s health insurance information, it does not have to withdraw the lien, but is required to submit the charges to the insurance provider. 213

The Iowa legislature has also determined that hospitals have the obligation to contribute to the expenses incurred in securing a judgment,

209.  Id.
210.  Id.
211.  Id.
212.  Id. The statute is now written as follows:

If a patient provides proof of insurance coverage under a health plan within thirty days of the patient’s discharge from a hospital, the hospital shall submit all charges to the patient’s health plan prior to filing the notice of the lien pursuant to section 582.2. The patient’s health plan shall not deny payment for hospital services received on the basis that a third party or other insurance carrier is responsible for the patient’s injuries. If the health plan denies payment for any other reason, the health plan shall nonetheless provide the hospital and the patient with a statement detailing the amount the health plan would have paid for the hospital services provided and the amount the patient would have been responsible for had the claim not been denied. In such a case, the amount of the lien shall be limited to the amount the hospital would have received if such charges were covered by the patient’s health plan. A health plan’s failure to provide a statement shall not affect the limitations on a hospital lien pursuant to this section. This subsection shall not prohibit a hospital from filing notice of a lien pursuant to section 582.2 for the amount owed to the hospital due to patient responsibility including but not limited to deductibles, copayments, and coinsurance.

Id.

213.  Id. § 582.1A(3). If this happens, then the amount of the lien is governed by the provisions just enumerated. Id.
verdict, or settlement against the tortfeasor in cases in which the hospitals file liens pursuant to chapter 582. A new section of the law provides, “A hospital that recovers from a judgment, verdict, or settlement pursuant to this chapter shall be responsible for the pro rata share of the legal and administrative expenses incurred in obtaining the judgment, verdict, or settlement.”

Another important change made to Iowa’s statute is the new notice requirement. In addition to filing notice with the office of the clerk of the district court of the county where the hospital is located and with the person or persons alleged to be liable for the injuries to the patient, the hospital must mail a copy of the notice to the injured party or his attorney, if this information is ascertainable.

The Iowa legislature also changed the administration of the actual payment or payments made by the negligent party. Prior to any payment being made by the tortfeasor, the patient’s attorney may inform the tortfeasor that the attorney agrees to assume responsibility for the liens for which notice has been received under the statute. Once this happens, the tortfeasor must provide the patient’s attorney with copies of any lien notice relating to the lien for which the attorney has agreed to be responsible. At this point, the tortfeasor is no longer responsible for payment to the hospital; the responsibility for payment has been transferred to the attorney who has agreed to provide such payment to the hospital after he receives payment of the judgment, verdict, or settlement. This new

214. Id. § 582.1A(5).
215. Id.
216. Id. § 582.2.
217. Id. § 582.3(2).
218. Id. The new subsection provides:

Prior to payment by a person, firm, or corporation, including an insurance carrier, to a patient’s attorney, the patient’s attorney may notify the person, firm, or corporation that will be making the payment that the attorney agrees to assume responsibility for the satisfaction of some or all liens of which the person, firm, or attorney has received notice pursuant to section 582.2.

219. Id. (“Upon receipt of such notification by the patient’s attorney, such person, firm, or corporation shall provide the patient’s attorney with copies of any lien notice relating to a hospital lien for which the attorney has agreed to assume responsibility and such person, firm, or corporation shall not thereafter be responsible to any hospital encompassed by such notification.”).
220. Id. (“A patient’s attorney who so notifies a person, firm, or corporation and who receives a copy of any lien notice encompassed by such notification from the
section of the code provides a mechanism that allows the payment process to be simplified to a certain extent because the tortfeasor only has to worry about paying the patient’s attorney, and then the attorney transfers the appropriate amount of the settlement to the hospital. If a dispute exists between the hospital and the patient as to the amount that is owed to the hospital, the patient’s attorney must hold in trust the maximum amount that the hospital would be owed under the statute and may distribute the rest of the funds to those entitled to them, including the patient, the attorney, and others.221 The determination of how the disputed amount will be distributed is made “by the court in which the patient filed [the] action to recover for the patient’s injury and the court shall retain jurisdiction . . . to resolve the amount of the lien . . . .”222 If the matter was settled out of court without the patient filing an action against the tortfeasor, “a court in which such action could have been brought shall have jurisdiction to determine the amount owed to the hospital.”223

An important yet subtle change in the statutory scheme for the hospital lien statute is that hospitals are now able to file a lien in the amount of the “reasonable and customary charges,” as opposed to the “reasonable and necessary charges,” as was the case under the prior version.224 Although the phrases sound very similar, they are not synonymous.225 “Necessary” refers to a patient’s need for medical services to be administered to him; “customary” refers to the rate at which the patient will be billed for such services.226

“Necessary charges” cover services that are required for the patient’s welfare.227 This is certainly the case in Iowa, where evidence is required to establish that a patient needed the treatment that she received or would receive in the future as a result of the tortfeasor’s conduct.228 The term

person, firm, or corporation shall pay such hospital the amount to which the hospital is entitled pursuant to section 582.1A from the amount received from the person, firm, or corporation.”).

221. Id.
222. Id.
223. Id.
224. 2007 Iowa Legis. Serv. 464 (West); see also Iowa Code § 582.1 (2005).
225. See Covelen, supra note 23, at 337–38 (stating that, under California law, “reasonable and customary charges” are not equated with “reasonable and necessary charges”).
226. Id. at 338–39.
227. Id. at 338.
228. See Stanley v. State, 197 N.W.2d 599, 606–07 (Iowa 1972) (finding that an
“customary charges” refers to the amount that hospitals usually bill their patients, and in some instances it has been defined as “the amount charged to private patients of the general public for similar services” as those provided to a particular patient.

As discussed above, the hospital must submit all of its charges to a patient’s health insurance provider if that patient has such a provider. Additionally, if the insurance provider denies coverage for any reason, the amount of the lien is determined to be the discounted rate that would have applied if the provider would have covered the medical expenses. This means that those with insurance plans are not really affected by this change in the language. However, those without insurance now have a standard by which to determine the amount of the hospital’s lien to be asserted against their tort recoveries. These reasonable and customary charges can be determined by looking at the prevailing charge for similar services in that community, as well as what that individual healthcare provider charges for similar services. Obviously a determination of this amount will have to be made by the fact-finder when the amounts are disputed, much as is the case when determining the reasonable value of medical expenses in plaintiffs’ actions against tortfeasors.

C. Did the Legislature Go Far Enough?

While the 2007 amendments to the hospital lien statute went a long way toward ending the prior misuse of the statute by hospitals, further improvements can be made to ensure that injured patients will be

expert’s testimony established that future medical care would be necessary and damages could be awarded to the plaintiff).

231. IOWA CODE § 582.1A(2) (2007).
232. Id.
233. The fairness of this provision is outside the scope of this Note, but one could make the argument that it is unfair to allow those without insurance to be charged full rates by the hospital, thereby cutting into these patients’ other damages that may be collected from tortfeasors.
compensated for their injuries as a result of the negligence of others. Essentially, those with insurance will benefit from the new version of the statute because in most cases, hospitals will have to collect from the insurance companies at the reduced rates for the patients’ care. However, those without insurance may still have their entire tort recoveries consumed by the hospital’s lien and therefore may be unable to recover any damages against the tortfeasor for themselves. A simple way to cure this problem would be to place a limitation on the amount that hospitals are able to recover under Iowa Code chapter 582; for example, Missouri’s limitation provides that a patient is guaranteed to be able to recover fifty percent of the damages for which the tortfeasor is liable,236 and Virginia places a limitation on the dollar amount that hospitals may recover from patients.237

On the other side of this argument for increasing the limitations on hospitals’ ability to impose liens on patients’ tort recoveries is the position that the purpose behind these statutes was really to ensure that hospitals would be compensated for taking in all patients, especially those without the ability to pay for their own care. By putting caps on the amount of a lien, a hospital could be placed in the very difficult situation of having to decide whether to accept an indigent patient because the services rendered may actually cost more than the hospital could ever hope to recover for their services. This is the situation that many of these hospital lien statutes were implemented to avoid in the first place.238 Perhaps a better way to address the problem of this unfairness to the uninsured with regard to the hospital lien statute would be to implement a fairer system to determine rates that the uninsured are charged across the board.

237. VA. CODE ANN. § 8.01-66.2 (West 2006) (dictating that the lien cannot exceed $2,000 for any hospitals or nursing homes).
238. See Satsky v. United States, 993 F. Supp. 1027, 1029 (S.D. Tex. 1998) (“[Texas's hospital lien statute's] purpose is to promote the ability of hospitals to recover payment for emergency services in order to induce them to render emergency care to patients without regard to ability to pay.”); Buchanan v. Beirne Lumber Co., 124 S.W.2d 813, 815 (Ark. 1939) (“[The Arkansas hospital lien statute] was enacted for the very humane purpose of encouraging physicians, hospitals and nurses to extend their services and facilities to indigent persons who suffer personal injuries through the negligence of another, by providing the best security available, to assure compensation for services and facilities.”).
VII. CONCLUSION

Iowa’s hospital lien statute has undergone a metamorphosis from its beginnings, at least in the sense as to how and why it has been applied. In the beginning, Iowa, like many other states, wanted to make sure that hospitals would provide care to its residents, even when times were tough and when some people were unable to pay for the costs of the healthcare services. Over the years, however, the insurance industry, along with other entities such as Medicare, drastically changed the way that hospitals did business. Instead of charging everyone the same rates, hospitals entered into agreements with insurance providers for reduced-rate charges and have been mandated by statute to accept certain payments from Medicare that substantially cut into their profit margins. As the insurance industry grew, fewer and fewer patients were paying the full charges for hospital services, which forced hospitals to get creative in collecting their bills.

Patients in Iowa have fought back against one of the methods of collecting more money—the use of Iowa Code chapter 582 to file liens against patients’ tort recoveries from third parties. Eventually, the state legislature took notice of this practice and decided to amend the hospital lien statute to ensure that the patients’ insurance providers would be the ones receiving the bill. Because of this amendment, many patients injured by the negligent conduct of others do not have to worry about their tort recovery going to the hospitals and less going toward other items of recovery, such as lost wages, pain and suffering, and property damage. Perhaps as other states start to take notice of their hospitals’ abuse of their own hospital lien statutes, those states will follow the same path as Iowa and will ensure that their patients are adequately protected against hospitals’ systematic misuse of the hospital lien statute in cases involving patients with insurance coverage.

Daniel L. Saar*

* B.A., Simpson College, 2005; J.D. Candidate, Drake University Law School, 2008.