

AMENDED IN ASSEMBLY AUGUST 29, 2012

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1528

Introduced by Senator Steinberg

February 24, 2012

An act to add Section 3284 to the Civil Code, to amend Sections 23004.1 and 23004.2 of the Government Code, and to amend Section 14124.70 of the Welfare and Institutions Code, relating to medical services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1528, as amended, Steinberg. Medical services: damages.

Existing law establishes, as a general rule, that compensation is the relief or remedy provided by law for a violation of private rights. Existing law provides that a person suffering detriment from the unlawful act or omission of another may recover damages from the person at fault.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Under existing law, when benefits are provided or will be provided to a Medi-Cal beneficiary for which another person or insurer is liable, the Director of Health Care Services may

recover from that person or insurer the reasonable value of benefits provided, as defined and as prescribed.

This bill would provide that an injured person whose health care is provided through a public or private capitated health care service plan shall be entitled to recover as damages the reasonable and necessary value of medical services. This bill would provide that a Medi-Cal beneficiary shall be entitled to recover from the person or party responsible the reasonable and necessary value of medical services.

Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien against any judgment, settlement, compromise, arbitration award, mediation settlement, or other recovery for past medical expenses obtained by the injured or diseased person. The bill would make that lien subject to any liens for attorney's fees and costs incurred by the person or person's representative, estate, or survivors.

Existing law authorizes a county to compromise, or settle and execute a release of, any claim, as provided. Existing law also authorizes a county to waive that claim, as provided.

This bill would require specified factors to be considered when a county is requested to compromise or waive any claim, as provided.

This bill would also make a related statement of legislative intent regarding damages for medical services.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *It is the intent of the Legislature that the*
- 2 *provisions of this act be limited to resolving an issue not addressed*
- 3 *in Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th*
- 4 *541, or Hanif v. Housing Authority (1988) 200 Cal.App.3d 635,*

1 *concerning how to establish the value of damages for medical*
2 *services provided through a capitated health care system plan and*
3 *to maximize the recovery of liens by the State Department of Health*
4 *Care Services and has no other effect on the holding of those cases.*

5 **SECTION 1.**

6 *SEC. 2.* Section 3284 is added to the Civil Code, to read:

7 3284. An injured person whose health care is provided through
8 a public or private capitated health care service plan, *if the health*
9 *care provider is paid a set periodic amount regardless of the*
10 *number of, or nature of, services provided, and the health care*
11 *provider does not present the injured person with a bill for payment*
12 *identifying the costs of the particular services rendered,* shall be
13 entitled to recover, as damages, the reasonable and necessary value
14 of medical services.

15 ~~**SEC. 2.**~~

16 *SEC. 3.* Section 23004.1 of the Government Code is amended
17 to read:

18 23004.1. (a) Subject to Section 23004.3, in any case in which
19 the county is authorized or required by law to furnish hospital,
20 medical, surgical, or dental care and treatment, including prostheses
21 and medical appliances, to a person who is injured or suffers a
22 disease, under circumstances creating a tort liability upon some
23 third person to pay damages therefor, the county shall have a right
24 to recover from that third person the reasonable value of the care
25 and treatment so furnished or to be furnished, or shall, as to this
26 right, be subrogated to any right or claim that the injured or
27 diseased person, his or her guardian, personal representative, estate,
28 or survivors has against that third person to the extent of the
29 reasonable value of the care and treatment so furnished or to be
30 furnished.

31 (b) The county may, to enforce rights established under
32 subdivision (a), institute and prosecute legal proceedings against
33 the third person who is liable for the injury or disease in the
34 appropriate court, either in its own name or in the name of the
35 injured person, his or her guardian, personal representative, estate,
36 or survivors. This action shall be commenced within the period
37 prescribed in Section 340 of the Code of Civil Procedure. In the
38 event that the injured person, his or her guardian, personal
39 representative, estate, survivors, or any of them brings an action
40 for damages against the third person who is liable for the injury

1 or disease, the county's right of action shall abate during the
2 pendency of that action, and continue as a first lien against any
3 judgment, settlement, compromise, arbitration award, mediation
4 settlement, or other recovery for past medical expenses obtained
5 by the injured or diseased person, his or her guardian, personal
6 representative, estate, or survivors, against the third person who
7 is liable for the injury or disease, to the extent of the reasonable
8 value of the care and treatment so furnished or to be furnished.
9 Consistent with the common fund doctrine, the lien shall be subject
10 to any liens for attorney's fees and costs incurred by the person or
11 person's representative, estate, or survivors. If the third person
12 who is liable is insured, the county shall notify the third person's
13 insurer, when known to the county, in writing of the lien within
14 30 days following the filing of the action by the injured or diseased
15 person, his or her guardian, personal representative, estate, or
16 survivors, against the third person who is liable for the injury or
17 disease. However, the failure to so notify the insurer shall not
18 prejudice the claim or cause of action of the injured or diseased
19 person, his or her guardian, personal representative, estate, or
20 survivors, or the county.

21 ~~SEC. 3.~~

22 *SEC. 4.* Section 23004.2 of the Government Code is amended
23 to read:

24 23004.2. (a) The county may (1) compromise, or settle and
25 execute a release of, any claim which the county has by virtue of
26 the rights established by Section 23004.1; or (2) waive any such
27 claim, in whole or in part, for the convenience of the county, or if
28 the governing body of the county determines that collection would
29 result in undue hardship upon the person who suffered the injury
30 or disease resulting in care or treatment described in Section
31 23004.1.

32 (b) If a request is made to compromise or waive any claim
33 established by Section 23004.1, the following factors shall be
34 considered:

35 (1) The total value of the damages suffered by the injured person
36 or the survivors in comparison to the amount actually recovered
37 by way of judgment, settlement, compromise, arbitration award,
38 or mediation settlement.

39 (2) Other liens being asserted against the recovery that would
40 reduce the final recovery to the person or survivors and whether

1 or not other lienholders have agreed to compromise or waive their
2 liens.

3 (3) Whether or not the claim established by Section 23004.1
4 would exceed 50 percent of the moneys ultimately recovered by
5 the person or survivor under any final judgment, compromise, or
6 settlement agreement after paying a prior lien.

7 (4) Any other factors that would be just, fair, and equitable to
8 consider when presented with a request to compromise or waive
9 a claim established by Section 23004.1.

10 (c) No action taken by the county in connection with the rights
11 afforded under Section 23004.1 or this section shall be a bar to
12 any action upon the claim or cause of action of the injured or
13 diseased person, his or her guardian, personal representative, estate,
14 or survivors against the third person who is liable for the injury or
15 disease, or shall operate to deny to the injured person the recovery
16 for that portion of his or her damage not covered hereunder.

17 ~~SEC. 4.~~

18 *SEC. 5.* Section 14124.70 of the Welfare and Institutions Code
19 is amended to read:

20 14124.70. (a) As used in this article:

21 (1) “Carrier” includes any insurer as defined in Section 23 of
22 the Insurance Code, including any private company, corporation,
23 mutual association, trust fund, reciprocal or interinsurance
24 exchange authorized under the laws of this state to insure persons
25 against liability or injuries caused to another, and also any insurer
26 providing benefits under a policy of bodily injury liability insurance
27 covering liability arising out of the ownership, maintenance or use
28 of a motor vehicle which provides uninsured motorist endorsement
29 or coverage, pursuant to Section 11580.2 of the Insurance Code.

30 (2) “Beneficiary” means any person who has received benefits
31 or will be provided benefits under this chapter because of an injury
32 for which another person or party may be liable. It includes such
33 beneficiary’s guardian, conservator or other personal representative,
34 his estate or survivors.

35 (3) “Reasonable value of benefits” means both of the following:

36 (A) Except in a case in which services were provided to a
37 beneficiary under a managed care arrangement or contract,
38 “reasonable value of benefits” means the Medi-Cal rate of payment,
39 for the type of services rendered, under the schedule of maximum
40 allowances authorized by Section 14106 or, the Medi-Cal rate of

1 payment, for the type of services rendered, under regulations
2 adopted pursuant to this chapter, including but not limited, to
3 Section 14105.

4 (B) If services were provided to a beneficiary under a managed
5 care arrangement or contract, “reasonable value of benefits” means
6 the rate of payment to the provider by the plan for the services
7 rendered to the beneficiary, except in cases where the plan pays
8 the provider on a capitated or risk sharing basis, in which case it
9 means the value of the services rendered to the beneficiary
10 calculated by the plan as the usual customary and reasonable charge
11 made to the general public by the provider for similar services.

12 (4) “Lien” means the director’s claim for recovery, from a
13 beneficiary’s tort action or claim, of the reasonable value of
14 benefits provided on behalf of the beneficiary.

15 (b) In order to protect the director’s lien right to recovery to the
16 fullest extent possible and consistent with Arkansas Dept. of Health
17 and Human Services v. Ahlborn (2006) 547 U.S. 268, the
18 beneficiary shall be entitled to recover from the person or party
19 responsible the reasonable and necessary value of medical services.