

# We can fight balance billing!

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“Balance billing” or “discount billing” is when a health-care provider bills a health insurance plan at a contracted rate and then bills the patient for the difference between the contracted rate and the full posted rate (which nobody but the uninsured ever pays — another example of how the poor pay more).

Both balance billing and the attempt to collect the full, undiscounted amount directly from the patient without billing the health insurer are prohibited by the provider contracts of most health plans and by the Health Care Consumer Billing and Disclosure Protection Act, La. R.S. 22:1871, *et seq.*



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provider to bill Medicare before there is an identified liability insurer.)

And while a participating Medicaid provider cannot refuse treatment and for the most part cannot bill the patient, the provider may choose to bill the third party instead of Medicaid. La. R.S. 46:446.5. (Some providers claim Medicaid in Louisiana through the Department of Health and Hospitals now allows balance billing through

an April 2008 “rule,” but this is of doubtful validity because (1) it contradicts explicit state statutory law, La. R.S. 46:437.12(10)(a) and 46:446.5, and (2) it contradicts federal Medicaid law. See *Miller v. Wladyslaw Estate*, 547 F.3d 273 (5th Cir. 2008).

There is an attorney general opinion, No. 05-0056 (5/17/05), suggesting a contracted health-care provider may attempt to collect a lien in excess of the contracted rate from someone (such as the liability insurer or the plaintiff’s attorney) other than the patient.

That opinion (which is, of course, not binding on anyone) is just plain wrong for three reasons. First, it puts form over substance, since any lien against a liability insurer is going to come at the expense of the plaintiff. Second, it contradicts La. R.S. 22:1874(B), which provides that “[n]o contracted health-care provider may maintain any action at law against an enrollee or insured for a health insurance issuer liability or for payment of any amount in excess of the contracted reimbursement rate for such services.”

Third, it contradicts the reasoning of *Miller v. Wladyslaw Estate*, 547 F.3d 273 (5th Cir. 2008), where the U.S. Fifth Circuit, citing a long line of cases, assumed that placing a lien on tort proceeds after billing a contracted payer (in that case, Medicaid) is the same as balance billing.

The Health Care Consumer Billing and

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La. R.S. 22:1874(A)(1) explicitly prohibits a contracted provider from “discount billing, dual billing, attempting to collect from, or collecting from an enrollee or insured a health insurance issuer liability or any amount in excess of the contracted reimbursement rate for covered health care services.” This language covers both balance billing and the refusal to bill the health insurer in the first place.

Balance billing is also prohibited under Medicare, 42 USC 1395cc(a)(1)(A), and Medicaid, La. R.S. 46:437.12(a)(10). But a Medicare provider may — *is*, in fact — required to collect directly from the liability insurer if it can do so within 120 days; after 120 days, it may either bill Medicare or lien the liability insurer. 42 CFR 411.52 and CMS bulletins. (The best thing for our clients is for the

Disclosure Protection Act gives us three remedies against a health-care provider who attempts to balance bill or refuses to bill the health insurer in the first place, and instead sends us a lien.

First, La. R.S. 22:1874(B) provides that, if the contracted provider's illegal "lien" rises to the level of an "action at law" — which it arguably does just by being asserted and definitely does if it is contested in a lawsuit — the prevailing party "shall be entitled to recover all costs incurred, including reasonable attorney fees and court costs."

Second, La. R.S. 22:1876 provides that if the contracted provider sends a report to a credit reporting agency for nonpayment of an amount the provider is prohibited from collecting and does not send a correcting

letter to the credit reporting agency within ten days of a request, the provider "shall be liable for all reasonable costs, including reasonable attorney fees and court costs, incurred by the enrollee or insured with correcting such erroneous credit record."

Third, La. R.S. 22:1877 empowers the Consumer Protection Division of the Louisiana Department of Justice (that is, the Attorney General's Office) to receive complaints against providers who violate the prohibitions of the Act and, if warranted, pursue remedies under the Unfair Trade Practices statutes, La. R.S. 51:1401, *et seq.*

It's time to fight back.

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