



Personal Injury Lien Tracking for Paralegals: Workers' Compensation Liens and HIPAA Compliant Medical Authorizations

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Personal Injury Lien Tracking for Paralegals:

Workers' Compensation Liens and HIPAA Compliant Medical Authorizations

Written by Elaine Jensen, Axley Brynerson, LLP

Workers' Compensation Liens

In Wisconsin, reimbursement of worker's compensation liens is calculated based on a standard formula. From the start of our claim, I maintain contact with the workers' compensation provider so that I am consistently updated as to the worker's compensation lien amount. At the completion of your case, you will be required to complete and file a Third Party Proceeds Distribution Agreement.

You will not only need to know the total lien amount but will need to know how it is broken down between medical and indemnity payments. On my Subro Settlement Memo I will make a notation that shows that it is a worker's compensation lien, and along with the memo, I provide a copy of the Third Party Proceeds Distribution Agreement so that the attorney can quickly run the numbers as they will apply to the worker's compensation lien. Once the case has settled, you will need to the Third Party Proceeds Distribution Agreement completed, signed by the worker's compensation attorney and the client. It then gets filed with the Department of Workforce Development by approval by an Administrative Law Judge. I am

fortunate to have my office located near the DWD and have the luxury of walking the form over for review and signature of the on duty Administrative Law Judge. If you do not have the luxury, you can mail it in being sure to enclose a self-addressed stamped envelope for return of an executed copy. Once it is completed, then copies need to be provided to all counsel, including the defense counsel so that they may know the worker's compensation issue has been resolved.

HIPAA Compliant Medical Authorizations

This may seem like an odd topic when discussion liens and subrogation, however, if you are dealing with liens and subrogation, you are dealing with medical records, which will require you to have HIPAA Compliant Medical Authorizations at the ready.

You will want to be sure to include all of these requirements in your authorization. Most medical providers will be happy to provide you with copies of their own medical authorization forms they have formulated. It is my preference to use one form for all clients and providers, and as long as all HIPAA requirements are met, there isn't an issue. In addition to the HIPAA requirements set forth above, there are a few other things that I would recommend.

First, if your client is incapacitated and your authorization is being signed by a health care power of attorney, it is a good idea to attach a copy of the actual health care power of attorney paperwork to the authorization. Most medical facilities will have this on file, but it makes it easier for the copy service to have it with the authorization,

and can save some time. Additionally, if you are requesting records for a patient that is deceased, you will need to attach the appropriate documentation for the personal representative to sign the authorization as well.

Second, one of the requirements is that the authorization identify the time period for which the authorization is effective. Some providers will only release records for that time period up to the date the authorization is signed. To avoid any problems with this and the delays it can cause, I now include the following language:

“IT IS MY EXPRESSED INTENTION THAT THIS AUTHORIZATION ALLOW THE RELEASE OF ANY AND ALL MEDICAL RECORDS GENERATED AT ANYTIME DURING THE PERIOD THAT THIS AUTHORIZATION IS VALID, WHETHER IT IS BEFORE OR AFTER THE DATE OF MY SIGNATURE ON THIS AUTHORIZATION.”

As you know, HIPAA regulations are Federal. In Wisconsin, there is also legislation that pertains to disclosure and protection of medical records under §146.81-84, Wis. Stats. Included within that legislation is §146.83(3f)(b), Wis. Stats., which sets forth the guidelines for medical providers to follow in charging for medical record requests.

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