The Game of Liens

Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases

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This article discusses liens that practitioners commonly encounter in Colorado workers' compensation cases and suggests best practices for their recovery.

Consider the following fact pattern. A food delivery courier, who is a military veteran over the age of 65, severely fractures his ankle while running away from a vicious dog that broke loose at a multi-residential apartment complex. He files for workers' compensation benefits with the delivery company, but because it is unclear whether the courier is an independent contractor or an employee, the employer and its insurance carrier deny the claim.

The Department of Veterans Affairs (VA) pays for part of the courier's medical treatment, but primary health insurance begins to make medical payments for other aspects of the treatment. Meanwhile, the courier receives short-term and then long-term disability insurance payments. Eventually, the courier is separated from his job, and he applies for unemployment insurance. After several months of litigation, the courier's employer admits liability for the injury and starts paying benefits. Shortly thereafter, the courier begins receiving Social Security Disability Insurance (SSDI) benefits and is Medicare eligible. Though the employer admitted liability for the injury under its workers' compensation insurance plan, Medicare begins making payments for prescription medications. Under this very complex but common scenario, how are reimbursement payments to each entity handled?

In the scenario above, the payment of benefits under the Colorado Workers' Compensation Act (the Act)[1] may trigger the interests of multiple third parties, such as medical providers, the negligent dog owner, community homeowners' associations, property landowners, and the VA. Such third parties have express (statutory) or implied liens based on an employer's or insurance carrier's admission of liability for workers' compensation benefits. Depending on the lien and benefit at issue, recovery in the Colorado workers' compensation system—itself governed by the Colorado Office of Administrative Courts (OAC) Rules of Procedure[2] and Colorado Division of Workers' Compensation (Division) Rules of Procedure[3]—may be subject to federal or state law. Given the lack of appellate court guidance on the application of these liens, practitioners must understand the lien landscape to attain the best outcome for their clients. Failure to do so may injure a client's rights and wallet.

This article discusses the most common liens that practitioners encounter in the Colorado workers' compensation system and offers best practices for their recovery.

Threshold Considerations

Practitioners must be on the lookout for possible lienholders in every workers' compensation case long before agreeing to a full and final settlement.[4] The rising cost of healthcare makes this work all the more important. Lienholders, like most creditors, will aggressively pursue recovery, sometimes through means that violate the law. Defending against these actions may potentially cost attorneys and their clients

substantial amounts of time and money. And the failure to identify and resolve outstanding liens could jeopardize the finality of the agreement or cause settlement funds to be reallocated, even after an administrative law judge (ALJ) approves a settlement.

When analyzing the existence of liens in workers' compensation cases, practitioners face a number of threshold issues. Namely, they must distinguish between a lien and an overpayment, evaluate the impact of Colorado's status as a "reverse offset state," and factor in the allowance for liens against permanent partial disability (PPD) benefits.

Liens versus Overpayments

The Act contains numerous provisions relating to both liens[5] and offsets for overpayments,[6] so it's essential to know the difference between a lien and an overpayment. A "lien" is the right of a third party who is otherwise not a participant in the workers' compensation proceedings.[7] An "overpayment" is money a claimant receives that exceeds the amount that should have been paid, that the claimant was not entitled to receive, or that resulted from the payment of duplicate benefits.[8] The employer or insurance carrier may assert an offset for overpayments against future benefits to which the injured worker may be entitled.[9] Sometimes an overpayment can transform into a lien; for example, an overpayment of temporary disability benefits can be recovered by the withholding of permanent disability benefits.[10] In this instance, the employer or insurance carrier is effectively asserting a lien against permanent disability benefits and may withhold payment of entitlement benefits rather than seek reimbursement.[11] However, in certain circumstances an employer or insurance carrier cannot recover overpaid benefits.[12]

CRS § 8-42-113.5(1)(c) entitles an employer or insurance carrier to request an order of repayment from an ALJ. If the employer or insurance carrier made an overpayment that the injured worker cannot repay immediately, the ALJ, in his or her discretion, may determine the amount of the overpayment and issue an order of repayment,[13] considering the injured worker's financial situation and ability to repay the amount within a reasonable time period.[14] The employer and insurance carrier can then garnish or assert a lien against the injured worker's future wages.[15]

How "Reverse Offset" Works

Generally speaking, the Act does not allow unlimited double recovery.[16] It allows for offsets to reconcile the injured worker's receipt of workers' compensation benefits and other benefits outside the Act.[17] In most states, the non-workers' compensation benefit takes the offset.[18] In Colorado and seven other states, workers' compensation benefits take the offset unless the applicable law expressly states otherwise.[19] Thus, for example, if the injured worker is entitled to temporary total disability (TTD) benefits and SSDI, the employer and/or insurance carrier pay a reduced amount of TTD benefits to offset the injured worker's receipt of SSDI.

The practical effect of reverse offset is that the employer and/or insurance carrier reap the benefits of the injured worker's receipt of both workers' compensation and non-workers' compensation benefits. During the pendency of the workers' compensation claim, practitioners should request disclosure of an injured worker's non-workers' compensation benefits via interrogatories or informal correspondence. Indemnity exposure analyses should take into account the existence of offsets and the time period for receipt of government entitlement benefits, including SSDI, federal retirement benefits, and/or unemployment benefits.

Liens against PPD Benefits

Workers' compensation benefits were immune from attachments to satisfy judgments[20] until the General Assembly passed CRS § 8-42-124(6), which allowed for garnishment of indemnity benefits, except those for PPD.[21] A subsequent amendment, effective May 31, 2001, allows liens to attach to PPD benefits as well.[22] CRS § 8-42-124(6) provides:

> [B]enefits for permanent total disability and permanent partial disability shall be subject to wage assignment or income assignment as wages pursuant to section 14-14-102(9), C.R.S., and subject to garnishment as earnings pursuant to section 13-54.5-101(2)(b), C.R.S., and subject to administrative lien and attachment pursuant to section 26-13-122, C.R.S., for purposes of enforcement of court-ordered child support and subject to garnishment as earnings pursuant to sections 13-54-104(1)(b)(IV) and 13-54.5-101(2)(d), C.R.S., for purposes of enforcement of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible.

Practically speaking, this law allows for a greater chance of lien recovery. Depending on the nature of the injury and the injured worker's employment, the majority of his or her indemnity benefits may be in the form of PPD benefits.

The Lien Landscape

Liens for child support obligations, subrogation, short- and long-term disability payments, and payments made by non-governmental health-care providers, Medicare, Medicaid, and the VA arise pursuant to statutory or regulatory law.

Child Support Liens

The most common liens in Colorado workers' compensation claims are for child support. Under Colorado law, child support liens may attach to payments of temporary disability benefits,[23] permanent disability benefits,[24] and settlement funds.[25] These liens arise when a child support agency files a Notice of Administrative Lien and Attachment.[26] The statute requires the agency to notify, in writing, the injured worker and the insurance carrier.[27] Colorado child support liens continue for an indefinite number of 12-year periods.[28]

Child support payments are remitted to the Family Support Registry,[29] and the payor should show any and all lien numbers on supporting documentation submitted with the payments.[30] The Colorado Child Support Services Program (CSS) monitors lien payments and distributes the funds among the applicable liens.[31] If the parties do not pay the lien or cooperate with CSS, CSS may intervene in the underlining workers' compensation matter.[32]

Unfortunately, injured workers don't always remember or disclose child support obligations, so these obligations may not come to light until settlement discussions begin or even after settlement. When disclosed during settlement discussions, the existence of a child support lien can complicate matters because half of the potential settlement proceeds are payable directly for past due child support.[33] Therefore, the insurance carrier should set forth a plan for allocating the workers' compensation benefits to comply with child support obligations.[34] The adjuster should demonstrate that the employer and/or insurance carrier are in compliance with the statute by attaching the Notice of Administrative Lien and Attachment to any admission of liability. Where time lost from employment does not exceed three days,[35] the adjuster should notify CSS so it can inactivate the lien.[36]

Practitioners must also note when the injured worker is subject to a child support order of another state. The Uniform Interstate Family Support Act clarifies that, as a matter of full faith and credit, the state in which enforcement is sought should defer to the order of the issuing state.[37] For instance, where an order for child support originates from Oregon, courts in Colorado can be required to enforce that order. The insurance carrier should comply with the withholding requirement for the state in which the lien originated.

Subrogation Liens

Sometimes a workplace injury results from a third party's negligence or misconduct. When this occurs the injured worker may (1) pursue a cause of action against the third party in district court and (2) file a claim for workers' compensation with the Division.[38] The pursuit of one cause of action does not prohibit the simultaneous or later pursuit of the other.[39] The employer and/or insurance carrier also have their own statutory causes of action in subrogation against the alleged tortfeasor.[40] Their recovery acts as a statutory assignment of a right to recover amounts paid to or on behalf of the injured worker against the third-party alleged tortfeasor.[41] For practical purposes, this assignment acts like a lien.[42]

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When the injured worker pursues third-party litigation, the employer's and/or insurance carrier's lien is for all workers' compensation benefits due and payable by them as a result of the tort.[43] The lien may be reduced by the injured worker's third-party litigation attorney fees and costs if the employer and/or insurance carrier do not participate in the lawsuit within 90 days after receiving notice of the litigation's commencement.[44] When and if the injured worker recovers monies from the third-party tortfeasor, the employer and/or insurance carrier may recover up to, but no more than, the amount of the workers' compensation benefits for which they are liable.[45]

At the outset of the workplace injury, practitioners should be aware of and protect the employer's and/or insurance carrier's subrogation rights. Depending on the circumstances, the employer and/or insurance carrier may want to pursue their own cause of action in subrogation or intervene[46] in the injured worker's lawsuit. Practitioners should also monitor the progression of these causes of action because they may not align with the life of the workers' compensation claim. District court litigation by practice and design progresses at a slower pace than a workers' compensation claim.[47] Thus, the employer and/or insurance carrier should prioritize and appropriately value their subrogation rights when agreeing to settle the underlying workers' compensation claim.

Third-party litigation also presents a rare alignment of interests among the injured worker and the employer and/or insurance carrier. This incentivizes some level of cooperation between otherwise adverse parties regarding both the workers' compensation claim and the third-party lawsuit.

Short- and Long-Term Disability Liens

An injured worker's short-term disability benefits are often subject to offsets for the workers' compensation benefits paid by the employer,[48] but the offset cannot cause the workers' compensation benefits to fall below zero.[49] For example, when an injured worker is unable to work and is subsequently terminated because of a work-related accident or injury, the injured worker is entitled to unemployment

benefits after receiving workers' compensation benefits.[50] The employer can offset workers' compensation benefits paid when the injured worker concurrently receives unemployment benefits and TTD benefits,[51] and an offset is available for permanent total disability (PTD) benefits paid by the employer.[52] An offset is not allowed when unemployment benefits have already been reduced by the amount of temporary benefits received[53] or if the injured worker simultaneously receives PPD benefits and unemployment benefits.[54]

The Family and Medical Leave Act (FMLA) is another example of a short-term disability benefit.[55] It allows for 12 weeks of leave in any 12-month period.[56] Recovery under the FMLA and the Act are often two distinct causes of action and, consequently, the injured worker may receive benefits under both.[57] An injured worker qualifies for FMLA and workers' compensation benefits by proving an inability to perform the job functions because of a serious health condition.[58] However, if an injured worker declines an offer of modified duty and chooses to use FMLA rights, the employee may forfeit the wage replacement temporary disability workers' compensation benefits, or an offset is available against those benefits for receipt of short term disability payments.[59]

An injured worker may qualify for additional long-term benefits outside the Act.[60] Those additional benefits offset workers' compensation benefits paid by the employer.[61] As stated above, the offset cannot reduce workers' compensation benefits below zero.[62] Injured workers may receive Social Security benefits, which can offset their workers' compensation benefits by up to 50%.[63] This offset applies to temporary disability and PTD benefits,[64] and to retroactive SSDI benefits even when the workers' compensation claim has been closed and later reopened.[65] Additionally, an employer that did not pay the original Social Security taxes may claim the offset.[66] Conversely, for Social Security retirement benefits, an offset is only allowed for PTD benefits,[67] even if the injured worker received Social Security retirement benefits at the time of injury,[68] and an offset is only permitted if the PTD benefits were paid after the injured worker turned 45 years of age.[69]

Some public and private employers provide short- and long-term disability, retirement, and pension benefits to their employees. Short- and long-term disability benefits are subject to offset by the employer.[70] The offset is proportionate to the percentage of the premiums the employer paid[71] and applies to all workers' compensation benefits, with two limits: the workers' compensation benefits cannot be reduced below zero,[72] and the employer-provided disability benefits cannot be contractually forfeited to allow for payment of workers' compensation benefits.[73] Employers may also offset retirement and pension benefits that they pay to their employees.[74] Employers may claim an offset for all workers' compensation benefits paid with the exception of PTD benefits pursuant to a collective bargaining agreement.[75]

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Practitioners should have a working knowledge of the benefits the employer provides. Depending on the employer and the benefit at issue, the employer or insurance carrier may or may not want to take the offset. For example, an employers' workers' compensation carrier and short-term disability carrier may have an agreement on whom is entitled to the offset, and the workers' compensation carrier may need to reimburse the short-term carrier for short-term disability benefits. Further, as stated above, practitioners must be on the lookout for the injured worker's receipt of Social Security disability benefits.

Non-Governmental Healthcare Provider Liens

Non-governmental healthcare providers may also assert liens for charges in accordance with the Act's medical benefits fee schedule,[76] which all providers must comply with.[77] Further, the Act forbids an injured worker from bearing responsibility for payment or reimbursement to a healthcare provider for services rendered in connection with a workplace injury.[78] An ALJ may impose a penalty on a creditor for willful violation of this prohibition.[79]

Recently, the Industrial Claim Appeals Office (ICAO) presided over a case on this issue.[80] In *In re Claim of Keating*, an injured worker was treated at the hospital for a compensable workplace injury, the employer failed to pay for the medical treatment, and the hospital began billing the injured worker. Following common practice, the injured worker's counsel notified the hospital via letter that it was illegal to try to collect personally from an injured worker for treatment rendered in a workers' compensation claim.[81] Nevertheless, the hospital continued its collection efforts against the injured worker.[82] The ICAO panel affirmed the ALJ's imposition of penalties against the hospital for its attempts to collect personally from the injured worker.[83]

Healthcare providers that are cognizant of this proscription look for other ways to recover.

For example, CRS § 38-27-101 allows a hospital "duly licensed by the department of public health and environment" to assert a lien to recover the value of services furnished consequent to the "negligence or other wrongful acts of another" that are "not covered by the provisions of the Workers' Compensation Act of Colorado."[84]

Practitioners must determine whether any non-governmental hospital or healthcare provider liens on medical services have been rendered to the injured worker. This can be done by visiting the Colorado Secretary of State's website and reviewing the Uniform Commercial Code filings of any medical providers that have treated the injured worker.[85] Practitioners should also take perfected liens into account during settlement negotiations; the failure to do so may jeopardize the settlement agreement's validity from the start. In extreme cases, while a workers' compensation settlement is pending, a hospital or other healthcare provider could initiate a separate action to hold the parties' responsible for outstanding liens.

Medicare Liens

Title 42 USC § 1395y(b) shifts the costs of an injured worker's treatment to the insurance carrier or self-insured employer in the Colorado workers' compensation system. Medicare will not pay for services that have been, or may reasonably be expected to be, paid for by a workers' compensation carrier or self-insured employer.[86] But Medicare may make conditional payments,[87] in its discretion, where there is reason to believe the insurance carrier has not paid.[88] Such a payment by Medicare is conditioned upon reimbursement by the insurance carrier.[89]

Practitioners should determine whether the injured worker is a Medicare recipient. This can be done through formal discovery and informal correspondence during settlement negotiations. If the injured worker receives Medicare, the attorney should obtain a lien statement with an itemized breakdown of services billed. An itemization clarifies whether the billed service was for the workplace injury and whether the billed amount corresponds to the workers' compensation fee schedule amount. Practitioners can then direct the employer and/or insurance carrier to pay the billed amount according to the workers' compensation fee schedule or, depending on the complexity of the bills in question, negotiate directly with Medicare for a compromised settlement.[90]

> "Further, the Act forbids an injured worker from bearing responsibility for payment or reimbursement to a healthcare provider for services rendered in connection with a workplace injury. An ALJ may impose a penalty on a creditor for willful violation of this prohibition."

Medicaid/Health First Colorado Liens

Health First Colorado, Colorado's Medicaid program, is responsible for asserting Medicaid liens against injured workers for Colorado workers' compensation medical benefits.[91] An individual enrolled in Health First Colorado must assign his or her rights to payment for treatment to the State during the application process, including the right to appeal a denial of benefits from an alternative source of payment.[92] Health First Colorado enjoys an automatic lien when medical services are furnished to an injured worker in connection with a workers' compensation claim.[93] Typically, these liens arise when the employer and/or insurance carrier denies the claim and the injured worker does not pay for the medical services rendered.

Practitioners should determine whether the injured worker is enrolled in Health First Colorado to appropriately plan for the possibility of a lien. Again, the first step to take toward resolution of the lien is to request a lien statement with an itemized breakdown of the services billed.

VA Liens

Where a third party would otherwise bear responsibility for the costs of a veteran's non-service-connected disability, 38 USC § 1729(a)(1) assigns to the United States a right to recover all reasonable charges from the third party.[94] As entities that would otherwise bear medical costs for industrial injuries sustained by a veteran, workers' compensation carriers and their insureds constitute third parties for purposes of § 1729(a)(1).[95] The effect of this statute is the reallocation of economic costs to the workers' compensation system and away from the federal government. Because workers' compensation is not considered a healthcare program within the meaning of the federal subrogation law, § 1729 limits the right of recovery to "reasonable charges."[96] Reasonable charges are determined by the VA Secretary.[97]

The VA has enumerated procedures to account for VA liens during out-of-court resolution of Colorado claims for workers' compensation.[98] In cases where settlement proceeds are insufficient to satisfy the VA's subrogation interests, a veteran may request that the VA compromise, or waive, those interests.[99] A veteran accomplishes this by submitting appropriate documentation to the Revenue Law Group.[100] Note that it is debatable whether the VA is entitled to obtain reimbursement for unauthorized medical treatment or treatment not found reasonable, necessary, or related to the workplace injury.[101] Before it makes a payment, the VA facility must review each bill for "injury-relatedness."[102]

Practitioners should verify an injured worker's veteran's status either through interrogatories or informal correspondence early on in the representation. If the injured worker is a veteran and received services through the VA, the practitioner should request from the VA a lien statement with an itemized breakdown of the services billed. As with Medicare and Medicaid, there may be discrepancies in the amount owed because of competing fee schedules.

ERISA Considerations

The Employee Retirement Income Security Act (ERISA) authorizes civil recovery of monies paid by an ERISA-covered plan.[103] It is an open question whether workers' compensation medical and indemnity payments and settlement amounts qualify as reimbursable monies under ERISA. Although ERISA may not oblige the injured worker to reimburse ERISA monies, it may affect the insurance carrier's obligations. For example, the insurance carrier may have to reimburse ERISA monies after admitting liability for the provision of past medical services,[104] but it is unclear whether the reimbursement must be paid according to the ERISA plan rate[105] or the rate set by the Colorado fee schedule.[106] Colorado law makes payment in excess of the Act's fee schedule unlawful.[107] This provision, read in conjunction with ERISA's saving clause affirming the validity of state insurance law, implies that payment would be at the Colorado fee schedule rate,[108] but there are no Colorado cases on point.

ERISA also affects the settlement of workers' compensation subrogation rights. If an ERISA plan is self-funded,[109] the employer may waive subrogation against its own workers' compensation insurance carrier or self-funded workers' compensation insurance pool.[110] As a practical consideration, it is to the employer's advantage to shift costs to the workers' compensation policy—even when there are disputed issues of causation—because of the workers' compensation fee schedule cost containment protections.[111]

The parties must also determine the conventional subrogation limits in the plan's terms. In *U.S. Airways v. McCutchen*, the US Supreme Court addressed the related issue of the interplay between ERISA and personal injury lawsuits.[112] The Court held that the written terms of the ERISA plan have precedence over equitable defenses such as the "make whole" doctrine,[113] which states that a plaintiff must be fully compensated (or "made whole") before the insurer has a right to reimbursement.[114] Under *McCutchen*, the plan's plain terms govern,[115] but workers' compensation recovery is significantly different from third-party tort recovery and "make whole" considerations discussed in *McCutchen*.[116] Moreover, there is currently no case law resolving whether the make whole doctrine would prevent an ERISA plan from receiving full reimbursement from the injured worker and workers' compensation insurance carrier.

These ambiguities require careful settlement negotiations and agreements. In a subrogation action that an ERISA payor brings directly against the workers' compensation insurance carrier, the best course of action is for all parties to work with the plan administrator before a full and final settlement. The settlement agreement submitted to the Division should incorporate all agreed-upon terms regarding ERISA, including medical services reimbursement. These actions will help prevent settlement agreements from being overturned on grounds of material mistakes of mutual fact.

Conclusion

While the Act is its own self-contained statutory scheme,[117] a workers' compensation claim implicates a multiplicity of potential third-party private and public lienholders. To successfully protect workers' compensation recoveries, practitioners must exercise due diligence in investigating the existence of all potential lienholders and evaluating their impact on the injured worker's compensation. CL


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NOTES

1. CRS title 8, art. 40 to 47.

2. 1 Colo. Code Regs. 104-3, https://oac.colorado.gov/sites/oac/files/1%20CCR%20104-3%20%281%29.pdf.

3. Workers' Compensation Rules of Procedure, https://cdle.colorado.gov/workers-compensation-rules-of-procedure. *See also* 7 Colo. Code Regs. § 1101-3; *Nova v. Indus. Claim Appeals Office*, 754 P.2d 800, 802 (Colo. App. 1988) ("The Colorado Rules of Civil Procedure do not apply in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute.").

4. While it is outside the scope of this article, practitioners should also be aware of liens that may not be asserted against workers' compensation benefits, such as IRS tax liens, 26 USC § 6334(a)(7), and attorney fees liens. *See* CRS § 8-42-124(1); *Freemyer v. Indus. Claim Appeals Office*, 32 P.3d 564 (Colo.App. 2001).

5. *E.g.*, CRS § 8-42-124(6) (allowing certain liens to be placed on workers' compensation benefits).

6. *E.g.*, CRS § 8-42-103(1)(c) (providing an offset for injured workers who receive Social Security benefits).

7. *See Black's Law Dictionary* (11th ed. 2019) ("A legal right or interest that a creditor has in another's property, lasting usu. until a debt or duty that it secures is satisfied.").

8. CRS § 8-40-201(15.5). *See In re Claim of Grandestaff,* W.C. No. 4-717-644, Order at 6, 2013 WL 6646422 at *5 (ICAO Dec. 12, 2013).

9. CRS § 8-42-103.

10. CRS § 8-42-113.5(1)(a).

11. *Id.*

12. *E.g.*, *City and Cty. of Denver v. Indus. Claim Appeals Office*, 58 P.3d 1162 (Colo.App. 2002).

13. *See* CRS § 8-43-207(1)(q); *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354, 360 (Colo. App. 2009), *as modified on denial of reh'g* (June 25, 2009), *rev'd in part, vacated in part sub nom. Benchmark/Elite, Inc. v. Simpson*, 232 P.3d 777 (Colo. 2010).

14. *See Simpson*, 219 P.3d at 356–60.

15. CRS § 8-42-124(6).

16. *In re Carlos Castro*, W.C. No. 4-739-748, 2008 WL 5461433 (ICAO Dec. 31, 2008).

17. CRS § 8-41-203.

18. Social Security Program Operations Manual Systems (POMS) DI § 52105.001, https://secure.ssa.gov/poms.nsf/lnx/0452105001.

19. *Id.*

20. CRS § 8-42-124(6) (1990).

21. CRS § 8-42-124(6).

22. CRS § 8-42-124(6) (2001).

23. CRS § 8-42-124(2)(a); CRS § 13-54.5-104(2)(b)(I).

24. CRS § 8-42-124(6).

25. CRS § 8-43-204(4).

26. CRS § 26-13-122(1).

27. CRS § 26-13-122(3).

28. 8 Colo. Code Regs. § 1505-7:8.2.

29. CRS § 26-13-114.

30. This can be as simple as writing the lien numbers on a check.

31. For guidance in calculating child-support payments, *see* https://childsupport.state.co.us/siteuser/do/vfs/Frag?file=/cm:faqCalcPay.jsp.

32. *In re David Rodgers,* W.C. No. 4-501-441, 2004 WL 387782 (ICAO Feb. 25, 2004).

33. Gren and Zerylnick, "Settlement Procedure in Workers' Compensation Claims," 46 *Colo. Law.* 40, 41 (July 2017).

34. *Id.* at 41.

35. *See* CRS § 8-42-103(1)(a) ("If the period of disability does not last longer than three days from the day the employee leaves work as a result of the injury, no disability indemnity shall be recoverable. . . .").

36. CRS § 8-42-124(6).

37. 28 USC § 1738B.

38. CRS § 8-41-203(1)(a).

39. *Id.*

40. CRS § 8-41-203(1)(b).

41. *Id.*

42. CRS § 8-41-203(1)(d).

43. CRS § 8-41-203(1)(b).

44. CRS § 8-41-203(1)(e)(II).

45. CRS § 8-41-203(1)(b).

46. The employer and/or insurance carrier's payment of workers' compensation benefits is a strong argument for intervention as a matter of right under CRCP 24(a).

47. CRS § 8-40-102(1).

48. CRS § 8-42-103.

49. *Id.*

50. CRS § 8-73-112.

51. *Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson*, 938 P.2d 504, 509 (Colo. 1997).

52. CRS § 8-42-103(f).

53. *Id.*

54. Phillips and Phillips, 17 *Workers' Compensation Practice & Procedure* (Colo. Practice Series) § 8.9 Unemployment Benefits (Thomson West 2d ed. 2018).

55. 29 USC §§ 2601 et seq.

56. 29 C.F.R. § 825.702(b).

57. Cairns and Brewer, "Workers' Compensation, the ADA and the FMLA: The Ten Questions Most Commonly Asked by Colorado Employers," 24 *Colo. Law.* 2293, 2294 (Oct. 1995).

58. 29 C.F.R. § 825.112(a)(4).

59. Cairns and Brewer, *supra* note 57 at 2300.

60. CRS § 8-42-103.

61. *Id.*

62. *Id.*

63. CRS § 8-42-103(1)(c)(I).

64. *Id.*

65. Phillips and Phillips, *supra* note 54 at § 8.2 Social Security Disability Benefits (citing *Cody v. Indus. Claim Appeals Office*, 940 P.2d 1042 (Colo.App. 1996).

66. *Sampson v. Weld County School Dist.*, 786 P.2d 488, 490–91 (Colo.App. 1989).

67. CRS § 8-42-103(1)(c)(II) and (II.5).

68. *Zebra v. Dillon Cos., Inc.*, 292 P.3d 1051, 1054 (Colo.App. 2012).

69. CRS § 8-42-103(1)(c)(B)(IV).

70. CRS § 8-42-103(1)(d)(I).

71. CRS § 8-42-103(1)(d)(I)(A).

72. CRS § 8-42-103(1)(d)(I).

73. CRS § 8-42-103(1)(d)(I)(B).

74. CRS § 8-42-103(1)(c)(II).

75. CRS § 8-42-103(1)(c)(II)(B).

76. CRS § 8-42-101.

77. CRS § 8-42-101(3)

78. CRS § 8-42-101(4).

79. CRS §§ 8-43-304, -305.

80. *In re Keating*, W.C. No. 5-065-586-002, 2020 WL 1286167 at *1 (ICAO Mar. 13, 2020).

81. *Id.*

82. *Id.* at 2.

83. *Id.* at 8.

84. CRS § 38-27-101(1).

85. Colo. Secretary of State, Uniform Commercial Code, https://www.sos.state.co.us/pubs/UCC/uccHome.html?menuheaders=9.

86. 42 C.F.R. § 411.40(b)(1)(i). For more information, visit https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Attorney-Services/Conditional-Payment-Information/Conditional-Payment-Information.html.

87. 42 USC § 1395y(b)(2)(B)(i); 42 C.F.R. § 411.52(a)(1).

88. 42 C.F.R. § 411.52(a)(1).

89. 42 C.F.R.§ 411.22.

90. Resolution of liens held by federal entities introduces preemption concerns, which are outside the scope of the negotiation.

91. *See* https://www.colorado.gov/hcpf; CRS § 25.5-4-301(5)(a).

92. CRS § 25.5-4-205(4).

93. CRS § 25.5-4-301(5)(a).

94. The United States can exercise its right of recovery through intervention or subrogation, or by commencing its own action under specified circumstances. 38 USC § 1729(b). *See also* 42 USC § 2651.

95. *United States v. Bender Welding & Mach. Co.*, 558 F.2d 761 (5th Cir. 1977) (contextualizing the policy considerations driving the designation of workers' compensation carriers and their insureds as third parties for purposes of 38 USC § 1729(a)(1)).

96. 38 USC § 1729(a)(1).

97. 38 USC § 1729(c)(2)(A).

98. https://www.va.gov/OGC/Collections.asp.

99. *Id.*

100. *Id.*

101. 38 C.F.R. § 14.603.

102. https://www.va.gov/OGC/Collections.asp.

103. 29 USC § 1132(a)(3).

104. 29 USC § 1022.

105. *Sereboff v. Mid. Atl. Med. Servs. Inc.*, 547 U.S. 356 (2006).

106. 7 Colo. Code Regs. 1101-3-18-1 to -11.

107. CRS § 8-42-101(3)(a)(I). *See also* 7 Colo. Code Regs. 1101-3-18-1 to -11 (providing fee schedule for injuries).

108. *Compare id. with* 29 USC § 1144(b)(2)(A) ("nothing . . . shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.").

109. *FMC Corp. v. Holliday*, 498 U.S. 52, 61 (1990). *See also* Bollwerk, "ERISA Health Plan Reimbursement in Workers' Compensation Cases," https://labor.mo.gov/sites/labor/files/Understanding-and-Resolving-ERISA-Handout.pdf.

110. *See FMC Corp.*, 498 U.S. 52 (self-funded ERISA plans are exempt from state regulation insofar as that regulation relates to the plans); 138 A.L.R. Fed. 611 (citing 29 USCA 1001 et seq.; *Baxter v. I.S.T.A. Ins. Trust*, 749 N.E. 2d 47 (Ind.Ct.App. 2001)) (ERISA does not require subrogation provisions in plans, and a subrogation right exists only if a plan creates one).

111. 7 Colo. Code Regs. 1101-3-18-1 to -11.

112. *U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88 (2013).

113. *Id.* at 106.

114. *Id.*

115. *Id.* at 88.

116. *Id.*; CRS § 10-1-135; and CRS § 8-40-201(19)(b), which exempts subrogation and lien rights granted to workers' compensation carriers or self-insured employers pursuant to CRS § 8-41-203.

117. *See* CRS § 8-40-102(1).