

**To:** Coordinated Care Organizations

**From:** Jake Jensen, Manager, Personal Injury Liens Unit

**Date:** December 31, 2020

**Re:** Guidance for Personal Injury Liens requirements

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This guidance document from the Personal Injury Liens (PIL) Unit is intended to help Coordinated Care Organizations (CCOs) in complying with the CCO contract, state statutes, and administrative rules. It's also intended to help CCOs in developing internal processes for the following:

1. Notifying the PIL Unit of any potential Third Party Liability (TPL) activity;
2. Requesting lien assignments from PIL;
3. Approval of lien filing and release templates;
4. Filing and releasing liens with the appropriate county clerk;
5. Requesting lien compromise approval from PIL
6. PIL's offset recovery process; and
7. CCO completion of monthly reports required to be submitted to PIL.

In this document, "CCO" also applies to a CCO's subrogation firm if the CCO has delegated authority to work with PIL Unit on its behalf. It is the responsibility of the CCO to ensure that any of its agents and subrogation firms are complying with PIL guidance, the CCO contract, ORS 416.510-416.610, and applicable Oregon Administrative Rules.

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#### **Notifying PIL of any potential TPL activity:**

A CCO will inform PIL, within 30 days of notice, about third parties who are potentially legally liable for all or part of the medical expenses paid by the CCO for services to a member.

1. When a CCO has identified a third party that may be responsible for the member's medical services as a result of an injury or an accident, the CCO shall collect as much of the following as possible:
  - a. Cause of injury (Motor Vehicle Accident (MVA), slip and fall, malpractice, workers compensation etc.);
  - b. Type of injury (broken leg, traumatic brain injury, etc.);
  - c. Date of accident/injury (DOA);
  - d. Possible liable parties name(s) and address(es);
  - e. Any liability or no-fault insurance and claim number;

- f. Attorney(s) information; and
  - g. Member's employer, if workers compensation.
2. A CCO should have a process to collect and store the information for possible use. A CCO shall inform PIL within 30 days of learning of potential third party liability.
    - a. Submit the information using the PIL online portal at [www.reportinjury.org](http://www.reportinjury.org);
    - b. Under "comments" on the online form, a CCO or its subrogation firm shall insert **"Notification of Potential TPL"**.

*The following criteria will be used to determine compliance:*

1. A CCO sent notice to PIL through online portal;
2. The notice was made within 30 days discovering a potential liable third party;
3. Comment field states **"Notification of Potential TPL"**; and
4. Member information filled out along with DOA, injuries sustained, and type of injury.

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### **Requesting lien assignments from PIL:**

A CCO shall obtain a lien assignment from OHA (through PIL) before seeking reimbursement from proceeds from a third party that is legally liable for medical expenses of a member injured by the third party. Without a lien assignment approval from PIL, a CCO does not have legal authority to seek reimbursement from a legally liable third party.

1. CCO will request the lien assignment by completing the online form located at [www.reportinjury.org](http://www.reportinjury.org). The CCO will provide the following information to PIL:
  - a. CCO's name;
  - b. Member's name and address;
  - c. Date of Injury;
  - d. Insurance or attorney information for either member or liable third party, if known. If unknown, under "Insurance Company Name and Attorney Firm Name" on the online form, CCO shall insert **"unknown"**; and
  - e. Under "comments" on the online form, a CCO or its subrogation firm shall insert **"Request Lien Assignment"**.

*The following criteria will be used to determine compliance:*

1. A CCO requested a lien assignment request using the online portal;
2. A CCO requested the lien assignment prior to seeking reimbursement from a third party;
3. A CCO provided the required information about the injured member and the accident;
4. A CCO inserted **"Request Lien Assignment"** in the comment field of the online form; and
5. PIL will be able to reference client on the CCO monthly reporting and see that the CCO previously submitted a lien assignment request (assumes there is recovery to pursue; otherwise, this will not apply).

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### **Lien filing and lien release templates**

A CCO shall create a lien filing and lien release templates that conform with the requirements of ORS 416.560.

1. A CCO will also submit copies, annually, no later than January 31, by Administrative Notice for review and approval by PIL.
2. Any material changes to approved templates shall be submitted to PIL, by Administrative Notice, for approval before use.
3. Administrative notices shall be submitted to [personal.injury@dhsosha.state.or.us](mailto:personal.injury@dhsosha.state.or.us).

*The following criteria will be used to determine compliance:*

1. A CCO makes timely annual submission of its lien filing and release of lien templates;
2. Any changes to the templates are submitted by Administrative Notice and approved before use; and
3. Administrative Notices are sent to [personal.injury@dhsosha.state.or.us](mailto:personal.injury@dhsosha.state.or.us).

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### **Filing and releasing liens with County Clerks:**

Upon receiving a lien assignment approval from PIL, a CCO shall perfect its lien by filing the lien with the appropriate County Clerk or other county recording official. For individual tortfeasors, that is the county of the individual's residence. A CCO shall release its lien once it has been paid in full or the parties agree to a resolution. A CCO will not issue a satisfaction unless paid in full. Only a release will be issued if a CCO's lien is partially satisfied.

### **Filing a Lien:**

1. A CCO shall file a lien with the recording officer of the county:
  - a. Where an individual tortfeasor resides;
  - b. Where a corporate tortfeasor (includes LLCs, partnerships, trusts) has its principal place of business. If there is no principal place of business in Oregon, then with the county or parish recording official of the nearest principal place of business; or
  - c. Where a public body, agency, or commission is a tortfeasor, the notice of lien shall be filed with the recording officer of the county in which the public body, agency, or commission has its main offices, including any out of state county or parish recording officer.
2. A CCO shall notify the tortfeasor and the following, if known, about the lien:
  - a. Tortfeasor's attorney;
  - b. Tortfeasor's insurance adjuster(s);
  - c. CCO member;
  - d. CCO member's attorney, if authorized by member;
  - e. CCO Member's insurance adjuster(s);
  - f. Any other person authorized by the CCO member; and
  - g. Any party necessary to receive payment of the lien, subject to the confidentiality requirements of the CCO contract.
3. A CCO shall give PIL Administrative Notice when a lien is perfected by filing with the County Clerk. The notice shall be within 10 days of perfecting the lien.
4. A CCO shall submit the Administrative Notice through the online form of notice at [www.reportinjury.org](http://www.reportinjury.org).
  - a. Under "comments" on the online form, a CCO or its subrogation firm shall insert "**Notice of Lien Filed**".

5. A CCO shall perfect liens by filing for any case with a lien of \$1,000 or more. If the amount of a lien is under \$1000, a CCO does not have to perfect the lien by filing, but a CCO shall still demand payment. A lien assignment is still required from PIL. In the event a lien that was under \$1,000 increases above \$1000 or more, then the CCO shall perfect its lien.
6. A CCO shall use a release of lien template substantially similar to the attached example. 

*The following criteria will be used to determine compliance:*

1. A CCO, for liens \$1,000 or greater, filed a lien with the appropriate county;
2. A CCO notified all known and required parties of the lien; and
3. A CCO notified PIL by submitting Administrative notice to [www.reportinjury.org](http://www.reportinjury.org)
4. A CCO inserted "**Notice of Lien Filed**" in the comment field of the online form;

#### **Release of Lien:**

A CCO's shall release liens if the lien is satisfied in full or by compromise. The release shall be filed in same county as the lien filing.

1. The lien release will be with the recording official in the county of the lien filing;
2. A CCO shall notify all parties that received a lien filing notice;
3. A CCO shall notify PIL of the lien release by submitting the appropriate online form at [www.reportinjury.org](http://www.reportinjury.org); and
4. A CCO shall use a release of lien template substantially similar to the attached example. 

*The following criteria will be used to determine compliance:*

1. A CCO shall release its liens with the county in which they filed a lien;
2. A CCO shall notify all parties that received notice of the lien; and
3. A CCO shall notify PIL of the lien release through Administrative Notice to [www.reportinjury.org](http://www.reportinjury.org).

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#### **Requesting a lien compromise request from PIL:**

A CCO shall obtain prior written approval from PIL before compromising any assigned lien.

1. A CCO shall submit a request by emailing PIL at [personal.injury@dhsosha.state.or.us](mailto:personal.injury@dhsosha.state.or.us).
  - a. In the subject line indicate "CCO Lien Compromise Request"; and
  - b. Provide PIL with the attorney's, insurance company's, or member's compromise request, include any documentation supporting the compromise request.
    - i. If there is a Medicare lien or medical providers who have not billed either Medicaid or the CCO, the CCO shall request the attorney/insurance adjuster to provide them with the final settlement amount of those liens prior to requesting a compromise.
2. PIL shall review the compromise request and within 3 business days provide the CCO with a compromise amount, if any. This may include a compromise of PIL's and the CCO's lien.
  - a. An urgent request shall indicate "URGENT" at the beginning in the subject line; and
  - b. If the CCO is in the middle of mediation, then add "Mediation Pending" to the beginning of the subject line.
3. PIL's review shall determine if PIL has a lien or claim.
  - a. PIL's lien or claim shall take priority over the CCO's lien;

- b. If PIL has a lien, PIL will provide the compromise recommendation to satisfy PIL's lien in full or within reason depending on the settlement amount;
  - c. If PIL does not have a lien or claim, then PIL shall provide the CCO with a compromise amount of the CCO lien, if at all; and
  - d. When PIL reviews a compromise request, it will consider the facts of the case, the parties involved, relevant legal issues, and the mission of the Oregon Health Authority in reaching a decision.
4. Should PIL's compromise be rejected, then the CCO shall submit any counter compromise to PIL for further review. PIL will provide further review of the compromise request, including next steps to compromise the CCO's lien.
  5. Attached is a model compromise request template for CCO use. The template does not have to be used, but all information within it shall be present when requesting a compromise request. 

*The following criteria will be used to determine compliance:*

1. A CCO shall submit a compromise request to PIL at [personal.injury@dhsoha.state.or.us](mailto:personal.injury@dhsoha.state.or.us) prior to compromising a lien;
2. Compromise request contains the information provided in the model template;
3. CCO indicates in subject line CCO Lien Compromise Request.
  - a. Marked "URGENT" if needed when a fast turnaround is required; and
  - b. Marked "Mediation Pending" if there is a pending mediation.
4. CCO submits PIL's compromise request;
5. If a recommended compromise is rejected, a CCO shall submit any proposed counter compromise to PIL for approval; and
6. PIL will be able to verify the compromise request on the monthly CCO reporting of compromised cases.

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### **PIL offset recovery process:**

If PIL has a lien not paid in full and a CCO has received payment on a lien for the same incident, then OHA has a right to offset from the CCO's recovered payments for the lesser of (i) the unpaid amount of the PIL lien or (ii) the amount the CCO received in satisfaction of such lien.

1. PIL shall review any cases that are settled or compromised to determine if PIL was paid in full and notify the CCO. PIL shall review a CCO's monthly report for cases where PIL was not notified by the CCO prior to settling or compromising a lien.
  - a. PIL shall determine cases where the CCO did not notify PIL of a compromise or the CCO received payment on a lien where PIL's lien was not fully paid;
  - b. If there are cases identified where PIL was not paid in full and the CCO recovered monies from a settlement, then PIL will issue an offset letter indicating the member(s) who PIL believes should have an offset payment issued to PIL;
  - c. The CCO shall ensure that PIL is updated with the correct accounts payable contact information for offset submissions;
  - d. The CCO will review the members identified by PIL for offset payments;
  - e. If the CCO disagrees with the identified offsets, then the CCO will reply to PIL by email at [personal.injury@dhsoha.state.or.us](mailto:personal.injury@dhsoha.state.or.us) explaining the CCO's disagreement.
    - The CCO will attach the original offset letter sent to them by PIL.

2. PIL shall review the CCO's email disagreeing with the offset payments and determine if PIL is owed the money.
3. If an oversight by PIL, then PIL will email the CCO stating that the member is not subject to the offset payment.
4. If PIL determines that they are owed the offset payments, then the lien coordinator assigned to the case or the unit manager will contact the CCO to determine a mutual resolution.
  - a. The disagreement will be discussed between the CCO and PIL.
5. The CCO shall remit all offset payments to:  
**Personal Injury Liens Unit**  
**PO Box 14512**  
**Salem, OR 97309**

*The following criteria will be used to determine compliance:*

1. The CCO ensures that all compromise requests are submitted to PIL for review, including any counter compromise requests;
2. The CCO submits its monthly report of compromised and settled cases to PIL;
3. The CCO reviews the potential offset clients sent to them by PIL timely and responds appropriately as identified in the guidance; and
4. The CCO timely remits any identified offset payments to PIL.

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### **CCO monthly reporting to PIL**

Within 5 business days after the end of each calendar month, the CCO shall provide the PIL Unit with a report of all of its PIL cases that are active, settled, closed, or terminated.

This report shall include the following:

1. CCO name.
2. All active liens/PIL cases.
3. All liens that were closed, compromised, or terminated in the subject month (this includes all settled cases).
  - a. Report shall have a Case Type field that identifies the above types of cases (i.e. active, closed, compromised terminated).
4. For all cases:
  - a. Member's name;
  - b. Medicaid ID #;
  - c. Date of member's injury;
  - d. Amount of CCO's lien;
  - e. Attorney information, if known; and
  - f. Insurance information, if known.
5. For all closed, compromised or terminated liens/cases:

- a. The date of any settlement or judgement, if known;
  - b. The gross amount of any settlement or judgement, if known;
    - i. Compromised cases shall include the gross settlement amount.
  - c. The amount the CCO received from any liable third-party; and
  - d. Any other information that PIL requests.
6. Submit the report to [personal.injury@dhsoha.state.or.us](mailto:personal.injury@dhsoha.state.or.us).
7. The following are definitions related to the report template that should help CCOs understand what PIL is requesting.
- a. **Gross Amount of Member Settlement:** This is the overall case settlement amount to the member not the CCO lien amount
  - b. **Case Status:** These should be open, closed, compromised, or terminated
  - c. **Case Type:** This should be civil or restitution.
8. CCOs must use the PIL monthly reporting template provided on the CCO Contract Forms [webpage](#).

*The following criteria will be used to determine compliance:*

1. The report was submitted by end of business on the 5<sup>th</sup> business day of each month;
2. The report was submitted to [personal.injury@dhsoha.state.or.us](mailto:personal.injury@dhsoha.state.or.us);
3. The report was submitted using the required template; and
4. The report at a minimum has elements described above in items 1, 2, 3, 3(a), 4(a)(b)(c), 5(a)(b)(c), 6, and 8.

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### **Guidance Contact Information**

CCOs may contact Jake Jensen, PIL Unit Manager, at [jake.m.jensen@dhsoha.state.or.us](mailto:jake.m.jensen@dhsoha.state.or.us) or 503-339-4073 with any questions about the information in this guidance document.