

# NEW MEXICO INJURY ATTORNEY BLOG

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ATTORNEYS AT LAW

## Subrogation Rights in a New Mexico Personal Injury Claim

By Collins & Collins

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In most cases, when a person suffers personal injuries in an accident, his insurance, either health or automobile, will pay for his medical bills. Although another party is likely responsible for the bills, it is simplest for the injured person to obtain the care needed and have it paid for by his or her own insurer. Then, if and when the injured party recovers money damages from the party who is at fault for causing the injury, the injured party is responsible for reimbursing his insurer for medical benefits paid on his behalf. This payment, or reimbursement, is known as "subrogation." The question many injured parties have is why they must reimburse their insurance company, when they purchased either health insurance or med pay under their auto insurance policy and paid insurance premiums for that coverage month after month?

Usually, the reason is that you agreed to do so when you purchased your insurance. That very long contract of insurance stated what the insurer would do for you, what it wouldn't do, and what you would do for the insurer as part of the deal. The contract you signed most likely included a "subrogation" clause that states that your insurer is subrogated to all rights of recovery that you, the injured party, has against the at fault party for the injuries caused for which bills were paid. By signing the insurance contract and accepting benefits of coverage, you agree that if you were injured due to the fault of another, and obtained money to compensate you for your damages, you will reimburse your health insurer for medical bills paid on your behalf.

Both auto policies and health insurance policies often state that the insured has "assigned" his right to recover against the negligent party to the insurer and that the insured will do whatever is needed to assist the insurer recover. Basically, the insurer can pursue a legal action against the negligent party. In practice, the insurance company usually lets the insured do the work and pursue the claim and waits for reimbursement. If you refuse to pay your insurer and breach the contract, the insurer may sue you for the amount that should have been reimbursed plus, in most cases,

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attorneys fees and costs incurred in obtaining their rightful payment. Your insurer may also cancel your insurance because you did not abide by your contractual obligations.

If you have an attorney, your attorney has likely been notified of the insurer's payments and is well aware that the insurer is due payment. Generally a health insurer will send a letter to its insured, his attorney and the insurance company of the at-fault party so that all are aware of its subrogation interest. In that situation, the notice basically acts as a lien against the settlement proceeds or trial recovery and your attorney is obligated to pay the lien or he himself may be liable. Even if your attorney has not received a formal letter of subrogation from your insurer, he is aware of your medical care and knows who has paid your bills.

It is very important to notify your attorney of any known liens or subrogation rights. An experienced personal injury attorney will investigate the payments, determine if subrogation is appropriate and then negotiate reimbursement. These liens can typically be negotiated down and often require a statutory reduction in the lien. Perhaps just as importantly, by taking care of the subrogation, your attorney actually protects you from future problems with your insurer.

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