

STORAGE NAME: h4743.ca

DATE: April 13, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 4743

RELATING TO: Pinellas County/Hospitals

SPONSOR(S): Representative Jones

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill allows Pinellas County (county) and municipalities within the county to develop and enact a health care lien ordinance that extends to hospitals operating in the county and to the county. The bill authorizes such hospitals and the county to impose a lien on the judgment or settlements for injury or harm that resulted in a person requiring medical care at the particular hospital. Such person may be patients who are indigent or otherwise unable to pay for the medical care costs.

The bill also provides that the lien must be limited to the greater of either 1) the worker's compensation rate in effect on the effective date of this bill or 2) the nongovernmental, commercial health insurance or managed care contractual rate applicable to the injured person at the time medical care or treatment was rendered plus the amounts for which the patient is personally responsible.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Hospital liens are liens against the proceeds of settlements or judgments awarded to persons who have received medical services for injuries resulting from the incidents giving rise to the cause of action settled or adjudicated. Hospital liens assure hospitals a source of payment for the medical care provided to nonpaying or indigent patients. All hospital liens are statutory liens, which require privity of contract between the lien claimant and the party bound by the lien. The relationship between hospitals and their patients is always contractual whether expressed through contracts completed prior to or upon patient admission, or implied through quasi-contracts that result when the patient is admitted under emergency situations with no opportunity for informed consent.

Hospitals in Florida's counties have historically been granted the lien privilege through a special act followed by an implementing county ordinance. According to Pinellas County representatives, to date, 18 Florida counties have successfully sought special acts for hospital lien privileges under varying conditions (Dade, Broward, Orange, Duval, Volusia, Sarasota, Escambia, Marion, Seminole, Monroe, Jackson, Bradford, Lake, Alachua, Lee, Palm Beach, Indian River, and Hillsborough counties).

Pinellas County (county) is one of the few remaining metropolitan areas where the hospital lien privilege is not available to the hospitals. In assessing the need and benefit of such a lien for the county, the county's representatives observe that Tampa Bay General hospital collected between \$17-22 million annually through the application of the lien privilege. Using Tampa General's emergency room volume as a gauge, the representatives predict that the potential impact of a lien privilege for hospitals in the county is significant.

Even so, hospital liens have been an issue of debate between Florida hospitals and Florida trial lawyers. Most of the counties in Florida that have been granted the lien privilege have no provision for attorney's fees and address only the hospital's right to attach any settlement or judgment awarded to a claimant to cover all reasonable medical services the hospital has provided the claimant. Without an expressed provision, Florida case law has held that the hospital's charges attach first.

Trial lawyers feel that hospital liens should make allowance for attorneys' fees in order to generate more suits with greater overall value. Trial lawyers assert that because attorneys' fees and any portion going directly to the plaintiff can only be satisfied from anything remaining after the hospital has deducted its costs, there is little incentive for an attorney to take a client's case, or for an indigent client to pursue a cause of action. Hospitals believe that if they are not given priority in reimbursement, the cost of indigent care to the state will increase. Hospitals also state that they should continue to have priority over attorneys because under state law they must provide emergency care to patients, unlike attorneys who may choose their clients.

The county's charter requires the adoption of separate ordinances for each municipality, otherwise, a referendum is needed. As a result, concerns exist as to the consistency of ordinances between municipalities of the county and between the county and its municipalities.

Concerns about the uniformity of ordinances relating to lien privileges leads to another issue that because hospitals are able to use charges as the basis for the lien amount, some Health Maintenance Organization (HMO) subscribers are denied the benefit of their discounted rates, even though those same charges usually serve as a basis of their settled or adjudicated recovery.

B. EFFECT OF PROPOSED CHANGES:

This bill will enable Pinellas County (county) Commissioners and board of municipalities within the county to implement an ordinance for liens in favor of all operators of hospitals in the county and in favor of the county when it pays for medical care, treatment, or maintenance of qualifying residents of the county and municipalities upon such legal recovery arising from the cause of action that necessitated hospitalization and medical treatment. This provision complies with the county's charter requiring municipalities to enact their own ordinances. Further, the county and municipal ordinances may provide for the attachment, perfection priority, and enforcement of such liens and for necessary and appropriate procedures to carry out the purposes of the ordinance.

Under the bill, the lien is limited to the greater of either 1) the worker's compensation rate in effect on the effective date of this bill; or 2) the nongovernmental, commercial health insurance or managed care contractual rate applicable to the injured person at the time medical care or treatment was rendered plus the amounts for which the patient is personally responsible. This provision is expected to have the following intended results:

- (1) Establishes consistency among the county and the municipalities within the county relating to what hospitals can charge-off to liens.
- (2) Allows HMO subscribers to benefit from their discounted managed care rates.
- (3) Reduces the actual hospital charges, not the recovery amount, by anywhere from 10 to 25 percent. Such a reduction may provide a greater possibility for funds left to the insured or uninsured patient after the lien is imposed, according to hospital representatives. However, parties concerned about hospital lien pay-offs equaling or exceeding the patient's entire settlement amount, disagree that this will be the actual result from the provision. They believe that the lien limiting provision will not apply to the uninsured patient and that the provision does not provide for negotiated rates for the uninsured. As such, the hospitals can charge over the uninsured patient's recovery amount.

In recognizing the concerns of trial attorneys and other interested parties, hospital representatives encourage resolution of issues relating to the details of implementing a lien privilege at the local level where the actual lien ordinances are enacted.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Creates a special act.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, Pinellas County and municipalities within the county are authorized to provide for hospital liens through an ordinance.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, Pinellas County and the municipalities within the county may implement an ordinance to provide for hospital liens.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Under the lien provisions of the bill, certain HMO subscribers may benefit from their discounted managed care rates.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1. Authorizes Pinellas County and the municipalities within the county to provide by ordinance for liens in favor of hospital operators in Pinellas County and Pinellas County when it pays for medical care, treatment, or maintenance of qualifying residents of the county and municipalities within the county upon all causes of action, suits, claims, counterclaims, and demands accruing to persons to whom care, treatment, or maintenance is furnished by such hospital or is paid for by Hillsborough County; provides that such liens would also apply to demands accruing to the legal representative of the patient and upon proceeds of all judgments, settlements, and settlement agreements awarded to the person receiving medical services for injuries resulting from the incidents giving rise to the cause of action; provides that the

ordinance may provide for the attachment, perfection, priority, and enforcement of such liens, and for necessary procedures to carry out the purposes of the ordinance; and provides that the lien must be limited to the greater of either 1) the worker's compensation rate in effect on the effective date of this bill or 2) the nongovernmental, commercial health insurance or managed care contractual rate applicable to the injured person at the time medical care or treatment was rendered plus the amounts for which the patient is personally responsible.

Section 2. Provides an effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? March 6, 1998

WHERE? Warfield's Tampa Bay Review; Clearwater, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

Sunhealth Council, Inc. (council) raised a concern relating to the limits set on hospital lien amounts under the bill. The limit as applied to insured persons may be reasonable; however, the cost of care for **uninsured** patients often exceeds worker's compensation and or capitated managed care rates. Thus, a hospital that provides treatment to an uninsured person can demand a pay-out well in excess of any capitated rate. Consequently, a hospital could place a lien that equals or exceeds the entire settlement amount, possibly leaving the injured party without adequate funding to long-term care or home-based recuperative support services.

Hospital representatives observe that the hospital lien limit rate gauges are actually intended to curtail pay-outs well in excess of any managed care rate and foster consistent ordinances within the county on this issue. They also state that the lien limit provision applies to the actual hospital charges, not the recovery amount, and effectively, reduces the amount of actual charges that the hospital may impose a lien from 10 to 25 percent. It is expected to result in a greater possibility that the patient would be left with some funding for other medical needs.

The council is also concerned that the potential for many different lien ordinances due to the nature of the Pinellas County charter has the effect of creating "lien friendly" areas. The council acknowledges, in agreement with hospital representatives, that this may not be a current concern for Emergency Medical Services (EMS) since an emergency patient

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distribution plan is in force in the county. However, with the advent of privatized EMS, "lien friendly" areas may become a reality.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Because this is a special law, any adopted amendments to this bill must meet the notice requirements set out in Art. III, sec. 10 of the Florida Constitution. Any proposed amendments to this bill must be sponsored by a member of the Pinellas County Delegation and have the consent of the other Pinellas County Delegation members.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

Legislative Research Director:

Nayola R. Frazier

Joan Highsmith-Smith