

STORAGE NAME: h1407a.hcl

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1407

RELATING TO: Leon County/Hospital Liens

SPONSOR(S): Representative Lawson and others

COMPANION BILL(S):

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 1
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1407 creates a hospital lien law which gives the lien privilege to the operators of hospitals in Leon County.

Hospital operators are entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon all judgments, settlements and settlement agreements, on account of illness or injuries which necessitated the hospital care.

It provides procedures for perfecting such liens and providing for releases. Under certain circumstances, the lienholder is entitled to recover, in addition to the lien for medical costs, reasonable attorney's fees and expenses.

The bill provides that no person shall be entitled to damages on account of hospital care or treatment unless all hospital costs have been paid. In addition, Worker's Compensation claims are exempt from the provisions of this county lien law.

The bill will have no fiscal impact on the state, local government, or the private sector in general.

II. SUBSTANTIVE ANALYSIS:

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.

Most states have general laws that authorize hospital liens, but Florida hospital liens exist on a county-to-county basis through special acts and local ordinances. In 1951, the Florida Legislature passed a general law of local application granting all hospitals in counties with populations over 325,000 the right to attach hospital liens. A general law of local application operates throughout the state based upon a specified classification (usually population) wherever it exists in the state. Although general laws of local application differ from special laws, which are limited to a particular person, group, or locality, their classification schemes are such that the laws' applications are restricted to particular localities, and general laws of local application are often vulnerable to constitutional challenge as being special acts in disguise. Special acts are required by the Florida Constitution to publish notice of intention to seek enactment in the manner provided by general law or to have the condition of becoming effective only upon approval by vote of the electors of the areas affected. (FLA. CONST. art. III, § 10.) At the time the 1951 general law of local application was passed, only Dade County qualified to meet the specified classification of a county with a population over 325,000.

Between 1951 and 1971, the populations of several counties increased so that they would have been included in the original 1951 Hospital Lien Act; however, several acts were created during the two decades to exclude specific counties. By the early 1970's, the Act applied only to counties with populations between 325,000 and 350,000, between 385,000 and 390,000, and over 425,000. In 1971, the Legislature repealed the 1951 Hospital Lien Act in an act that repealed many other population acts. With the adoption of the 1971 Act, the Legislature intended to reduce dependence on general laws of local application that were often subject to constitutional challenge and to expand the home rule powers of local government. The Act stated that previous acts, including the Hospital Lien Act, were to become ordinances in the counties in which they applied on the effective date of the Act. Dade and Duval counties codified the hospital lien law by ordinance and remain the only counties to attach liens by virtue of local ordinances. The remaining counties that have been granted the lien privilege have done so through special acts.

Of the hospitals that have been granted the lien right, in thirteen counties (Dade, Broward, Orange, Duval, Volusia, Sarasota, Escambia, Marion, Seminole, Monroe, Jackson, Bradford, and Lake) the lien right has been extended to all hospitals, in two counties (Alachua and Lee) it is limited to only non-profit hospitals, and in another two counties (Palm Beach and Indian River), the right is limited to public hospitals. In Hillsborough County, the lien was only afforded to the Hillsborough County Hospital Authority (HCHA).

Three of the counties (Dade, Orange, and Palm Beach) also extend the privilege to the county or health care district when the governmental entity has paid for the hospital care.

Palm Beach County obtained its hospital's enabling act in 1957 (Ch. 57-1688, Laws of Florida), which gave the lien privilege to operators of public hospitals operating in the county. The operators of public hospitals are entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon all judgments, settlements and settlement agreements, on account of illness or injuries which necessitated the hospital care. Prior to 1998, **all hospitals** in Palm Beach County had been filing liens under the provisions of the 1957 law. However, in 1998, the Fourth District Court of Appeals interpreted the law to only allow public hospitals to take advantage of the 1957 law. Palm Beach County is seeking to have the 1999 Legislature change their lien law and make it apply to all hospitals in the county.

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Hillsborough County obtained its hospital's enabling act in 1980 (Ch. 80-510, Laws of Florida), which gave the HCHA the lien privilege. The HCHA only operated Tampa General Hospital, and therefore, it was the only hospital in Hillsborough afforded the right to impose liens. Tampa General has been able to collect \$17-22 million annually through the privilege, but this collection only accounts for slightly more than half the actual charges. Due to changes at Tampa General prior to 1998, the Hospital Authority no longer operates the hospital. As a result, the lien privilege in Hillsborough County was no longer in effect. This change created a situation in which Tampa General was the only Level I Trauma Center and statutory teaching hospital in the state that did not have the lien privilege.

Leon County does not presently have a hospital lien law. Currently, there are two hospitals in Leon County. They are Tallahassee Community Hospital and Tallahassee Memorial HealthCare, Inc. (TMH). Since Leon County doesn't have a hospital lien law, the hospitals must seek a judgment in Small Claims Court, or just write off unrecovered medical costs to uncompensated care. According to TH, the costs of medical services and charges that are written off as uncompensated care is approximately \$35 million annually. While a large percentage of this amount is for indigent care, a large portion of the balance could be recovered with a hospital lien law.

During the 1998 session, HB 4081 relating to Hillsborough County became law as ch. 98-499, Laws of Florida. This revised law enables Hillsborough County Commissioners to implement an ordinance for liens in favor of all operators of hospitals in Hillsborough County and in favor of Hillsborough County when it pays for medical care, treatment, or maintenance of qualifying residents of the county upon all rights of action which the injured person or his legal representative may assert, as well as the proceeds of any settlements or judgments arising from the cause of action that necessitated hospitalization and medical treatment. Any ordinance adopted by Hillsborough County under this act must grant identical remedies to every hospital operating in the county and to the County Indigent Health Care Plan.

Also, if the patient is covered through an HMO or other nongovernmental entity under contract with the hospital the lien will be limited to the covered charges in effect at the time treatment was delivered and to the amount that the hospital has contracted to accept from all sources for the care and treatment of the patient.

In the past, 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 express 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 argue 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 argue that if they are not given priority in reimbursement, the cost of indigent care to the state will increase. Hospitals also argue 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.

B. EFFECT OF PROPOSED CHANGES:

Creates a hospital lien law which gives the lien privilege to the operators of hospitals operating in Leon County.

Hospital operators are entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon all judgments, settlements and settlement agreements, on account of illness or injuries which necessitated the hospital care. It provides procedures for perfecting such liens and providing for releases. If the lienholder is successful, the lienholder is entitled to recover from the defendant, in addition to the lien for medical costs, reasonable attorney's fees and expenses. No person shall be entitled to damages on account of hospital care or treatment unless all hospital costs have been paid.

Worker's Compensation claims are exempt from the provisions of this act.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

None.

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?

No.

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

No.

(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?

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

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 ANALYSIS:

Section 1. Creates a hospital lien law which gives the lien privilege to the operators of hospitals operating in Leon County.

Hospital operators are entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon all judgments, settlements and settlement agreements, on account of illness or injuries which necessitated the hospital care.

Section 2. Provides procedures for perfecting such liens in the Office of the Clerk of Circuit Court and provides for releases.

Section 3. Provides procedures for recording of the liens by the Clerk of Circuit Court of Leon County.

Section 4. Provides that no releases shall be valid unless the lienholder executes a release. If the lienholder is successful in any action resulting from an improper release, the lienholder is entitled to recover from the defendant, in addition to the lien for medical costs, reasonable attorney's fees and expenses.

Section 5. Prohibits a person from receiving damages on account of hospital care or treatment unless all hospital costs have been paid, unless alternative procedures are used.

Section 6. Provides exemption from matters within the purview of the Worker's Compensation Law.

Section 7. Provides severability clause. Provides that if any part of this act is declared unconstitutional, such declaration shall not effect the remainder of the act.

Section 8. Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

- A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 22, 1999.

WHERE? Tallahassee Democrat, Leon County, Tallahassee, Florida.

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B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

IV. COMMENTS:

Because this is a local law, any adopted amendments to this bill must conform to the notice requirements set out in Art. III, s. 10 of the Florida Constitution and s. 11.02, Florida Statutes. Many delegations have adopted policies relative to amendments and passage of local bills. The Leon County delegation has no written policies on file with the Committee on Community Affairs relative to amendments and passage of local bills.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 1999, the Committee on Health Care Licensing and Regulation adopted a strike everything amendment to:

- provide for negotiations, mediation, or equitable distribution of the proceeds of a settlement;
- permit future medical expenses to be included in any settlement determination;
- authorize a judge to consider a list of factors in determining attorney fees and a hospital lien;
- provide that the hospital lien will not exceed 75% of the itemized patient reasonable charges for a patient covered by Medicare or Medicaid;
- prohibit the Medicaid or Medicare provision from applying to any funds recovered by the hospital from state general revenue funds; and
- provide for repeal of the act effective July 1, 2001, unless reenacted by the Legislature.

VI. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Robert W. Coggins

Lucretia Shaw Collins