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DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH REGULATION
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 885
RELATING TO: Hillsborough County/Hospital Liens
SPONSOR(S): Representative Murman & Others
TIED BILL(S): None.

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 6 NAYS 0
 - (2) HEALTH REGULATION YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill revises Hillsborough County's hospital lien law to incorporate definitions and to incorporate provisions from the applicable county ordinance and negotiated agreements between Hillsborough County and hospitals. In addition to defining terms not currently defined in the special act and revising language governing equitable distribution of settlements or judgments when such are not adequate to cover the amount due to the lienholder as well as the patient's attorney's fees, the bill:

- Adds a limitation on the amount of a lien in instances where the patient is uninsured or covered by the County Indigent Health Care Plan;
- Provides for an offset from recovery proceeds for the cost of any insurance policy that paid any part of any lien amounts;
- Consistent with general law, excludes amounts secured by statutory liens having priority over liens created by this act;
- Provides procedures for determining the amount of noneconomic damages and future medical costs when such costs are not itemized in the settlement, settlement agreement, or judgment;
- Requires a procedure by which a patient may bring a claim of alleged abuse by a lienholder in the exercise of the lien privilege granted by this act; and
- Prohibits any lienholder or its legal representative who enforces a lien in accordance with this act from seeking additional compensation in relation to the covered event and prohibits any lienholder or its legal representative who collects a lien from enforcing the terms of a letter of protection issued in conjunction with services rendered in connection with the covered event.

According to the attached "Economic Impact Statement," this bill's anticipated fiscal impact is unknown at this time.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Hillsborough County's Lien Law

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 claim or cause of action settled or adjudicated.

Hillsborough County obtained its hospital's enabling act in 1980 (ch. 80-510, Laws of Florida), which gave the Hillsborough County Hospital Authority (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. Due to changes at Tampa General, the Hospital Authority ceased to operate the hospital and the lien privilege in Hillsborough County was no longer in effect.

In 1998, the Legislature adopted chapter 98-499, Laws of Florida, to enable 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. The lien may be 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. 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. 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. 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. Attorneys' fees and costs will be provided through equitable distribution based on a pro rata share.

Implementation of Hillsborough County's Lien Law

Pursuant to chapter 98-499, L.O.F., County Ordinance 00-19 was passed by the Board of County Commissioners of Hillsborough County Board on May 3, 2000, and has been in effect since May 5,

2000. The ordinance mirrors the special act, except that it contains the following additional provisions, as authorized by the act:

- Definitions;
- Establishes procedural and other matters, including the requirement that each hospital must maintain "a negotiated agreement" with the County in order to exercise the lien privilege;
- Limitations on hospital charges;
- A method of perfecting and enforcing liens;
- A requirement that the Clerk of the Court file liens in the official records;
- Restrictions on a patient's ability to recover damages;
- Prohibition on the release or satisfaction of the lienholder's recorded claim unless the lienholder is included in such release or satisfaction;
- Provision for satisfaction and release by the lienholder;
- Provision for impairment of liens;
- Provision for addressing abuses of the lien authority conferred by the ordinance;
- Penalties for failure by a lienholder to perfect a lien in accordance with the provisions of the ordinance; and
- A termination date of June 30, 2001.

According to information provided by the Hillsborough County Legislative Delegation, the Hillsborough County Attorney's Office submitted the following information regarding the county's request for this local bill:

"The purpose of the proposed amendment is to clarify provisions not previously defined in ch. 98-499, Laws of Florida, and incorporate provisions of the agreements negotiated pursuant to the implementing county ordinance and eliminate the need for the agreements. Also to harmonize ch. 98-499, Laws of Florida, with provisions in general law applicable to the lien law not currently referenced in the special act. It also allows for uniform application of the lien law to all lienholders as the contracts are terminable by either the county or each and every hospital."

Medicaid/Medicare

Medicaid services are considered the payment of last resort and if funds become available from a third party, Medicaid is to be repaid in full for benefits provided. Section 409.910, F. S., provides that Medicaid is to pay only after all other sources of payment for medical care have been exhausted. Further, Medicaid is to be repaid from any third-party benefits prior to any other person and regardless of whether the recipient is made whole or any other creditors are paid. The equities of a recipient, his or her legal representative, a recipient's creditors, or health care providers cannot defeat, reduce, or prorate recovery of Medicaid benefits. Id. However, where the funds are derived from a tort action, the Medicaid recovery is limited to 50% of the recovery after attorney fees and

costs up to the amount of the medical assistance provided by Medicaid. The Hospital has one year from the date of services to bill Medicaid.

Medicare is treated in the same manner as other insurance and is coordinated as a benefit pursuant to s. 627.4235, F.S. Medicare pays after other personal insurance such as health insurance, or automobile or homeowners insurance which includes medical benefits.

C. EFFECT OF PROPOSED CHANGES:

This bill revises Hillsborough County's hospital lien law to incorporate definitions and to incorporate provisions from the applicable county ordinance and negotiated agreements between Hillsborough County and hospitals. In addition to defining terms not currently defined in the special act and rewording language governing equitable distribution of settlements or judgments when such are not adequate to cover the amount due to the lienholder as well as the patient's attorney's fees, the bill:

- Adds a limitation on the amount of a lien in instances where the patient is uninsured or covered by the County Indigent Health Care Plan;
- Provides for an offset from recovery proceeds for the cost of any insurance policy that paid any part of any lien amounts;
- Consistent with general law, excludes amounts secured by statutory liens having priority over liens created by this act;
- Provides procedures for determining the amount of noneconomic damages and future medical costs when such costs are not itemized in the settlement, settlement agreement, or judgment;
- Requires a procedure by which a patient may bring a claim of alleged abuse by a lienholder in the exercise of the lien privilege granted by this act; and
- Prohibits any lienholder or its legal representative who enforces a lien in accordance with this act from seeking additional compensation in relation to the covered event and prohibits any lienholder or its legal representative who collects a lien from enforcing the terms of a letter of protection issued in conjunction with services rendered in connection with the covered event.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Chapter 98-499, L.O.F., is amended to create a new section 1, which provides definitions for the following terms and phrases:

- "Applicable lien rate;"
- "Board;"
- "County;"
- "Covered event;"
- "Hospital;"
- "Lienholder;"
- "Medicare Act;"
- "Patient;"
- "Patient's claims;"
- "Pro rata share;" and
- "Recovery proceeds."

Existing provisions of chapter 98-499, L.O.F., are substantially reworded under a new section 2.

New subsection (1) of section 2 authorizes the Board of County Commissioners of Hillsborough County (Board) to provide by ordinance for:

(a) Liens in favor of hospitals for medical care, treatment, or maintenance provided to a patient, and in favor of the county when the county pays for medical care, treatment or maintenance of qualifying residents of the county, upon causes of action, suits, claims, counterclaims, and demands in connection with a covered event and accruing to a patient, and upon all judgments, settlements, and settlement agreements entered into by virtue thereof.

(b) The attachment, perfection, priority, and enforcement of any such lien and for such procedural and other matters as may be necessary or appropriate to carry out the purposes of the ordinance.

(c) Limiting the amount of a lien to the "applicable lien rate," which is defined in new section 1 as:

"charges arising from a covered event in effect at the time the care and treatment were delivered for the covered event, which shall in no event exceed:

(a) The amount that a lienholder has contracted to accept from all sources for the care and treatment of the patient whether the source is commercial, nongovernmental health insurance coverage through a health maintenance organization, or other nongovernmental entity that is under contract with the lienholder;

(b) For uninsured patients, a rate not exceeding that rate which is customarily paid to a lienholder for services provided to a patient, in compliance with the payment provisions established by the Medicare Act; or

(c) If the patient is covered by the County Indigent Health Care Plan, all amounts payable by the county in connection with services provided to the patient pursuant to the county's indigent health care plan.

(d) Establishing an equitable distribution plan which includes that in the event the recovery proceeds are not adequate to cover the amount actually due and owing the lienholder, as well as the patient's attorney's fees, the recovery proceeds will be equitably distributed on a pro rata share basis. "Pro rata share" is defined to mean:

"a percentage amount of the recovery proceeds, which shall be derived by dividing the total amounts claimed by either a lienholder, the patient, or when applicable, the patient's attorney, by the total sum of all claims arising out of the covered event which are payable from the recovery proceeds including all of the patient's claims, and multiplying the resulting percentage by the total recovery proceeds. For the purpose of calculating pro rata share, if the patient is uninsured, a lienholder hospital may calculate its lien amount as an amount equal to its full billed charges for services provided in connection with a covered event. However, in no event may the hospital's pro rata share of the recovery proceeds exceed the payment amount established by the Medicare Act for all services provided."

"Recovery proceeds" is defined to mean:

"the total amount of all settlement, settlement agreement, and/or judgment proceeds along with any other remuneration for damages arising directly or indirectly from a covered event, minus amounts secured by statutory liens having priority over liens created by this act, an offset for insurance proceeds as provided herein, and, in the event litigation is filed, the patient's attorney's fees as provided in paragraph (1)(g) of section 2."

(e) An offset from the recovery proceeds for the costs of any insurance policy which resulted in payment in whole or in part of any lien amounts. These amounts shall not exceed 1 year's premium amount for any such policy.

(f) Procedures for determining the amount of noneconomic damages and future medical costs related to the covered event to be used in calculating pro rata shares when noneconomic damages and future medical costs are not itemized in the settlement, settlement agreement, or judgment. The procedures shall provide a mechanism for resolution of disputes related to this determination.

(g) Providing that in the event litigation is filed to recover a plaintiff's damages through settlement or judgment, instead of prorating the plaintiff's attorney's fees, in determining the lienholder's recovery, plaintiff's attorney's fees shall be calculated at an amount not to exceed 25 percent of the recovery proceeds.

New subsection (2) of section 2 provides that any ordinance enacted in accordance with this act must include a procedure by which a patient may bring a claim of alleged abuse by a lienholder in the exercise of the lien privilege granted by this act and the manner in which the claim will be considered and resolved. The ordinance must also provide, without exception, for all lienholders identical procedural remedies.

New section 3 provides that any lienholder or the legal representative of that lienholder who enforces a lien in accordance with this act and the implementing ordinance of the county is barred from seeking any additional compensation in relation to the covered event from the patient, any family member of the patient, or any other individual authorized to make decisions concerning the providing or withholding of the patient's care or treatment in relation to the charges covered by the lien. In addition, the section provides that any lienholder or the legal representative of that lienholder who collects a lien in whole or in part pursuant to this act is prohibited from enforcing the terms of a letter of protection issued in connection with services rendered in connection with the covered event.

Section 2. An effective date of July 1, 2001, is provided.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN?

February 3, 2001

WHERE? The Times, Tampa, Hillsborough County

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. OTHER COMMENTS:

House Rule 5.6(a) provides"

"If a committee or council determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill."

This rule does not appear to apply to HB 885. In general terms, this bill incorporates certain provisions of Hillsborough County Ordinance 00-19 and contracts negotiated between the county and area hospitals into the special act. However, several changes to the special act appear to require local legislation. For instance, chapter 98-499, L.O.F., provides under specified circumstances for a "settlement or judgment to be equitably distributed . . ." This provision requires the entire settlement or judgment to be distributed pursuant to this act between the hospital and the patient . . ." The special act makes no provision for excluding amounts secured by statutory liens having priority over liens created by this act -- Medicaid (s. 409.910, F.S.). The bill also revises language governing equitable distribution of settlements or judgments when such are not adequate to cover the amount due to the lienholder as well as the patient's attorney's fees. In addition to other changes, the bill excludes reasonable attorney's fees and costs due the hospital's attorney. Finally, the bill adds provisions addressed in the contracts between the county and participating hospitals, but which are not authorized in the special act. These include:

- A limitation on the amount of a lien in instances where the patient is uninsured or covered by the County Indigent Health Care Plan;
- An offset from recovery proceeds for the cost of any insurance policy that paid any part of any lien amounts;
- A procedure for determining the amount of noneconomic damages and future medical costs when such costs are not itemized in the settlement, settlement agreement, or judgment;
- A procedure by which a patient may bring a claim of alleged abuse by a lienholder in the exercise of the lien privilege granted by this act;

- A prohibition on any lienholder or its legal representative who enforces a lien in accordance with this act from seeking additional compensation in relation to the covered event and a prohibition on any lienholder or its legal representative who collects a lien from enforcing the terms of a letter of protection issued in conjunction with services rendered in connection with the covered event.

In March 2000, staff of the Health Licensing & Regulation Committee released an interim project report entitled, "Feasibility of Establishing a Statewide Lien Law." Staff performed a review of the policy underlying existing hospital lien laws and input was solicited from affected and interested parties, including hospitals, physicians, attorneys, and consumers. From the information received, the following options were presented for consideration by the Legislature:

- Continue the existing method of individual counties to obtain hospital lien authority and allow current lien laws to remain effective;
- Enact a uniform law affecting only those counties that do not presently have lien laws and allow current lien laws to remain effective;
- Enact a statewide, uniform law and establish a repeal date of existing lien laws; or
- Repeal all existing lien laws in favor of the common law right of any creditor to demand payment from a debtor through the court system.

Staff concluded that a "uniform, statewide lien law policy be adopted by the Legislature." Additionally, it was recommended "that the proceeds of a settlement or judgment resulting from personal injury caused by a third party be equitably distributed between the hospital, attorney(s), physician(s), and the patient/plaintiff." No legislation was initiated by the committee as a result of the recommendations.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Thomas L. Hamby, Jr.

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON HEALTH REGULATION:

Prepared by:

Lucretia Shaw Collins

Staff Director:

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