

STORAGE NAME: s2578.ca

DATE: April 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: CS/SB 2578

RELATING TO: Hillsborough County/Hospital Bills

SPONSOR(S): Judiciary and Senator Grant & others

COMPANION BILL(S): None.

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

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

The bill restricts the authority that may be granted by a Hillsborough County ordinance for the filing of a lien for medical services and limits the amount the hospital may be permitted to collect. The ordinance may not allow a lien to be recorded by a hospital unless the insurer or other payor of third-party benefits, has been billed for the covered charges except where the hospital is required to seek recovery from third parties prior to billing the program. The bill also requires the ordinance to provide for equitable distribution of proceeds between the hospital and the patient where the patient recovers less than the total damages.

The Hillsborough County Commission is directed to incorporate the changes in the bill in any ordinance adopted. If an ordinance is not adopted by October 1, 1999, chapter 98-499, Laws of Florida, will be repealed.

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 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Tampa General, the Hospital Authority ceased to operate the hospital and the lien privilege in Hillsborough County was no longer in effect.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.

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, Florida Statutes. Medicare pays after other personal insurance such as health insurance, or automobile or homeowners insurance which includes medical benefits.

B. EFFECT OF PROPOSED CHANGES:

The **committee substitute** restricts the authority which may be granted in the hospital lien ordinance. A lien may not be recorded by a hospital until the insurer or other payor of third-party benefits, has been billed for the covered charges unless state or federal law or rules or a contract requires the hospital to seek recovery from the third party prior to billing. This includes Medicaid, Medicare and the County Indigent Health Care Plan. The hospital must accept the contract amount as payment for services and may not file a lien for a greater amount for the same services.

The ordinance must provide that any lien entitles the hospital to a pro-rata share of any settlement or judgment obtained by the patient. The hospital will pay a pro rata share of attorney fees and costs and then receive as payment on the debt a pro rata share of the proceeds. This is the same method used under chapter 440, F.S., to pay liens for worker's compensation benefits. The courts have provided a formula for equitable distribution of any settlement or judgement to satisfy worker's compensation liens. *Manfredo v. Employer's Casualty Insurance Company*, 560 So.2d 1162 (1990) and *Volk v. Gallopo*, 585 so.2d 1163 (4th DCA, 1991).

The board of county commissioners is directed to revise any ordinance adopted in accordance with chapter 98-499, Laws of Florida, to reflect these changes.

Finally, the bill provides that Chapter 98-499, Laws of Florida, and the provisions of this act are to be repealed on October 1, 1999 unless the board of county commissioners of Hillsborough County enact an ordinance before that date to implement the provisions of the chapter law.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 98-499, Laws of Florida.

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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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. Amends s. 1 of chapter 98-499, Laws of Florida; requires that a Hillsborough County hospital bill the insurer or other payor of third-party benefits prior to recording a lien; provides exceptions involving state or federal law or rules or contract requiring the hospital to seek reimbursement from a third party prior to billing the insurer, health plan, or program; and provides for distribution of a patient's recovery from a third party.

Section 2. Requires the Hillsborough Board of County Commissioners (board) to revise any ordinance adopted pursuant to chapter 98-499, Laws of Florida, to incorporate the amendments made by this act to chapter 98-499, Laws of Florida.

Section 3. Provides for the repeal of chapter 98-499, Laws of Florida on October 1, 1999, unless the board enacts an ordinance before that date in accordance with the statutory provisions of s. 1 chapter 98-499, Laws of Florida, as amended.

Section 4. Provides that this bill takes effect upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [] No []

IF YES, WHEN? January 30, 1999

WHERE? "The Times"; Hillsborough County; Tampa, Florida

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:

This bill analysis is drawn to the committee substitute for SB 2578.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Senate Committee on Judiciary adopted a committee substitute for SB 2578. The substantial changes contained in the committee substitute for HB 2578 follows:

- Permits the hospital lien ordinance adopted by the county commission of Hillsborough County to allow collection from third parties prior to filing a claim with an insurer or payor of third-party benefits when required by state or federal law or rules or a contract;
- Requires the ordinance to provide that any lien entitles the hospital to a pro-rata share of any settlement or judgment obtained by the patient. The hospital will pay a pro rata share of attorney fees and costs and then receive as payment on the debt a pro rata share of the proceeds; and
- Provides that chapter 98-499, Laws of Florida, and the provisions of this bill are to be repealed on October 1, 1999 instead of July 1, 1999, unless the board of county commissioners of Hillsborough County enact an ordinance before that date to implement the provisions of the chapter law.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Nayola R. Frazier

Joan Highsmith-Smith