

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2578

SPONSOR: Committee on Judiciary and Senators Grant, Sebesta, Lee, and Hargrett

SUBJECT: Hillsborough County

DATE: March 31, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|---------------------|
| 1. | <u>Johnson</u> | <u>Johnson</u> | <u>JU</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>RC</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute 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 committee substitute 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 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 If an ordinance is not adopted by October 1, 1999 chapter 98-499, L.O.F., will be repealed.

This bill substantially amends chapter 98-499, L.O.F..

II. 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, L.O.F.), 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Tampa General, the Hospital Authority ceased to operate the hospital and the lien privilege in Hillsborough County was no longer in effect.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, L.O.F., 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 should 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.

III. 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, L.O.F., to reflect these changes.

Finally, the bill provides that Chapter 98-499, L.O.F., 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.

The bill is to take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the lien on recovery from third parties is limited to the amounts not covered by Medicaid or Medicare or other insurer or third-party sources, the person recovering a judgment or settlement may have more funds remaining after the settlement or judgment is paid. Further, the equitable distribution will prohibit the hospital from taking an entire settlement to cover a lien and will provide for payment of the attorney's fees and costs.

C. Government Sector Impact:

When a lien law ordinance is enacted, the recovery for medical services will be limited to the amounts paid by insurers or third-party sources which may be a negotiated payment which is less than actual cost to the hospital. Further, when a judgement or settlement is for less than the plaintiff's total damages the hospital recovery will be reduced to an equitable share of the amount of the judgment or settlement in relation to the total damages.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
