

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

This bill creates a hospital lien law which provides that nonprofit corporations operating a charitable hospital within Collier County are entitled to impose a lien for all reasonable charges for treatment of injured persons upon all judgments and settlements recovered from the tortfeasor who caused the injuries necessitating the health care services.

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. In contrast, 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 (s. 10, Art. III, State Constitution). At the time the 1951 general law of local application was passed, only Dade County met 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.

Florida currently has 21 lien laws. Of the hospitals that have been granted the lien right, 15 counties (Bradford, Brevard, Broward, Dade, Duval, Escambia, Jackson, Lake, Marion, Monroe, Orange, Pinellas, , Sarasota, Seminole, and Volusia) have extended the lien right 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.

Collier County does not presently have a hospital lien law. Currently, there are two hospitals in Collier County, Naples Community Hospital and the "for profit" Cleveland Clinic. Naples Community Hospital is the only hospital affected by this bill. As Collier County doesn't have a hospital lien law, the hospitals must seek judgments in small claims court, or write off unrecovered medical costs to uncompensated care.

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 (all except Palm Beach, Pinellas and Hillsborough) 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 allowances 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.

In 2000, the Florida House of Representatives' Committee on Health Care Licensing and Regulation undertook a review and evaluation of the special acts and hospital lien law ordinances in Florida. Information reviewed by staff supported the creation of a uniform, statewide lien law policy. Additionally, it was recommended that the proceeds of a settlement or judgment resulting from personal injury caused by a third person be equitably distributed between the hospital, attorney(s), physicians(s), and the patient/plaintiff.

C. SECTION DIRECTORY:

Section 1: Provides that each nonprofit corporation operating a Collier County hospital that qualifies as a 501 (c) (3) is entitled to a lien for reasonable hospital charges owed for health care services provided to an injured person from proceeds of judgments and settlements recovered from the tortfeasor who caused the injuries necessitating treatment.

Provides that the term "patient," as used in this section, includes the legal representative of the injured person.

Provides that the lien is limited to the actual amount of all reasonable charges recovered, less the hospital's pro rata share of costs and attorney's fees incurred by the patient in recovering such charges.

Provides that the hospital's pro rata share is calculated by deducting an amount from its recovery equal to the percentage of the judgment or settlement which is for costs and attorney's fees.

Provides that charges must be calculated after reduction of all amounts payable under third-party-payor contracts and in accordance with other benefits, programs or plans.

Provides that if benefits are payable under personal injury protection insurance as provided in ch. 627, F.S, and the patient has lost wages, that 25% of the amount of personal injury protection benefits or the amount of lost wages, whichever is less, be reserved for paying the patient's lost wages, and not subject to a lien created by this section.

Provides that if no amount is payable under a third-party-payor contract or other insurance or plan, the reasonable charges be determined under the third-party-payor contract or agreement entered into between the hospital and the payor which provides for the lowest charges agreed to as acceptable by the hospital.

Provides that if the patient and hospital fail to agree on the actual amount of the charges recovered from a tortfeasor, the court in which the claim was filed shall determine the amount of charges recovered. In determining these charges, consideration must be given to any offset in the amount of settlement or judgment for any comparative negligence of the patient or other tortfeasors, limitations in the amount of liability insurance coverage available to the tortfeasor, or other mitigating factors.

Provides that the hospital's recovery must be reduced by any payments by the patient and any other voluntary donations on behalf of the patient.

Provides that a patient notify the hospital by certified or registered mail of his intent to claim damages from the tortfeasor. Provides that the patient include a copy of the complaint if he has filed suit at the time the notice is sent.

Provides that the notice include a statement that the hospital waives any lien if it does not provide the patient or his attorney with a statement asserting the lien and the amount of all reasonable charges within 30 days following receipt of the notice.

Provides that failure of the hospital to provide the statement within the 30-day period constitutes a waiver of the lien.

Provides that payment to the hospital pursuant to this section fully satisfies the patient's bill.

Provides that the hospital provide the patient all reasonably necessary information to assist the patient in proving his claim at no charge.

Section 2: Provides an effective date of July 1, 2003, and that the law applies to all hospital charges incurred on or after that date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 30, 2002

WHERE? The *Naples Daily News*, a daily newspaper of general circulation, in Collier County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

There appears to be some question about the interpretation of hospital liens created by special act in relation to the constitutional provision prohibiting the creation of liens based on private contract in special acts. See, s.11(a) (9), art. III of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

This bill appears to not contemplate that a patient may need to pay treating physicians or future health care costs relating to their injuries from their proceeds.

Other Comments

The Sponsor¹ of the bill has indicated that when hospital patients refuse to pay for the care they have received in Collier County and then win a related lawsuit, the hospital cannot recover payment unless they receive the same lien protection as hospitals have in many other Florida counties.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.

¹ Jessica Kardas, Legislative Assistant to the Honorable Dudley Goodlette, District 76