

Feasibility of Establishing a Statewide Lien Law



**By the Staff of
The Florida House of Representatives
Committee on Health Care Licensing & Regulation
The Honorable Mike Fasano, Chair**

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INTRODUCTION

The Committee on Health Care Licensing and Regulation has undertaken a review and evaluation of the operation and effect of the special acts and hospital lien law ordinances that exist in Florida. By direction of Representative Fasano, Chair of the committee, staff prepared this project report which offers members a summary of the issues facing the Legislature with regard to Florida's lien laws as well as possible options for legislative action.

Florida's lien laws are designed to enable primarily hospitals to secure payment for medical services rendered to persons whom, for whatever reason, are unable to pay for services. In most cases, the medical services at issue are those that result from a personal injury caused by a third person to the patient. The lien laws allow the hospitals to recover their costs of providing health services to an injured patient from the proceeds of a civil court settlement or judgment resulting from a personal injury lawsuit. In these cases, there are a number of central parties that may have an interest in the proceeds of a settlement or judgment: the hospital that provided the services; the physicians that provided professional services; the attorney or attorneys who represented the patient/plaintiff; and the patient, who may be in dire financial straights resulting from the injury and subsequent medical treatment. These parties have interests that relate directly to important questions of policy. The central question presented by this report is whether, and to what extent should Florida's lien laws balance the interests of the parties that are directly affected by personal injury cases.

Florida common law provides for a right of recovery for the provision of goods or services, but this right requires demonstration at trial that the services were rendered and raises questions about their quality and costs. A hospital lien eliminates the need for a hospital to bring suit against a patient to recover payment for medical services. Of Florida's 21 lien laws, 18 give hospitals the right to recover their costs as a priority from the proceeds of a settlement or judgment, leaving the burden of proof up to the patient/plaintiff who files suit as a result of a personal injury. Once guilt has been established and the proceeds are determined by settlement or judgment of the court, the hospital can enter into the litigation and assert its right to recover. Very often, this right is equivalent to 100% of the proceeds of the settlement or judgment, leaving other parties without compensation or recovery. All hospital liens are statutory liens, which require a contractual relationship between the hospital and the patient, whether expressed through contracts completed prior to or upon patient admission, or impliedly established upon admission when the patient is admitted under emergency situations with no opportunity for informed consent.

Staff has 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 that staff has reviewed, the following options appear to be available for consideration by the Legislature:

- Continue the existing method for 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.

EXECUTIVE SUMMARY

Hospital liens were instituted as a means of obtaining reimbursement for medical care provided to patients whom, for whatever reason, are unable to pay for services. Florida's hospitals consider the lien laws as a mechanism for filling the financial void resulting from their provision of medical care to those who cannot pay. Indeed, lien ordinances help support community trauma centers. Responses from Florida's hospitals suggest that the patchwork approach to lien laws throughout the state loosely matches the lack of local revenue to support indigent care. From the hospital's standpoint, diminishing sources of revenue require extreme efforts to recover all incurred costs so that they can continue operation, and continue to provide care for indigent patients.

Hospitals have stated the need to recover the costs of providing medical services rendered on behalf of their patients. However, in Florida, hospitals often take 100% of the proceeds of settlements or judgments involving their patients, leaving nothing for the patient to pay for future needs, treating physicians, or the patient's lawyers. In addition, hospitals frequently choose to recover their costs from the tortfeasor's insurance rather than seeking reimbursement from the patient's medical insurance first, at the discounted rate of the patient's own HMO or insurance. This practice reduces the potential monies available to the patient for non-medical expenses, such as legal expenses or continuing needs.

Oftentimes in situations where the potential lien recovery will be less than the cost of medical services, the hospital will negotiate with the patient/plaintiff's attorney, resulting in both parties receiving a portion of the settlement or judgment. In contrast, there are cases in which the hospital has refused to negotiate, leading the attorney to refuse to represent a patient or a patient refusing to accept a settlement that would ultimately be paid to the hospital.

Frequently, physicians and other health care providers play no part in recovery of payment for their vital services through funds made available by settlements or judgments. Finally, situations currently exist in which persons who sustain injuries in an accident caused by the negligence of a third party are unable to continue employment, have continuing health care needs they cannot afford, and do not receive compensation because the proceeds of the lawsuit are recovered by the hospital under a lien law.

From the perspective of the consumer, specifically those with health insurance coverage, who cannot receive appropriate compensation for a life-changing injury (or even funds for funeral expenses), the effect of losing their recovery to a health care provider is unfair.

From the standpoint of the physician, there would be few lives saved without their skills and effort. The current lien law system does not recognize the vital contributions of physicians, resulting in no provision to assure payment for their crucial services.

The attorney's view reflects the economic reality of having to evaluate potential personal injury cases in part on whether a lien will eliminate recovery of fees and costs. This may result in an attorney's refusal to take a personal injury case, and a patient/plaintiff's inability to recover any compensation.

Moreover, without the personal injury lawsuit, the hospital may not recover any of its costs under a lien. While often characterized as adverse, the relationship between the hospitals and personal injury lawyers -- insofar as it relates to the lien laws -- is symbiotic.

Hospitals, physicians, and lawyers all deserve to be paid for providing services to the injured person. The injured person also deserves to have his or her future needs stemming from the injury satisfied. Obviously, the lien law issue is complicated with many factors that need to be considered.

Staff has reviewed the policy underlying existing hospital lien laws and gathered input from all affected and interested parties. This review leads staff to the following conclusions on the following options that the Legislature may consider:

- Continue the existing method for individual counties to obtain hospital lien authority and allow current lien laws to remain effective;

This option assumes that reviewed information supports the existence of a fair and responsible approach for all involved parties who live in counties that have lien law ordinances as well as counties that do not have lien law ordinances. Information gathered from attorneys, consumers, and physicians suggests that the current method of obtaining lien laws in interested counties has developed into a patchwork of liening practices, at least some of which do not sufficiently recognize the justifiable needs of all stakeholders.

- Enact a uniform law affecting only those counties that do not presently have lien laws, allowing current lien laws to remain effective;

This option assumes that reviewed information supports the existence of a fair and responsible approach to liening for all involved parties in counties that currently have lien laws in effect, and a recognizable liening deficit in counties without lien law provisions. Information gathered indicates that, in general, county lien laws appear disparate in their treatment of all involved parties. Lien laws were initially instituted as a means of obtaining reimbursement for medical care provided to insolvent patients. Counties that have not applied for lien law ordinances may, due to population distribution, have low numbers of cases in which a lien law would apply; however, the underlying need continues for lien law practices to provide reimbursement on behalf of the number of insolvent patients that do receive medical services.

- Enact a statewide, uniform law and establish a repeal date of existing lien laws; or

This option assumes that the reviewed information does not support the current approach to applying liens on settlements for involved parties in counties in Florida that have established lien laws and does not support having no lien practices in counties that have not established lien laws. Information gathered from attorneys, consumers, and physicians suggests that the current method of obtaining lien laws in interested counties has developed into a patchwork of lien practices which, in general, do not sufficiently recognize the needs of all stakeholders.

- 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.

This option assumes that there is no need for lien laws in Florida. Lien laws were initially instituted as a means of obtaining reimbursement for medical care provided to insolvent patients. All counties have populations which are incapable of paying for medical expenses. Counties that have not applied for lien law ordinances may, due to population distribution, only have low numbers of cases for which a lien law could apply. Lien practices provide a method of recovering medical expenses incurred in the care of indigent persons. Billing tortfeasors' insurance companies for full and usual charges rather than accepting a patient's medical insurance may be one reason why current lien practices have evolved.

Information reviewed by staff supports the option of a uniform, statewide lien law. It is therefore recommended that a statewide lien law policy be adopted by the Legislature to be effective January 1, 2001. The special acts, or lien law ordinances presently in effect will expire on December 31, 2000. Additionally, it is 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), physician(s), and the patient/plaintiff.

METHODOLOGY

On June 3, 1999, Speaker Thrasher approved the Committees on Health Care Licensing & Regulation, Judiciary, and Community Affairs conducting a joint interim project regarding the potential for reform of the state's hospital lien laws. To gain a better understanding of the lien law process and how it affects hospitals, physicians, attorneys, and most importantly, patients, a questionnaire (Appendix A) was sent on July 30, 1999, to the following associations:

- Academy of Florida Trial Lawyers;
- Association of Community Hospital & Health Systems, Inc.;
- Florida Association of Counties;
- Florida Hospital Association;
- Florida League of Health Systems, Inc.;
- Florida Medical Association; and
- Florida Osteopathic Medical Association.

By the requested response date of August 20, 1999, most of the associations had provided a written response (Appendix B), including one representing a joint response from the three (3) hospital associations. In communications with the Florida Association of Counties, it was reported that a response was not provided since the "questionnaire did not specifically address county government authority; however, the county association is concerned with the financial standing of hospitals currently under local lien laws."

As part of this investigative process, in December, 1999, a letter (Appendix C) was sent to the three hospital associations and a letter and questionnaire (Appendix D) to the hospital administrator in each of the 280 licensed hospitals in the state. The purpose of the questionnaire was to solicit their opinions regarding the potential financial impact to hospitals if any one of the following options was adopted by the members of the Legislature:

- Continuing the existing method for individual counties to obtain hospital lien authority (through a special act of the Legislature) and allowing current lien laws to remain effective;
- Enacting a uniform law affecting only those 46 counties that do not presently have lien laws and allowing current lien laws to remain effective;
- Enacting a statewide, uniform lien law and establishing a repeal date of existing laws; or
- Repealing all existing lien laws in the 21 counties in favor of the common law right of any creditor to demand payment from a debtor through the court system.

Additionally, the hospital administrators were asked to provide information from data collected on cases in which lawsuits/liens were applied during the 90-day period from July 1 - October 1, 1999. By the return date of January 1, 2000, a total of 44 of the 280 questionnaires mailed had been received from the hospitals representing a 16% return rate. Of the 44 responses, 20 of the letters from hospitals stated their inability to provide the requested information.

BACKGROUND INFORMATION

Most states have general laws that authorize liens. In contrast, Florida liens exist on a county-by-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. 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 states 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 are the only counties to attach liens by virtue of local ordinances. The remaining 19 counties that have been granted the lien privilege have done so through special acts.

From a public policy development perspective, it would appear to be appropriate to consider the constitutionality of lien laws under the Florida Constitution. 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 special acts based on private contract. It is suggested that persons interested in a written discussion of this issue reference Meta Calder's Florida's Hospital Lien Laws 21 Florida State University Law Review 341, 359-366 (1993).

To date, 21 of Florida's 67 counties have hospital lien provisions (Appendix E). Of these 21 counties, there are thirteen counties in which the lien right has been extended to all hospitals, two counties in which it is limited to only non-profit hospitals, and two counties in which the right is limited to public hospitals. In Hillsborough County, the lien was only afforded to the Hillsborough County Hospital Authority. The three hospital associations within Florida reported that, of the counties with lien laws, two require implementation at the local level, which has not yet occurred (Hillsborough and Pinellas); one has been rendered moot by a court decision (Palm Beach); and four others apply only to a portion of the hospitals within the county (Indian River, Alachua, Lee, and Monroe counties). Therefore, of the 280 licensed hospitals in the state, the hospital associations have identified 116 hospitals which currently have lien rights.

Forty-two states, including the District of Columbia, have enacted uniform lien laws (Appendix F). Florida, Kentucky, Michigan, Mississippi (repealed in 1989), Ohio, Pennsylvania, South Carolina, West Virginia, and Wyoming are the only states without statewide lien law provisions. The majority of these state lien laws specify that the plaintiff's attorney has the right to attach liens against settlements or judgments. A small minority of states allow hospitals to place liens against settlements or allow awards to hospitals or other medical service providers only after legal fees are satisfied.

Hospital liens continue to be an issue of debate between Florida hospitals and Florida trial lawyers. Twenty-one counties in Florida have been granted hospital lien law provisions and of those, only two counties have given attorneys first priority in payment of liens. Therefore, 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 to the claimant.

Florida case law has held that the hospital's charges attach first. Trial lawyers feel that hospital liens should make allowance for attorney's fees in order to generate more suits with greater overall value. As attorney's fees and any portion going directly to the plaintiff can only be satisfied from any dollars remaining after the hospital has deducted its costs, there may be little incentive for an attorney to take a client's case or for a potential plaintiff to pursue a cause of action.

Therefore, since most liens preempt attorney's fees, an injured plaintiff may not be able to find counsel to represent him or her in seeking reimbursement for medical costs. It is possible to interpret this lack of true access to the courts as being dependent on the county in which a potential plaintiff is hospitalized. The concepts of fairness to all individuals and necessity for providing full access to legal remedies, support the existence of a lien law that would be enacted throughout the state in a uniform manner.

A contrasting argument by hospitals predicts that if they are not given priority in reimbursement, the cost of indigent care 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.

There is no consistency among the various counties in the specific manner in which the laws are implemented, which results in a patchwork of local liens. Few of the county lien laws specify protection of a patient's rights or provision for compensation to the physician or attorney. With the exception of the laws in three counties, the existing lien laws do not provide for a distribution of available funds among the various parties involved.

In contrast to all other counties in Florida with existing lien laws, the following counties specify distribution of settlement proceeds in the following manner:

Lake County

Lien is limited to the lesser of the following: reasonable charges for care and treatment; or two-thirds of the net amount of the settlement or judgment after deducting the reasonable cost of procuring the settlement or judgment (reasonable attorney's fees).

Palm Beach County

Amount of the lien is equal to the total amount paid for providing health care minus the health care district's pro rata share of attorney's fees. Lien will be no greater than two-

thirds of the settlement or judgment after attorney's fees are paid. (This lien law has been rendered moot by a court decision because the Palm Beach County special act applies only to public hospitals).

Hillsborough County

Lien is limited to the covered medical charges in effect at the time care and treatment were delivered and shall not exceed the amount that the hospital has contracted to accept from all sources for the care and treatment of the patient.

If the settlement or judgment is less than or equal to a sum of the debt actually due and owing the Hospital Authority, it will be equitably distributed based on the pro rata reduction in the amount due the hospital and the patient, including a pro rata reduction in the amount of reasonable attorney's fees and costs due the patient's attorney on that portion of the settlement attributable to the hospital lien.

If the settlement exceeds the debt due the hospital but is not adequate to cover the amount due to the hospital as well as the patient's attorney, the settlement will be equitably distributed based on a pro rata share of the amount due the hospital and the patient, including a pro rata share for the amount of reasonable attorney's fees and costs due the patient's attorney and the hospital's attorney.

In the event litigation is filed to recover a plaintiff's damages through settlement or judgment, then the hospital's lien actually collected shall be subject to assessment, by reduction, for plaintiff's attorney fees, which for the lien assessment shall be capped at 25 percent. Implementation of this lien law has not occurred at the local level.

Past Statewide Lien Law Proposals

The first bill to propose a statewide lien law was HB 1926, which originated in 1973. HB 1926 specified the lien parameters as:

“Every individual, partnership, firm, association, corporation, institution and governmental unit, and every combination of any of the foregoing, operating a hospital in the state shall be entitled to a lien for all reasonable charges for hospital care, treatment and maintenance of ill or injured persons upon any and all causes of action, suits, claims, counter-claims and demands accruing to the persons to whom such care, treatment, or maintenance are furnished, or accruing to the legal representatives of such persons, and upon all judgments, settlements and settlement agreements rendered or entered into by virtue thereof, on account of illness or injuries giving rise to such causes of Action, suits, claims, counter-claims, demands, judgments, settlements or settlement agreement and which necessitate or shall have necessitated such hospital care, treatment and maintenance.”

In 1993, CS/HB 1053 and SB 976 each contained identical language specifying a distributional payment of proceeds:

“The amount of the lien created by this section shall be the entire amount of reasonable charges due and owing pursuant to the notice of health care services provided less the hospital’s pro rata share of all costs expended by the persons claiming the right to recover, including the cost of reasonable attorney’s fees for the claimant’s attorney; provided, however, that the amount of the lien created by this section shall in no event be greater than two-thirds of the amount remaining from the proceeds of the judgment, settlement, or settlement agreement after the deduction of attorney’s fees and other reasonable costs and expenses of litigation. In determining the hospital’s pro rata share of costs and attorney’s fees, the amount of reasonable hospital charges due and owing shall be reduced by a percentage amount equal to the percentage of the recovery which is for costs and attorney’s fees.”

Recent Local Proposals

In 1999, HB 1407 was introduced to establish a Hospital Lien Law for Leon County. Palm Beach County proposed an amendment to its lien law in HB 1085. Both bills were amended by the Health Care Licensing and Regulation Committee to specify the following distributional payment of proceeds from settlements or judgments:

- When the total amount received, through settlement or judgment, is equal to or greater than the sum of all medical and reasonable costs of litigation, including the contractual attorney’s fee due to the patient’s attorney, then the hospital lien shall be paid in full.
- When the total amount received, through settlement or judgment, is less than the sum of all medical expenses and the reasonable costs of litigation, including the contractual attorney’s fee due to the patient’s attorney, then the claimant and the hospital have a statutory duty to negotiate in good faith an equitable distribution of the proceeds of the settlement or judgment.
- In the event the parties are unable to agree on an equitable distribution of the proceeds, the claimant and the hospital shall participate in mediation. If mediation produces no agreement, the court may equitably distribute the proceeds of the judgment or settlement between the hospital, patient, and patient’s attorneys, notwithstanding the lien created by this act.
- In equitably distributing the proceeds, the court shall give consideration to the reasonable costs of litigation and any offset in the amount of settlement or judgment for any comparative negligence of the claimant.

HB 1085, as amended by the Health Care Licensing & Regulation Committee, passed the Community Affairs Committee, but died on the House Calendar. HB 1407, as amended by the Health Care Licensing & Regulation Committee, was temporarily deferred in the Community Affairs Committee, where it died at the end of the legislative session.

In 1998, a work group was established to review the financial condition of Tampa General Hospital and the potential effects of the allocation proposed in their hospital lien ordinance on the persons having suffered a trauma incident. The work group was comprised of representatives in the following Hillsborough County positions: Chief Deputy Clerk; Director of Auditing; Director of the Division of Health Care; Health and Social Services Department; private CPA; Budget Analyst with Health and Social Services; Director of Debt Management; a private physician and member of the Health Care Advisory Board; and the Assistant County Attorney. In regard to the working group's charge to review potential effects to persons suffering trauma, the following was concluded: "This work group believes that there is reasonable justification to readdress the distribution of funds in the legislation and in any proposed ordinance."

Furthermore, the working group had three recommendations:

- Set aside an equitable amount for the follow-up medical services and rehabilitation of a patient with the provision that this amount could be awarded directly to the hospital if the hospital guarantees to provide these services at no additional charge to the patient.
- That there be an equitable distribution of the remaining funds between the hospital and its attorney, the attending physicians, the patient's attorney, and possibly the patient.
- That, when the patient is uninsured, the claims from the hospital and/or physician be limited to the average of all the insurance reimbursement rates of companies which have contracts with the hospital.

FINDINGS

Results of research are summarized into four distinct stakeholder groups: hospitals; attorneys; physicians; and consumers. In addition, background information about insurance is provided.

Hospitals

Responses to the two questionnaires sent to the 280 hospital administrators and the 3 hospital associations indicate the difficulty these institutions have in separating out data specific to liens placed for the purpose of recovering medical expenses incurred in the care of persons involved in an injurious situation for which damages are sought.

Of the data that was collected, it was repeatedly demonstrated that hospitals often do not recover even half of the medical costs which were the basis of the liens. The five hospitals that reported data most completely indicated that, collectively, the hospitals recovered \$2,450,655 from liens and failed to recover \$3,116,790 for the three-month period for which data was reported. Proportionally, hospital recovery of liens ranged from 4% to 53% with an average recovery of 44%. A response by Jackson Memorial Hospital indicated that the median value of all liens recovered from May 1, 1998, to April 30, 1999, was \$12,099 and the mean value was \$30,874. Although this recovery rate is not typically high, hospital liens assure hospitals a source of payment for the medical care provided to nonpaying or indigent patients.

In a letter dated January 10, 2000, the Florida Hospital Association, Florida League of Health Systems, and the Association of Community Hospitals and Health Systems of Florida provided a written reply to the request for information by staff. Information gathered by these associations represents at least 25 percent of the facilities affected by current hospital lien laws. It was reported that the 29 hospitals utilized lien laws to collect nearly \$26 million during 1998 for services rendered to individuals injured through the fault of another. These associations report an effective working relationship between individual hospitals and members of the relevant local attorney's bar association to obtain fair compensation for all parties in light of available resources. The hospital associations oppose a statewide lien law and support allowing the current lien laws to remain in effect. They provided arguments specifically related to local control, government mandates, and market instability to further support this position, which can be found in Appendix G.

Specifics regarding the implementation of lien laws by hospitals reveal some important nuances in the attempts of individual hospitals to recover medical costs for services due to injuries from the negligence of another individual. The following are selected comments provided by individual hospital respondents:

- Without a lien the auto insurance company or adjuster does not have to honor the hospitals assignment of benefits;

- If the auto/liability was divided it would interfere with how quickly the hospital is paid; currently PIP must be paid to the hospital first;
- One hospital stated that all requests to negotiate are considered and approximately 10% of cases are negotiated; negotiations are based on an estimated settlement; generally the hospital will reduce its fee the same percentage as attorney fees are reduced;
- One hospital generally allows legal costs to be paid off the top, with the remainder apportioned between the patient, his attorney and the medical providers (usually $\frac{1}{3}$ - $\frac{1}{2}$ of the settlement); and
- One hospital negotiates when provided the total amount of the settlement, including the amount for the patient, total outstanding medical bills, total attorney's fees and costs, attorney's willingness to reduce fees, amount proposed for the hospital to accept and information regarding any other sources of recovery. Once this information is provided, the hospital may negotiate normal reductions or discounts which shall not exceed 25% of total charges.

Trial Lawyers

In November, 1999, the Florida trial lawyers provided a comprehensive response that was supplemented by case studies illustrating 25 situations in which implementation of the hospital lien law had damaging effects on the plaintiffs (Appendix H). Approximately 10,000 hospital liens were filed in 1998, of which, it can be assumed, the 25 cases cited were a small part. In a letter dated August 20, 1999, a representative of the Academy of Florida Trial Lawyers contended that "many of the lien ordinances or special acts currently on the books in Florida are onerous to the injured patient." Furthermore, "the current state of the law complicates lawsuits and makes them difficult, if not impossible, to settle." Also, "hospital lien laws cause attorneys to decline meritorious cases. This occurs because most of these laws do not take into account the cost of collecting funds from a third party to reimburse the hospital and other health care providers. An injured person who has no chance of retaining a portion of the proceeds of a settlement or judgment for immediate or future needs will not pursue a lawsuit."

Subsequently, committee staff requested that Florida trial lawyers who practice in those counties without a lien law be polled to identify a possible pattern and practice for negotiating health care provider's bills where there is a limited recovery. The Academy of Florida Trial Lawyers received responses from practitioners in six counties that do not have hospital lien laws. A letter dated January 4, 2000, stated that the majority of the respondents reported that the workers' compensation formula was utilized (s. 768.78, F.S.), as it provides for a proportional distribution of any third party recovery. There were a few respondents who utilized no specific formula expressing that formulas are too rigid and cannot effectively take into consideration all facts surrounding case differences. Respondents indicated that hospitals have historically been willing to negotiate some form of an equitable distribution as well as pay for their share of the fees and

costs of collection of settlement proceeds. Attorneys from areas in which former public hospitals have become private and lost their lien privileges note that these hospitals have been inflexible in negotiating an equitable settlement, often to the point of jeopardizing any recovery for the client, hospital or any other health care provider.

Physicians

Input was solicited from the Florida Medical Association (FMA) regarding the hospital lien law. It is the position of the FMA that the current patchwork system of differing county hospital lien laws serves only to enrich hospitals at the expense of patients and physicians. The FMA indicates that the county-by-county approach should be replaced with a uniform, statewide lien law that treats patients, physicians, attorneys and hospitals equitably.

Under the current lien laws, liening privileges are granted only to the hospital, not to physicians. Having hospital staff privileges does not provide a physician with any greater rights than those physicians who do not have staff privileges. The lien law process only allows hospitals to obtain compensation for their services. Physicians are required to seek compensation just as they would if no lien law existed. Unless the patient agrees to pay, the physician must either resort to the collection process or simply write the bill off.

The FMA response states, “The hospitals will attempt to argue that they provide indigent care, and thus public policy dictates they be compensated through the lien law process. This ignores the fact that for every indigent patient treated at a hospital, there is also a physician providing services who does not get paid. No public policy is served by giving hospitals preferential treatment at the patient’s and physician’s expense.” Additionally, it was pointed out that insurance companies with limited personal injury benefits (most often PIP insurers with \$10,000 limits) will not pay physicians until all hospital charges have been paid. This response expresses that a uniform law could correct this imbalance and ensure that all parties to the process are treated fairly. A response was also received from the Florida Osteopathic Medical Association which supports a fair and equitable process which includes the patients, the physicians, the attorneys and the hospitals. They expressed that the present patchwork system of differing rules by county is confusing and complicated.

Consumers

Letters of input were received from five consumer-oriented organizations (Appendix I). The primary concerns expressed relate to the law that permits hospitals the option of not billing Medicare, and later opt to capture all of a settlement the patient receives from another insured’s proceeds or coverage. It was stated that this option allows medical facilities to bill at higher amounts than Medicaid or a private insurance plan would pay. This situation has “resulted in attorneys not taking cases in which there is a substantial hospital lien, because Medicare has been refused by the hospital, or there is inadequate insurance coverage from an individual found at

fault.” The Florida Action Coalition Team (FACT) presented three suggestions regarding the present hospital lien law policies:

- Hospitals should be required to accept an insurance plan, Medicaid or Medicare or an HMO plan as payment in full;
- A change should be effected in the methodology in which patients, especially seniors, pursue a lawsuit, so that the entire burden is not entirely on the patient; and
- Patients should be permitted to retain a portion of the settlement money for their basic needs. This was illustrated by the following example from FACT:

“Hit by a car with the other driver at fault, this injured man was unable to work while undergoing treatment. The at-fault driver had only PIP coverage and when his insurance company paid off, the doctors took half and the lawyers took half, leaving absolutely nothing for the patient...He is also unable to work. A later lawsuit did come up with a small settlement, however, the hospital grabbed it all with a lien, and to this day, this man has not collected one cent, is still unable to work and it has now been almost seven years since this has occurred. The basic needs of this patient were not met during the last legal activity, yet the hospital grabbed theirs.”

The issue of patients retaining a portion of settlement money for their basic needs is further affected by the following policy. Personal Injury Protection (PIP) coverage is paid first to hospitals and takes priority over benefits covering funeral expenses, lost wages, and lost earning capacity (Fernandes v South Carolina Insurance Company 408 So 2d 753 (Fla., 3d DCA, 1982)). Therefore, families who assume that there will be funds for funeral expenses available from PIP coverage, may find that, in current practices, the dollars have been used to pay emergency room costs or other medical expenses. This practice could potentially occur even if the individual had medical insurance which would have paid these expenses.

Insurance

A final issue that must be addressed considers whether hospitals should continue to seek recovery for medical costs against accident or liability coverage even when the patient has health insurance coverage. This was not the original intent of the hospital lien statute. As previously stated, hospital liens were instituted as a means of obtaining reimbursement for medical care provided to patients whom, for whatever reason, are unable to pay for services.

Under Florida’s Collateral Source Rule (s. 768.76, F.S.), a collateral source of benefits, such as a health insurance carrier, has a right of subrogation, that is, a right to be reimbursed by a claimant if the claimant recovers from a tortfeasor. Unlike hospitals under most hospital lien laws, however, the health insurer must share in the costs of any attorney’s fees incurred by the claimant. Further, any amounts recovered are also subject to court determination depending on such other mitigating factors as the court deems equitable and appropriate under the

circumstances. Not surprisingly, under such circumstances, a health insurer of an accident victim in a county with a hospital lien law would hold back knowing that the tortfeasor's insurance is subject to the hospital's lien and, therefore, has first responsibility to pay. A hospital would prefer to seek payment from the tortfeasor's liability insurance as it pays at a higher rate than health insurance. Unfortunately, by seeking payment first against automobile and liability insurance, the only source of payment for expenses such as lost wages and litigation costs can be quickly exhausted by medical expenses. Conversely, seeking reimbursement from health insurance first, which pays only for medical costs, increases the potential pot for non-medical expenses, including disability reimbursement and attorneys' fees. The issue then becomes whether a general hospital lien statute should be limited to only those instances in which the injured patient has no other source of health care coverage (Calder, 367-368).

RECOMMENDATION

Information reviewed by staff supports the option of a uniform, statewide lien law policy. Additionally, it is 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), physician(s), and the patient/plaintiff. Five specific parts of this recommendation are as follows:

Recommendation Part 1

The following proportional distribution model is offered to the committee for discussion:

When the total amount received, through settlement or judgment, is equal to or greater than the sum of:

- all reasonable hospital expenses incurred as of the date of filing the claim of the lien;
- all expenses incurred for services provided by physicians as of the date of filing the claim of lien;
- the reasonable costs of litigation, including the contractual attorney's fee due to the patient's attorney; and
- 10% of the total settlement or judgment amount --

then the physicians shall be paid in full for their services as described herein, and the hospital lien shall be paid in full and shall be released by the hospital.

When the total amount received through settlement or judgment is less than the sum of:

- all reasonable hospital expenses incurred as of the date of filing the claim of the lien;
- all expenses incurred for services provided by physicians prior to filing the claim of lien;
- the reasonable costs of litigation, including the contractual attorney's fee due to the patient's attorney; and
- 10% of the total settlement or judgment amount --

then the proceeds of such settlement or judgment shall be distributed such that:

- (a) 10% of the proceeds from the settlement or judgment shall be distributed to the patient; and

- (b) the net proceeds of the judgment or settlement amount remaining after payment to the patient shall be distributed among the hospital, the physicians and the patient's attorney on a pro rata basis as follows:
- the amount owed hereunder to each party named above shall be multiplied by a percentage equal to a fraction;
 - the numerator of which is the net settlement or judgment amount after payment to the patient as provided herein; and
 - the denominator of which is the total amount owed for hospital and physician expenses plus attorney's fees and costs as provided herein.
- (c) Upon full distribution of the proceeds as set forth above, the lien shall be released by the hospital.

Example:

Settlement = **\$100,000**
 Patient = \$ 10,000 (receives 10% of settlement)

Charges:

Hospital charge = \$ 67,000
 Attorney charge = \$ 35,000
 Physician's charge = \$ 18,000
 Total charges = \$120,000

Calculations:

90% remaining of settlement..... 90,000
 divided by total charges.....120,000 = .75 (disbursement proportion)

Amount to be paid:

Patient = \$ 10,000 (receives 10% of settlement)
 Hospital = \$ 67,000 x .75 = \$ 50,250
 Attorney = \$ 35,000 x .75 = \$ 26,250
 Physicians = \$ 18,000 x .75 = \$ 13,500
 Total paid = \$100,000

Recommendation Part 2

The cost of medical services to patients with health insurance will be satisfied under the contractual agreements between the hospital or medical service provider and the insurance company. To comply with federal law, the cost of medical services to patients covered by Medicare or Medicaid will be deemed paid in full under the Medicare and Medicaid contractual agreement.

Recommendation Part 3

If the patient has a prognosis for intense, continuing, extensive medical, rehabilitative, or therapeutic services, then a specified amount for the follow-up medical services and/or rehabilitation of a patient may be set aside. If such services are specified as necessary by two independent physicians or appropriate rehabilitation service providers, an amount of the settlement could be awarded to the hospital or appropriate rehabilitation service facility/provider with the provision that the facility/provider guarantee to provide these services at no additional charge to the patient. If the settlement amount is insufficient to cover reasonable charges by the hospital, attorney, and physician, in addition to the rehabilitation service apportionment, an amount of up to 10% of the total settlement can be specified for continuing medical, rehabilitative, or therapeutic needs.

If rehabilitation services are specified as necessary by two independent physicians or appropriate rehabilitation service providers, then the proceeds of such settlement or judgment which is insufficient to cover all charges shall be distributed such that: 10% of the proceeds from the settlement or judgment shall be distributed to the patient; up to 10% of the proceeds be awarded directly to the hospital/rehabilitation provider in return for a written guarantee for a specified amount and time period of future services; and the net proceeds of the judgment or settlement amount remaining after payment to the patient and rehabilitation service apportionment shall be distributed among the hospital, the physicians and the patient's attorney on a pro rata basis in the same manner as described in Part I.

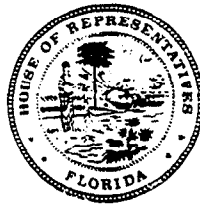
Recommendation Part 4

This statewide lien law, if enacted, will go into effect on January 1, 2001, in those counties that currently do not have lien law ordinances. The special acts, or lien law ordinances, presently in effect will expire on December 31, 2000. The statewide lien law proposed herein will thereby supersede all county lien laws and be effective in all counties on January 1, 2001.

Recommendation Part 5

If the Legislature deems it appropriate to establish a statewide lien law policy, there is an implication that lien law exemptions by general laws of local application or enactments of special acts in individual counties will be prohibited. To discourage future enactments of lien laws through special acts, it is recommended that a statutory prohibition pertaining to maintaining uniformity in lien laws be established pursuant to s. 11(a)(21), Art. III of the State Constitution.

Appendix A



Florida House of Representatives

John Thrasher, Speaker

HEALTH CARE LICENSING & REGULATION HEALTH & FAMILY SERVICES COUNCIL

Mike Fasano
Chair

Everett Kelly
Vice Chair

July 30, 1999

Charles Pierce, President
Florida Hospital Association, Inc.
P.O. Box 531107
Orlando, Florida 32853-1107

Dear Mr. Pierce:

Speaker Thrasher recently approved an interim project proposal made by the Health Care Licensing & Regulation, Judiciary, and Community Affairs Committees regarding the potential for reform of the hospital lien laws. To that end, I have attached a short questionnaire and would appreciate your considered response to those questions that are applicable to your industry. We cannot make an effective and thorough review of this important policy issue without your input.

Fundamental fairness dictates that we take a thorough look at the policy underlying existing hospital lien laws and take input from all affected and interested parties, including hospitals, physicians, lawyers, and most importantly, patients. I believe that from this review, the Legislature can reach a consensus on one of the following options:

- Do nothing, continuing the existing method for counties to obtain hospital lien authority and allowing current lien laws to remain effective;
- Enact a uniform law affecting only those counties that do not presently have lien laws, continuing the existing method for counties to obtain hospital lien authority and allowing current lien laws to remain effective;
- Enact a statewide, uniform law and establish a sunset date for repeal 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.

Lucretia Shaw Collins, Staff Director
1101 The Capitol Tallahassee, Florida 32399-1300 (850) 487-3771 FAX (850) 488-9933

Mr. Pierce
July 30, 1999
Page 2

The earliest lien laws were enacted in 1951, and since that time Florida has seen an explosion in population, health care costs and health care-related litigation. The rights that the Legislature balanced in 1951 need to be re-evaluated and perhaps even re-balanced in light of the state's growth. It is my intention to undertake this re-evaluation before the upcoming 2000 Legislative Session, and I have instructed my staff to prepare a report containing your input with potential suggestions/options for legislative consideration.

To ensure that your comments are considered and recorded, it is imperative that you complete the questionnaire and return no later than **August 20, 1999**. If you have questions or comments, please contact my Staff Director, Lucretia Shaw Collins at (850) 487-3771.

Again, thank you for your participation in this project.

Sincerely,



Mike Fasano
Chair

MF/lc

Attachment

Lien Law Questionnaire

1. For each of the last five fiscal/calendar years, what is the total dollar amount that hospitals have expended for *indigent care*? (Please provide a breakdown per county, per hospital).
 - a. How much of this indigent care amount do you estimate was as a direct result of the *negligence or fault of a third party*?
 - b. How much were hospitals in counties with lien laws able to recover based on the negligence of a third party?
 - c. How much were hospitals in counties without lien laws able to recover based on the negligence of a third party?
2. There has been litigation filed over whether a hospital can collect from a patient in excess of what the health maintenance organization or insurance contract pays. Please provide specific instances of hospitals who *have or are presently* operating in this manner.
3. Describe the impact lien laws have on an attorney's ability to represent his or her client?
4. Is there evidence, including anecdotal, of cases where attorneys have refused to represent a client due to the lack of any financial incentive caused by the lien law or the hospital's refusal to exercise less than its maximum lien rights?
5. How are physicians who *have hospital staff privileges* compensated through the lien law process? Are other health care practitioners who provide care outside of the hospital setting (i.e., rehabilitation, specialty, etc.) compensated in a similar manner?
6. In cases where lien rights have been exercised, are patients' ability to recover damages limited?
7. What important public policy goals are effectuated by having separate and distinct lien laws?
8. Are there any imperfections or imbalances in the existing lien laws? If so, please identify. Would a uniform law correct any of these imperfections or imbalances?



Appendix B

THE ACADEMY OF FLORIDA TRIAL LAWYERS[®]

Working to Protect the Safety of Florida's Families

215 South Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 224-9403
Facsimile: (850) 224-4254
Email: atl@atl.org
Website: www.atl.org

Executive Director
SCOTT CARRUTHERS

August 20, 1999

Rep. Mike Fasano, Chairman
Health Care Licensing & Regulation Committee
1101 Capitol
Tallahassee, FL 32399

Dear Chairman Fasano:

Thank you for requesting the Academy's input on the important issue of hospital lien law in Florida. We commend the Committee for studying the feasibility of creating an equitable uniform hospital lien law for Florida.

I would like to briefly comment on the four policy options set forth:

1. **Continue the existing method for counties to obtain hospital lien authority and allow existing liens to remain.**

Status quo is not good public policy for many reasons, including the following:

- Florida is the only state with a "patchwork" of local lien laws. Forty-one (41) states have enacted uniform lien laws. Existing lien laws vary from county to county and the majority of counties in Florida do not have lien laws. The current state of the law complicates lawsuits and makes them difficult, if not impossible, to resolve.
- Many of the lien ordinances or special acts currently on the books in Florida are onerous to the injured patient. There have been many instances where hospitals refuse to take a patient's health insurance as full payment for the hospital bill, and instead require the patient to make up the difference between the hospital's premium rate and the discounted insurance rate. The patient is forced to "make up the difference" from the limited funds available from the person causing the injuries. Laws that do not allow Floridians to rely on their health insurance when the worst happens need serious examination.

ALAN ...
DANIEL ...
MARK ...
HOWARD ...
HEATHER ...
WAYNE ...
HEATHER ...
MARK ...
WILLIAM ...
ALEXANDER ...
FRED ...
SEAN ...
JAMES ...
ROBERT ...
DONALD ...
ROBERT ...
RODNEY ...
MICHAEL ...
DONALD ...
WALTER ...
JULIE ...
MARTIN ...
DENNIS ...
ANTHONY ...
MELANIE ...
CHRISTOPHER ...
COLLEEN ...
TERRY ...
CHARLES ...
DIANA ...
SCOTT ...
DALE ...
KENT ...
BRADLEY ...
EDWARD ...
MICHAEL ...
LORRY ...
LORRY ...
ANDY ...
BENJAMIN ...
GODDARD ...
EDITH ...
RICHARD ...
DAVID ...
CHRISTOPHER ...
ROBERT ...
SHELLEY ...
DENNIS ...
PATRICK ...
JOHN ...
JAMES ...
HEATHER ...
HEATHER ...
LAWRENCE ...
JENNIFER ...
JENNIFER ...
RAUL ...
ROBERT ...
JULIAN ...
MARGARET ...
HEATHER ...
LAWRENCE ...
JENNIFER ...
JENNIFER ...
RAUL ...
ROBERT ...
JULIAN ...
MARGARET ...

- Hospital lien laws cause attorneys to decline meritorious cases. This occurs because most of these laws do not take into account the cost of collecting funds from a third party to reimburse the hospital and other health care providers. An injured person who has no chance of retaining a portion of the proceeds of a settlement or judgment for immediate or future needs will not pursue a lawsuit. No one benefits but the person who is at fault for causing the injuries that necessitated the care.

2. Enact a uniform law for the counties without lien laws and allow current lien laws to remain in place.

A "uniform" law for only some counties is not a uniform law at all. Florida would still have a patchwork of laws on the books. The lien laws currently on the books are either unworkable or grossly unfair to the injured patient and the attorney who is expected to obtain a recovery, and should be repealed.

3. Enact a statewide uniform lien law and repeal existing lien laws.

If the Florida Legislature decides that as a matter of public policy hospitals should be given a lien privilege over all other creditors of a person injured by the negligence of another, then the Legislature should consider enactment of an equitable uniform lien law. Existing local lien laws in Florida must be repealed because most of them grant all hospitals, whether private for profit or charitable, a 100% lien privilege which does not recognize the cost of collection, other basic needs of the patient, or the services provided by other health care professionals.

4. Repeal all existing lien laws.

This option would treat all creditors of an injured patient the same, whether they are health care professionals, hospitals, mortgage holders or banks that have loaned money for the patient's vehicle. Each individual should have the absolute right and duty to structure his or her finances to meet their obligations and to determine how to pay their debts. If debts are not paid, creditors can turn to the court system to compel payment in a fair and orderly way.

Laws granting hospitals special status were enacted many years ago to keep hospitals from turning away patients who were unable to pay. Today, federal and state law prohibit this practice regardless. In our current health care system, even in the absence of a lien law, hospitals have an advantage over other creditors when attempting to collect for services provided. In most instances, hospitals can collect from insurance companies, HMOs, Medicare, Medicaid, or workers' compensation carriers. In addition, taxing districts and other government and social programs provide funds for uncompensated care, should an injured person be unable to pay. Further, the current practice of putting hospitals first often has the effect of leaving physicians whom actually provided the medical care without any compensation for their services.

Several states, and most of the counties in this state, do not have hospital lien privilege laws.

With our thoughts on the various policy options offered by way of introduction, I now turn to the eight (8) questions posed by the Committee:

1. *For each of the last five-fiscal/calendar years, what is the total dollar amount that hospitals have expended for indigent care? (Please provide a breakdown per county, per hospital).*
 - a. *How much of this indigent care amount do you estimate was as a direct result of the negligence or fault of a third party?*
 - b. *How much were hospitals in counties with lien laws able to recover based on the negligence of a third party?*
 - c. *How much were hospitals in counties without lien laws able to recover based on the negligence of a third party?*

While hospitals are in a better position to provide these numbers, the committee should be mindful that there are different definitions of "indigent care" and "charity care." Instead of looking for dollar amounts of charity or indigent care provided, we recommend that the committee focus on the amount of "uncompensated care," or care that is recorded as "bad debt" on hospital financial statements. This is care for which no health insurance, federal, state, or local program or fund has paid. Only a small percentage of this "bad debt" number will be for care provided to a patient who was injured by a third party. Of the small percentage of care that is unpaid and necessitated by a third party, only a still smaller subset will be the subject of a lawsuit.

Hospitals should be able to provide the committee with this specific information. They should not be permitted to use total charity care numbers or indigent care numbers, to overstate the amount they believe they are losing as a result of not having a lien privilege. These numbers, while informative, are irrelevant to this committee's deliberations.

Additionally, the committee should consider imposing some requirement on hospitals in return for granting a lien privilege. Traditionally the reason that state government or county government has found it necessary to inject itself into the regulation of our market economy is to allow hospitals to continue to serve our communities. Government should be willing to grant liens only to hospitals that provide a certain level of care to indigent citizens.

Most of these local laws, however, grant government dictated benefits to all hospitals without distinction. While many hospitals make a substantial contribution to the community by the services provided to indigent citizens, the current legislation makes no provision limiting its grant of government assistance to those hospitals which provide a certain percentage of indigent services or whose quality of services rise to the level of a major trauma center.

Hospitals who do not freely and openly provide services to indigent citizens should not be given the benefit of a lien. Hospitals whose quality of care and quality of service do not reach the level of a major trauma center have not provided the "Quid Pro Quo" which governments should demand in exchange for government becoming involved in assisting in what is basically an economic dispute between the hospital and persons who receive treatment.

A decision by this committee that the lien is given, and only given, as a quid pro quo for exceptional community service would eliminate some of the more recent claims that every doctor, chiropractor and massage therapist in the county should also get the benefit of governmental enforced economic boost.

We have attached charts, which may be instructive, illustrating the total percentage of charity care provided in Leon and Palm Beach counties. This may assist the committee in determining what level of charity care would justify the grant of a lien privilege.

Further information may be obtained from the Agency for Health Care Administration.

2. *There has been litigation filed over whether a hospital can collect from a patient in excess of what the health maintenance organization or insurance contract pays. Please provide specific instances of hospitals who have or are presently operating in this manner.*

Hospitals very often seek a lien even in situations in which the hospital already has a contractual or statutory right to be paid by an HMO, a health insurance company, or a workers' compensation carrier.

This issue was litigated in the case of *Hillsborough Hospital Authority v. Zimmerman*, 697 So2d 147 (Fla. 2d DCA 1997), where Tampa General routinely filed a notice of lien in all negligence actions demanding that the patient pay the "premium rate," regardless of amounts paid by a patient's health insurer. In this case, Mr. Zimmerman's health insurance company paid the hospital bill pursuant to a Preferred Provider Agreement. Nevertheless, the hospital continued to pursue the balance of the bill from Mr. Zimmerman. The court held that the hospital had been paid in full and that the lien could not attach to further proceeds due Mr. Zimmerman from the person who caused the injury.

A class action was filed in Tampa on the issue of Tampa General Hospital's practice of billing patients over and above what health insurance paid. Initially the case was certified as a class action, but was later decertified. Nevertheless, lawsuits have been filed by the individuals abused by this practice. In these cases, the hospital discounted the rate they would charge the insurance companies and then turned around and filed a lien on the patient for the amount they had discounted to the insurance company; one for \$8,000 and one for \$27,000. (Attorney Emmett Abdoney, Tampa.)

Additionally, AFTL members have informed me of the following examples of hospitals choosing to forgo payments of health insurance:

- A husband and wife were seriously injured in an automobile accident. Health insurance paid \$83,000 of \$99,000 hospital bill. Hospital then filed lien to recover most of the wife's \$15,000 uninsured motorist benefits, leaving the couple with nothing to assist them with the impact the accident had on their lives. *Fuchs vs. United States Fidelity and Baptist Hospital* 479 So2d 292, 1st DCA 1985. (Attorney Steve Eschner, Escambia).

- Patient seriously injured in car accident, rendering him permanently unable to work. Florida Hospital in Orlando initially refused to bill the patient's PIP and health insurer. The attorney for the patient finally prevailed upon a billing clerk to bill the health insurance, since the time within which to submit the claim was about to run. The patient's health insurance paid the claim according to the contractual schedule rate. When this was discovered by hospital administrators, the hospital attempted to return the payment to the patient's health insurer, so they could instead bill the patient directly at a higher rate and exhaust the limited liability coverage available to the patient for his needs. Litigation has been filed to force the hospital to accept the health insurance of the patient. (Attorney Brett Bressler, Winter Park).
- Tampa General received a \$35,759 payment from a patient's health insurer and still insisted on taking an additional \$10,000 from the patient's liability settlement. The Tampa Tribune reported that traffic accident victims whose health insurers pay the hospital at a reduced rate are forced to pay the rest of the hospital's full charges from their accident settlements. (Attorney Bill Wagner, Tampa).
- The case of the elderly woman seriously injured in a car accident in Palm Beach County. The Palm Beach hospital refused to bill Medicaid for medical expenses and instead pursued the injured senior for amounts in excess of what Medicaid permitted. The hospital attempted to collect almost all of the woman's uninsured motorist benefits, which would have left her without the means to provide for continuing medical care and the assistance with daily living she now required. This was yet another case of limited coverage and the hospital unwilling to recede from its asserted 100% lien right. (Attorney Bill Pruitt, Jr., West Palm Beach).
- The case reported in the Palm Beach Post where Bethesda Memorial Hospital did not submit a bill to the patient's insurance company, but instead sent her a letter notifying her of its lien. (See attached article).
- A case that went up on appeal and ultimately held the Palm Beach County Lien inapplicable to private hospitals, involved the issue of a hospital not accepting Medicare. In this case, a senior citizen injured in an auto accident caused by an underinsured motorist was fully covered for health care services with Medicare and Medicaid Supplement Insurance. Delray Hospital in Palm Beach County "waived" the patient's Medicare and Medicaid Supplement Insurance to instead take the patient's PIP (\$10,000), medical payment coverage (\$5,000) and his uninsured motorist coverage. Had the hospital not waived Medicare, his bill would have been reduced to a "reasonable" level. The patient would then have been required to reimburse Medicare, but under an equitable distribution formula, as opposed to the hospital lien, which takes first priority over the patient, the attorney, and other providers.

Note: The patient's other health care providers in this case did not waive Medicare and Medicare paid their fees. The patient then re-paid Medicare on an equitable basis. Delray Hospital could have and should have proceeded in the same manner. *Schwartz vs. Geico and Delray Community Hospital*, (712 So2d. 723, Fla. 4th DCA 1998). (Attorney Michael Bendell, West Palm Beach— see attached newspaper article.)

3. *Describe the impact lien laws have on an attorney's ability to represent his or her client.*

In most lawsuits, there is limited insurance coverage available to compensate an injured person to the full extent of their injuries. Similarly, the state, counties, cities and "instrumentalities of the state," all limit liability to \$100,000 regardless of the size of the losses suffered by the injured person. In cases of limited insurance or limited liability, the attorney negotiates with the health care providers of the client, including the hospital, attempting to pay each of them something for their services, recognizing that there will not be enough of a fund available to ensure full payment to all. If the attorney for the insurance company of the at-fault party determines after discovery and evaluation that the insured is liable for the injury, he or she will make a settlement offer to the injured person. The injured person may wish to accept the settlement offer rather than experience the delay and risk associated with going to trial. However, the injured person cannot accept the settlement offer if the amount is insufficient to satisfy the hospital lien, costs of litigation including attorney's fees and to provide some amount of compensation to the plaintiff to meet his or her other needs. Hospital administrators refusing to reduce the amount they will accept as a satisfaction of the lien under these circumstances force the client to reject the settlement offer. The client must then go to trial in an attempt to collect more, even when this outcome is highly unlikely.

This results in the unnecessary use of judicial resources and significant delays in obtaining any compensation for the plaintiff (or the hospital). In addition, the plaintiff is now at risk of recovering nothing. A plaintiff who loses a lawsuit at trial is subject to a cost judgment, which requires him to pay the defendant's costs out of his own pocket. Conversely, the hospital causing the plaintiff to pursue the case to trial does not run the risk of having to pay the defendant's costs. Additionally, the attorney for the injured person has invested significant time and effort, as well as out of pocket costs necessary to pursue the case. If the case is lost at trial, this attorney receives nothing, notwithstanding the fact that he had negotiated a fairly good settlement offer from the at-fault party's insurance company.

Likewise ignored is the fact that the existence of such liens sometimes unconscionably ties up funds while the various financial entities argue over who is going to pay and how much. It is not infrequent that there arises a dispute between the workers' compensation carrier, or other medical payment insurance carrier regarding the reasonableness and necessity of certain bills, or often the priority between two or more insurance companies as to who pays first. While those disputes continue, all of the plaintiff's funds are held under the strangle hold of a lien which, is an all encumbering lien over the entire process regardless of the amount actually owed. These funds being tied up often results in a significant impact upon persons whose physical health has been significantly affected and often whose ability to earn money has been dramatically reduced or eliminated.

The refusal of the hospital administrators to reduce its demand for payment significantly affects the attorney's ability to resolve his or her client's case where there is limited insurance coverage or less than ideal evidence of liability on the party of the defendant. In these cases, an attorney is not able to obtain a good result for his or her client due to the involvement of a hospital with a 100% hospital lien priority. **A lien law allowing for equitable distribution in all cases would increase**

the efficiency of the civil justice system, and would remove the dilemma posed by hospitals demanding to be paid in full.

4. *Is there evidence, including anecdotal, of cases where attorneys have refused to represent a client due to the lack of any financial incentive caused by the lien law or the hospital's refusal to exercise less than its maximum lien rights?*

Yes. Many AFTL members indicate that it is their policy not to represent an individual where the amount of the hospital lien exceeds the amount of recoverable damages or makes up such a significant portion of the recoverable damages that the attorney cannot provide a fair recovery to the individual and a fair return for the attorney's investment of time, effort and money. When an attorney evaluates a potential lawsuit, he or she must take into consideration many factors, including:

- a) *Liability* — Is there sufficient evidence to prove that someone else is legally responsible for causing injury to the plaintiff?
- b) *Damages* — Is there sufficient evidence of a client's injuries and other losses, and are the injuries and losses significant enough to warrant the time and expense to pursue legal action.
- c) *Potential Recovery* — Provided there is a strong liability case and significant damages, is the potential at-fault party or parties able to pay the full damages? How much of the damages would the at-fault party or parties be able to pay?
- d) *Attorneys Fees and Costs* — How much time and effort will the attorney have to devote to the case? How much expense will be involved? What costs will have to be advanced by the client or attorney, including fees for expert witnesses, records, court reporters, accident reconstruction, etc.?
- e) *Liens, letters of protection, right to subrogation* — If the lawsuit is pursued and damages are recovered, how much of the money will need to be paid back to other individuals or entities?

For example:

- Will the plaintiff's insurance companies need to be repaid for amounts paid out under health or auto insurance? (Incidentally, under the right of subrogation, such insurers are not required to be repaid in full. See §768.76, F.S.)
- The amounts of any Medicaid, Medicare or Workers' Compensation liens. Each have formulas which do not require 100% repayment.
- Payments due to the potential plaintiff's treating physicians. These physicians will require the attorney to sign letters of protection promising to pay if a recovery is obtained.

- Payments due to the potential plaintiff's hospital, regardless of whether there is a lien. (Even where there is no lien, the attorney will negotiate payment of the bill. Where there is a 100% priority lien, the attorney will consider whether the particular hospital involved will be willing to negotiate or will demand full payment under its lien.)

It is very clear that after reviewing all factors to determine whether to pursue a case, the attorney will not represent a client if the hospital lien exceeds or consumes a significant portion of any potential recovery. These cases simply are not pursued and the hospital recovers nothing for its services from the party necessitating the medical care.

While attorneys generally do not keep track of cases they do not take, many Academy members from all over the state confirm that they do not take cases under these circumstances. (See attached summary of some of the problems Academy members have had when they have taken cases involving hospital liens.)

5. *How are physicians who have hospital staff privileges compensated through the lien law process? Are other health care practitioners who provide care outside of the hospital setting (i.e., rehabilitation, specialty, etc.) compensated in a similar manner?*

They are not compensated as a result of the lien law. The hospital comes first and is paid in full, under a 100% hospital lien priority law, without regard to whether other health care providers received any compensation whatsoever. It has also been stated, in the course of the debate on this issue, that hospitals are the first to submit bills against the injured person's personal injury protection policy (PIP) after deductibles have been absorbed by the patient and physicians.

The public policy reasons for allowing a hospital corporation, for profit or not for profit, to have priority when many individual professionals who provided care to the patient receive little or no compensation must be examined.

6. *In cases where lien rights have been exercised, are patients' ability to recover damages limited?*

As discussed in questions 3 and 4 above:

Hospital liens discourage attorneys from pursuing meritorious cases where potential recovery is questionable or limited. The injured person is left without a remedy.

Hospital liens interfere with an attorney's ability to settle a case for a client and have the effect of delaying and risking recovery of compensation for injuries suffered.

Hospital liens do not allow a client to satisfy his or her debts with all creditors; hospitals, doctors, car loans, etc., as a positive result of resolving their lawsuit.

Hospital liens that cause the abandonment of a meritorious lawsuit require injured persons to seek help with their predicament elsewhere, such as Medicaid or other forms of public assistance.

When there are only sufficient funds to pay the hospital, the injured person is deprived of:

- Lost earnings which might go to the support of the entire family;
- Funds to pay rent;
- Funds to pay mortgages;
- Funds to repair the car
- Funds to buy groceries
- Funds for continuing and future medical care.

In cases where the patient dies, hospitals take the position that the lien takes priority over funeral expenses. (See attached letter from Tampa General Attorney, Marvin Soloman.)

7. *What important public policy goals are effectuated by having separate and distinct lien laws?*

There are no public policy goals served by having a patchwork of local lien laws, most of which are detrimental to the administration of justice, the injured patient and other health care providers and creditors.

The best support for the argument against this approach can be found upon review of the approaches taken by the overwhelming majority of the United States of America.

This is not an issue of local control. Uncompensated care is a statewide problem impacting all health care providers and entities. This piece-meal, inconsistent and unfair approach pits patients against hospitals, physicians against hospitals, and hospitals against hospitals. Citizens from all over the state are subject to these "local laws" if they have the unfortunate experience of being injured in a county where one of these lien laws is on the books. There is a better way.

8. a) *Are there any imperfections or imbalances in the existing lien laws?*

Yes.

1. The laws giving hospitals a 100% lien priority do not require hospitals to do anything in return for the special treatment they receive under the law. There is no requirement that they perform a certain level of charity care in order to qualify for this privilege.
2. The lien law attaches immediately to all benefits and therefore makes it impossible for important current personal needs to be met until many months or even years in the future when court litigation is settled or otherwise resolved. For example, a) hospitals take the entire PIP coverage (\$10,000), notwithstanding the fact that this coverage is also intended for lost wages, b) hospitals demand to be paid the full amount of an initial small settlement with one of the defendants, leaving no money for the injured person to meet the needs of himself or his family. Hospitals assert the right to these initial and limited funds even though there are additional defendants with coverage available later in the litigation.

3. Lien laws were intended to apply only against money paid by the at-fault party or his or her insurance company. Hospitals attempt to extend this lien to other sources of income to the injured person. For example, the injured person may have used their own funds to purchase uninsured motorist coverage with the expectation that the proceeds of any insurance resulting from the payment of these premiums could be used by the individual to provide for his or herself and family. The committee should ensure that liens do not extend to these uninsured motorists' benefits and avoid putting the injured person in the position of being forced by the government into having purchased hospital insurance rather than insurance to benefit the injured person for other personal needs.
4. The hospital lien should not apply when a person is being treated under workers' compensation, or the injured person's health insurance plan or HMO.

A uniform lien law should make it explicitly clear that the lien law does not apply when the injured person is being treated under the provisions of the Florida's Workers' Compensation Law. The legislation should make it clear that the lien law does not apply to any sums paid or payable under any health care insurance, HMO or other private or government payment plan.

As an example of the problems created by the failure to make such exclusion clear, consider a case in which a hospital will either be paid by workers' comp or will be paid by health care insurance policy, but nevertheless, because there is a dispute between the two, the hospital attempts to collect the patient's uninsured motorist coverage or refuses to release other available funds to the injured person until the dispute between the two insurance companies is resolved. The interest of no one is served in this scenario, and the injured person suffers.

5. Current local lien laws allow hospitals to collect fees that are several multiples above what it regularly collects from almost all of its other patients for similar services. In today's health care system, it is extremely rare for a hospital to ever collect the "retail value" of its services. Hospitals readily accept significant reductions of their "retail" rates by contracting with HMOs, preferred providers, Medicaid and Medicare. If the Legislature decides to grant hospitals preferential treatment by a lien law, the lien should be restricted to reduced rates as they are with most other payment services.
6. There is no equity in the current state of the hospital lien law. This committee should repeal existing local lien laws. If, in its place, the committee seeks to enact a uniform lien law, it should be based on the principal of "equitable distribution."

Florida's Legislature, in developing the Workers' Compensation Law and the law governing collateral sources, has developed two extremely satisfactory formulas for equitably distributing recoveries. It would seem that a uniform current lien law should not embark upon an additional new proposal which would attempt to establish yet another formula or means of accomplishing an equitable distribution of proceeds. It should be sufficient to reference the Florida Workers' Compensation Law or the law

*Honorable Mike Fasano
Hospital Lien Law
August 20, 1999*

regarding equitable distribution of collateral sources to explain the formula used to equitably distribute the proceeds to a hospital. (See §§440.39 and 768.79, F.S.)

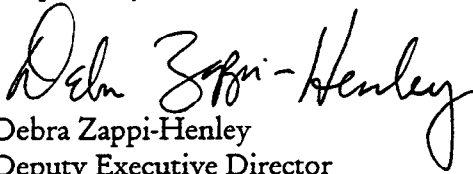
The Academy of Florida Trial Lawyers have been seriously concerned about this issue over the last decade. It is not a new issue that just recently came to our attention as a result of the three (3) local lien bills filed during the 1999 session. Since 1993, the Academy has opposed the enactment of any additional 100% hospital priority lien laws. Beginning in 1993, each local lien law that has been enacted has recognized the unfairness of a 100% hospital priority and has at least made provisions for the cost of collection. (See Lake County, Palm Beach Hospital District, Hillsborough County and Pinellas County. See also amended versions of Hillsborough County, Palm Beach County and Leon County, 1999.)

Additionally, the House Health Care Committee in 1993 reviewed the hospital lien issue and developed PCB 93-04, which created a uniform lien law, in recognition of many of the problems outlined herein.

The Academy supported legislation in 1993 and 1994 by Representative Paul Hawkes that attempted to create some uniformity and fairness in this state on this issue.

The issue of local hospital liens in this state generates significant debate and opposition by attorneys, clients, consumer groups and health care professionals. These local bills continue to tax the resources of government at the state and local level. The time has come for a consistent and equitable resolution of this important public policy issue. This committee, under your stewardship, Mr. Chairman, is well equipped to handle this challenge. Thank you for allowing the Academy the opportunity to comment.

Respectfully submitted,



Debra Zappi-Henley
Deputy Executive Director
Director of Legislative Affairs

August 19, 1999

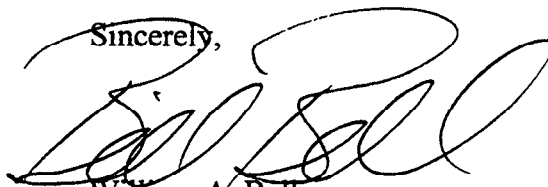
The Honorable Mike Fasano, Chair
House Health Care Licensing & Regulation Committee
1101 The Capitol
Tallahassee, FL 32399-1300

Dear Representative Fasano:

Enclosed is the response to your Hospital Lien Survey that is being submitted jointly by the Association of Community Hospitals and Health Systems of Florida, Florida League of Health Systems, and the Florida Hospital Association.

If you have any questions regarding this response, please call Neil Butler, Belita Moreton, or myself.

Sincerely,



William A. Bell

Sr. Vice President/General Counsel

WAB:rp

Enclosure

Lien Law Questionnaire

1. For each of the last five fiscal/calendar years, what is the total dollar amount that hospitals have expended for indigent care? (Please provide a breakdown per county, per hospital.)

Hospital Associations' Response

See attached data

- a. How much of this indigent care amount do you estimate was a direct result of the negligence or fault of a third party?

Hospital Associations' Response

The only data available on the amount of uncompensated care in Florida hospitals are from the Agency for Health Care Administration's annual hospital financial filings. All individual hospital data are at the aggregate level so the amount of uncompensated care that was a direct result of negligence of a third party is not available.

- b. How much were hospitals in counties with lien laws able to recover based on the negligence of a third party?

Hospital Associations' Response

We are in the process of collecting this data. We will provide this data to the Committee as soon as it is available.

- c. How much were hospitals in counties without lien laws able to recover based on the negligence of a third party?

Hospital Associations' Response

The question, as posed, cannot be answered. Hospitals without applicable lien laws do not maintain data that tracks recoveries from third-party tortfeasors. In theory, those hospitals could employ collection efforts using the pre-judgment garnishment or pre-judgment attachment statutes. However, there is no effective way for those hospitals to know when a demand is made or when a lawsuit is filed by an injured patient that involves unpaid charges incurred by such hospitals.

2. There has been litigation filed over whether a hospital can collect from a patient in excess of what the health maintenance organization or insurance contract pays. Please provide specific instances of hospitals who have or are presently operating in this manner?

Hospital Associations' Response

Plaintiff attorneys use hospital bills as an element of damages in their demand to insurance carriers and their presentation to juries. Except where Medicare and Medicaid have been billed, it would be unjust to restrict hospitals' ability to recover the amount paid. Medicare and Medicaid regulations prohibit providers from balance billing.

When plaintiff attorneys use the hospital bills to prove damages, the hospital should receive the amount represented as hospital bills due and owing.

3. Describe the impact lien laws have on an attorney's ability to represent his or her client?

Hospital Associations' Response

Plaintiff attorneys use local lien laws to their advantage by negotiating with insurance carriers for higher settlements to cover both the hospital charges and their client's pain and suffering. Lien laws which give plaintiff's lawyers their fees "off the top", disadvantage counsel representing a hospital seeking to recover the hospital bill.

4. Is there evidence, including anecdotal, of cases where attorneys have refused to represent a client due to the lack of any financial incentive caused by the lien law or the hospital's refusal to exercise less than its maximum lien rights?

Hospital Associations' Response

The hospital associations do not believe that there is any evidence of a reasonable attorney refusing to take a meritorious case simply because of a hospital lien. Since hospital liens were first created in Florida, there is substantial evidence that hospitals and responsible trial lawyers have been able to work out acceptable arrangements to permit cases to be litigated. When there is not enough money to pay both the hospital and the attorney, the hospital has a tremendous incentive to enter into an agreement with the attorney. Cases where the hospital may not agree often involve PIP or health insurance benefits, neither one of which normally requires the services of plaintiff's attorney to collect.

5. How are physicians who have hospital staff privileges compensated through the lien law process?

Hospital Associations' Response

Until 1998, physicians in Florida did not have a statutory lien right to file a lien on a settlement of judgment. No bill has ever been filed in the Florida Legislature to give physicians or other health care practitioners a statutory lien right on the proceeds of any settlement or judgment. In 1998 the Legislature passed the Pinellas County Hospital Lien law, which allowed non-employed and non-contracted physicians to share in the proceeds of any settlements and judgments through the hospital's lien.

Physicians who have hospital staff privileges fall in two categories:

- 1) Physicians who are employed or under contract with the hospital to provide health care services, such as, emergency room physicians, clinical laboratory physicians, pathologists, anesthesiologists, and radiologists. These physicians receive compensation as employees or through their contract.*

- 2) *Physicians who have staff privileges to admit and treat patients or clinical privileges to treat patients. Physicians who are not employed or under contract with a hospital may not receive compensation for their services when the patient has no insurance. When the patient is insured, the treating physicians are reimbursed based on the services provided.*

Are other health care practitioners who provide care outside the hospital setting (i.e., rehabilitation, specialty, etc.) compensated in a similar manner?

No health care practitioners in Florida currently have a statutory lien right to collect from the proceeds of any judgments or settlements. Until recently, physicians and health care practitioners had not expressed any interest in a statutory lien right.

6. **In cases where lien rights have been exercised, are patients' ability to recover damages limited?**

Hospital Associations' Response

No. A claimant has the ability to claim the damages sustained whether or not a lien law exists.

7. **What important public policy goals are effectuated by having separate and distinct lien laws?**

Hospital Associations' Response

Separate and distinct hospital lien laws give counties the ability to be self-determining and to decide if hospitals in the county need a lien right, either by statute or by local ordinance. Every community has unique circumstances that should be considered when enacting a lien law. Because of these varying circumstances, local lien bills are appropriate.

If the local authority uses its local tax dollars to pay for indigent care in the community, then it allows the local authority to recover some of its costs, thereby saving the taxpayers additional money. All counties use some local tax dollars to pay for health care services. A separate lien law would allow any county to have a lien law to recover some of these costs. It goes back to county rights. The state should not usurp the right of a county to develop its own distribution formula.

It is good public policy for hospitals to maximize reimbursement as it eases the local tax burden and the cost shift to paying patients.

8. **Are there any imperfections or imbalances in the existing lien laws? If so, please identify. Would a uniform law correct any of these imperfections or imbalances?**

Hospital Associations' Response

Anytime there are laws that must be applied to a variety of factual situations, there will be imperfections and imbalances. The hospital lien laws are no exception to this rule. The passage of a statewide lien law would also be subject to these same shortcomings, particularly if such a law failed to appropriately provide for the amount of funds the current lien laws allow the affected hospitals to recover. The existing system of hospital lien laws has worked well.

Glean E. Brynn, M.D. *President*
Mathis L. Becker, M.D. *President-Elect*
H. Frank Farmer, Jr., M.D., Ph.D. *Vice President*
Robert E. Cline, M.D. *Secretary*
Barbara J. Harty-Golder, M.D., J.D. *Treasurer*
Terence P. McCoy, M.D. *Speaker*
Carl W. Lentz, M.D. *Vice Speaker*
Cecil B. Wilson, M.D. *Past President*



FLORIDA MEDICAL ASSOCIATION, INC.

P.O. Box 10269 ♦ Tallahassee, Florida ♦ 32302 ♦ 113 E. College Ave. ♦ 32301
850/224-6496 ♦ 850/224-6627 (Fax) ♦ Internet Address: www.fmaonline.org

Donald F. Foy, Sr. *EVP*

August 18, 1999

The Honorable Mike Fasano
Florida House of Representatives
8217 Massachusetts Avenue
New Port Richey, Florida 34653

Dear Representative Fasano:

The Florida Medical Association greatly appreciates your efforts regarding the hospital lien law interim project and welcomes the opportunity to provide input from the physician's perspective. It is the position of the FMA that the current patchwork system of differing county hospital lien laws serve only to enrich hospitals at the expense of patients and physicians. This county by county approach should be replaced with a uniform, statewide lien law that treats patients, physicians, attorneys and hospitals equitably. We would greatly appreciate your assistance in reforming this system so that all parties are treated fairly.

As requested, the following is the FMA's response to the questionnaire you provided us with:

- 1) **For each of the last five fiscal/calendar years, what is the total dollar amount that hospitals have expended for *indigent care*? (Please provide a breakdown per county, per hospital).**
 - a. **How much of this indigent care amount do you estimate was as a direct result of the *negligence or fault of a third party*?**
 - b. **How much were hospitals in counties with lien laws able to recover based on the negligence of a third party?**
 - c. **How much were hospitals in counties without lien laws able to recover based on the negligence of a third party?**

The FMA does not have any information to answer the above questions.

- 2) **There has been litigation filed over whether a hospital can collect from a patient in excess of what the health maintenance organization or insurance contract pays. Please provide specific instances of hospitals who *have or are presently* operating in this manner.**

The FMA does not have any information to answer this question.

- 3) **Describe the impact lien laws have on an attorney's ability to represent his or her client?**

From the patient's perspective, this question would be best answered by the Florida Academy of Trial Lawyers. Lien laws, however, also impact the attorney's ability to represent his or her physician client. Attorneys from the Florida Bar's Health Law section should be contacted to provide input from the perspective of the physician's attorney.

- 4) **Is there evidence, including anecdotal, of cases where attorneys have refused to represent a client due to the lack of any financial incentive caused by the lien law or the hospital's refusal to exercise less than its maximum lien rights?**

The FMA does not have any information to answer this question.

- 5) **How are physicians who *have hospital staff privileges* compensated through the lien law process? Are other health care practitioners who provide care outside of the hospital setting (i.e., rehabilitation, specialty, etc.) compensated in a similar manner?**

Almost every county that has a hospital lien law gives the liening privilege only to the hospital, not to physicians. Simply having hospital staff privileges does not provide a physician with any greater rights than those physicians who do not have staff privileges. Thus, the lien law process serves only to allow hospitals to obtain compensation for its services. Physicians are required to seek compensation just as they would if no lien law existed, and unless the patient (or more commonly, the patient's attorney) agrees to pay, the physician must either resort to the collection process or simply write the bill off.

- 6) **In cases where lien rights have been exercised, are patients' ability to recover damages limited?**

The FMA does not have any information to answer this question.

- 7) **What important public policy goals are effectuated by having separate and distinct lien laws?**

No important public policy goals are effectuated by having separate and distinct lien laws. The current system of different lien laws on a county by county basis serves only to benefit hospitals at the expense of physicians and patients. The state's policy of providing equality under the law to all citizens demand that this patchwork system be replaced by a uniform, statewide lien law.

The hospitals will attempt to argue that they provide indigent care, and thus public

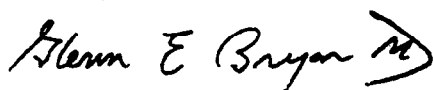
Policy dictates they be compensated through the lien law process. This ignores the fact that for every indigent patient treated at a hospital, there is also a physician providing services who does not get paid. No public policy is served by giving hospitals preferential treatment at the patients and physicians' expense.

- 8) **Are there any imperfections or imbalances in the existing lien laws? If so, please identify. Would a uniform law correct any of these imperfections or imbalances?**

Hospitals provide the facilities for medical care. Physicians provide the treatment that keeps patients alive. Yet, when payment time comes, most lien laws provide that hospitals get paid in full out of any settlement or judgement the patient may acquire. No provisions are made to compensate physicians. If there are not enough funds to satisfy all hospital charges, the hospital gets the full amount of what is available while the physician is left with an unpaid bill from an insolvent patient. Furthermore, insurance companies with limited personal injury benefits (most often PIP insurers with \$10,000 limits) will not pay physicians until all hospital charges have been paid. A uniform law could correct this imbalance and ensure that all parties to the process are treated fairly.

I hope the above information is useful. If you have any other questions, or if I can be of assistance in any way, feel free to contact either myself or the FMA's Associate General Counsel, Jeffery M. Scott.

Sincerely,



Glenn E. Bryan, M.D.

cc: Honorable Representative John Thrasher
Lucretia Shaw Collins, Staff Director
Sandra Mortham



FLORIDA OSTEOPATHIC MEDICAL

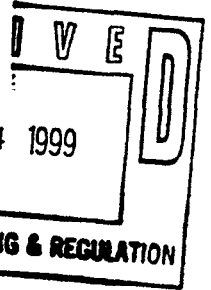


FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

STEPHEN R. WINN
EXECUTIVE DIRECTOR

RON L. WATSON
DIRECTOR OF GOVERNMENTAL RELATIONS

OFFICE: (850) 878-7364
FAX: (850) 942-7538



September 24, 1999

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Fort Lauderdale, Florida 33304

The Honorable Mike Fasano
8217 Massachusetts Ave.
New Port Richey, FL 34653

Dear Representative Fasano:

On behalf of the Florida Osteopathic Medical Association (FOMA), I would like to thank you for your leadership and guidance as Chairman of the House Health Care Licensing and Regulation Committee. It is always a pleasure to work with you on important issues facing the citizens of Florida.

In regards to your interim project questionnaire dealing with "Hospital Lien Laws", FOMA leadership has recently reviewed the response of the Florida Medical Association (FMA) and we agree with their comments.

With that in mind, it is our belief that a fair and equitable process should be developed that includes the patients, the physicians, the attorneys and the hospitals. The present patchwork system of differing rules by county is confusing and complicated.

Again, the FOMA thanks you for your leadership on this difficult issue and we look forward to working with you on solutions that benefit the citizens of Florida.

Sincerely,

Larry Mattingly, D.O.
FOMA President

EXECUTIVE OFFICE

THE HULL BUILDING
2007 Apalachee Parkway
Tallahassee, Florida 32301

Telephone: 850-878-7364
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EXECUTIVE DIRECTOR

STEPHEN R. WINN

LEGAL COUNSEL

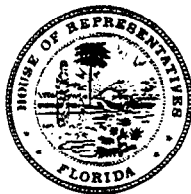
MORTON J. MORRIS, D.O., J.D.

cc: Lucretia Shaw Collins
Staff Director

SRW/rw

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Appendix C



Florida House of Representatives

John Thrasher, Speaker

HEALTH CARE LICENSING & REGULATION HEALTH & FAMILY SERVICES COUNCIL

Mike Fasano
Chair

Everett Kelly
Vice Chair

December 3, 1999

Charles Pierce, President
Florida Hospital Association, Inc.
P.O. Box 531107
Orlando, Florida 32853-1107

Dear Mr. Pierce:

In an effort to finalize staff's review of the lien law interim project, additional information is needed from your organization. It is requested that you provide comments on the potential financial impact to hospitals if any one of following options is adopted:

- (1) Continuing the existing method for counties to obtain hospital lien authority (through a special act of the Legislature) and allowing current lien laws to remain effective;
- (2) Enact a uniform law affecting only those 46 counties that do not presently have lien laws, continuing the existing method for counties to obtain hospital lien authority and allowing current liens laws to remain effective;
- (3) Enact a statewide, uniform lien law and establish a sunset date for repeal of existing lien laws; or
- (4) Repeal all existing lien laws in the 21 counties in favor of the common law right of any creditor to demand payment from a debtor through the court system.

Please respond no later than January 1, 2000. If there are questions, please contact Lucretia Shaw Collins, Staff Director, at 850/487-3771. If necessary, you may fax your response to the committee at 850/488-9933. Again, thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Mike Fasano" with a stylized flourish at the end.

Mike Fasano
Chairman
MF/lc

Appendix D



Florida House of Representatives

John Thrasher, Speaker

HEALTH CARE LICENSING & REGULATION HEALTH & FAMILY SERVICES COUNCIL

Mike Fasano
Chair

Everett Kelly
Vice Chair

December 2, 1999

Dear Hospital Administrator:

The Committee on Health Care Licensing & Regulation is conducting an interim project to determine the feasibility of establishing a statewide lien law policy. The purpose of this letter is to request your assistance in providing information which will aid in this effort. It is important that a reply be received from your hospital no later than **January 1, 2000**, in the enclosed self addressed, stamped envelope.

There are four possible options that the committee will consider:

- (1) continuing the existing method for counties to obtain hospital lien authority (through a special act of the Legislature) and allowing current lien laws to remain effective;
- (2) enact a uniform law affecting only those 46 counties that do not presently have lien laws, continuing the existing method for counties to obtain hospital lien authority and allowing current liens laws to remain effective;
- (3) enact a statewide, uniform lien law and establish a sunset date for repeal of existing lien laws; or
- (4) repeal all existing lien laws in the 21 counties in favor of the common law right of any creditor to demand payment from a debtor through the court system.

As part of the investigative process, it is important that the potential financial impact to hospitals throughout the state be carefully considered (this letter is being sent to each hospital in the state licensed with the Agency for Health Care Administration). The three major hospital associations have been requested to comment on the potential financial impact to hospitals if any one of these four options were implemented. As a singular entity, an opinion on the potential impact to your hospital is also invited.

Of additional interest is information related to the attached questionnaire. So as not to place an undue hardship on the task of data collection requested of your hospital staff, it would be appreciated if information would be provided on cases in which lawsuits/liens were applied during the 90-day period from **July 1 - October 1, 1999**. Please complete these questions as fully as possible. Return this questionnaire with any comments you may have on the lien law issue or this requested data collection.

Lucretia Shaw Collins, Staff Director

1101 The Capitol

Tallahassee, Florida 32399-1300

(850) 487-3771

FAX (850) 488-9933

Hospital Administrator

December 2, 1999

Page 2

Your assistance in providing this information by January 1st is greatly appreciated. Please understand that the committee intends to initiate legislation for consideration during the 2000 legislative session. It is of paramount importance that your views be taken into consideration, therefore, I urge you to respond in a timely manner.

If there are questions, please contact Lucretia Shaw Collins, Staff Director, at 850/487-3771. If necessary, you may fax your response to the committee at 850/488-9933. Again, thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Mike Fasano" followed by a circular flourish or monogram.

Mike Fasano
Chairman

MF/ka/lc

Attachment

cc: Bill Bell, Florida Hospital Association
Tony Carvalho, Association of Community Hospitals & Health Systems of Florida, Inc.
Ralph Glatfelter, Florida League of Health Systems
Jeff Scott, Florida Medical Association
Debra Zappi, Academy of Florida Trial Lawyer

HOSPITAL QUESTIONNAIRE
Committee on Health Care Licensing & Regulation
Florida House of Representatives

Name and County of Hospital: _____

Name and Title of Person Completing Questionnaire: _____

Please complete the following questions as fully as possible and return to the committee no later than **January 1, 2000**. Questions relate only to case information available for the 90-day period between **July 1, 1999 - October 1, 1999**. This questionnaire has been mailed to hospitals throughout the State of Florida. Therefore, this questionnaire recognizes that current lien laws may be in place in some institutions, whereas common law collection practices may be in place in counties without established lien laws.

1. Total number of inpatients admitted: _____
2. Total number of lawsuits/liens filed for recovery of medical costs associated with medical care of individuals: _____
3. Total number of indigent patients admitted: _____
4. Total number of lawsuits/liens filed on patients related to death/damages from third party negligence: _____
5. Of the number of cases in which third party negligence was the cause of death/injury for which lawsuits/liens were filed (question #4), what number did the hospital apply for claims from:
 - a) Private/managed care medical insurance: _____
 - b) Medicare or Medicaid: _____
 - c) Number with health care coverage in which a claim was not filed by the hospital:

 - d) Number of cases in which the individual had no health care coverage of any kind:

6. Of these third party negligence injury/death cases in which the hospital filed a lawsuit/lien (question #4), what number was satisfied to the following levels:
 - a) 100% (paid in full): _____
 - b) 75% - 99%: _____
 - c) 50% - 74%: _____
 - d) 25% - 49%: _____
 - e) 1% - 24%: _____
 - f) No settlement to date (cases open during this 3 month period): _____
7. Based on the third party negligence injury/death cases in which the hospital filed a lawsuit/lien and which were subsequently settled during July 1 - October 1, what is the total dollar amount recovered by the hospital (to the nearest \$5000): _____
Dollar amount specified in these settled lawsuits/liens which was not recovered (to nearest \$5000):

8. Please include any additional comments.

Appendix E

County-by-County Hospital Lien Law Comparison

	County	Type of Law	Authorizing Documents	Year	Provision for hospital lien?	Hospitals granted lien?	Attorney's fees provision?	Provision for payment of attorney's fees prior to hospital fees?	Note
1	Alachua	Special Act	Ch. 88-539, §1, L.O.F.	1988	Yes	Nonprofit corporations operating charitable hospitals	Yes	No	
	Alachua	Ordinance	Ch. 262, Art. 2, Code of Ordinances		Yes	Nonprofit corporations operating charitable hospitals	Yes	No	Mirrors special act.
2	Bay	Ordinance							
3	Bradford	Special Act	Ch. 61-1897, L.O.F.	1961	Yes	All hospitals	Yes	No	
4	Brevard	Ordinance	Ch. 54, Art. 3	1979	Yes	All hospitals	Yes	No	
5	Broward	Special Act	Ch. 30615, L.O.F.	1955	Yes	All hospitals	Yes	No	
	Broward	Ordinance	Ch. 16, Art. 2		Yes	All hospitals	Yes	No	Mirrors special act.
6	Dade	Special Act	Ch. 27032, L.O.F.	1951	Yes	All hospitals in counties with more than 325,000 people	Yes	No	
	Dade	Ordinance	Ch. 25C, Code of Metropolitan Dade County		Yes	All hospitals	Yes	No	
7	Duval	Special Act	Ch. 27032, L.O.F.	1951	Repealed as to Duval County	Repealed as to Duval County	Repealed as to Duval County	Repealed as to Duval County	
	Duval	Ordinance	Ch. 482, Ordinance Code, City of Jacksonville	1982	Yes	All hospitals in the general service district	No	No	
8	Escambia	Special Act	Ch. 30733	1955	Yes	All hospitals	Yes	No	

County-by-County Hospital Lien Law Comparison

	County	Type of Law	Authorizing Documents	Year	Provision for hospital lien?	Hospitals granted lien?	Attorney's fees provision?	Provision for payment of attorney's fees prior to hospital fees?	Note
9	Hillsborough	Special Act	80-510	1980	Yes	Only applies to the Hillsborough County Hospital Authority	No	No	The Hillsborough County Hospital Authority (HCHA) is the only entity with the lien privilege. HCHA ceased to operate its hospital and the lien privilege in Hillsborough County no longer has effect.
	Hillsborough	Special Act	Ch. 98-499	1998	*If provided for by county ordinance	All hospital*	Yes*	Yes. Pro rata share of fees and costs*	
10	Indian River	Special Act	59-1384	1959	Yes	Public hospitals	Yes	No	
11	Jackson	Special Act	57-1420	1957	Yes	All hospitals	Yes	No	
12	Lake	Special Act	93-346	1993	Yes	All hospitals	Yes	No	
13	Lee	Special Act	89-540	1989	Yes	Nonprofit corporations operating charitable hospitals	Yes	No	
14	Marion	Special Act	Ch. 930965	1955	Yes	All hospitals	Yes	No	
15	Monroe	Special Act	73-555	1973	Yes	All hospitals in the lower Florida keys hospital district	Yes	No	
16	Orange	Special Act	57-1644	1957	Yes	All hospitals	Yes	No	
	Orange	Ordinance	Ch. 20, Art. 4	1965	Yes	All hospitals	Yes	No	
17	Palm Beach	Special Act	57-1688	1957	Yes	Public hospitals	Yes	No	

County-by-County Hospital Lien Law Comparison

	County	Type of Law	Authorizing Documents	Year	Provision for hospital lien?	Hospitals granted lien?	Attorney's fees provision?	Provision for payment of attorney's fees prior to hospital fees?	Note
	Palm Beach	Special Act	93-382	1993	Yes	Palm Beach County Health Care District	Yes	Yes. Pro rata share of fees and costs	
18	Pinellas	Special Act	98-530	1998	*If provided for by county ordinance	All hospitals*	Yes*	Yes. Pro rata share of fees and costs*	
19	Sarasota	Special Act	61-2868	1961	Yes	All hospitals	Yes	Yes	
20	Seminole	Special Act	Ch. 31274, L.O.F.	1955	Yes	All hospitals	Yes	No	
21	Volusia	Special Act	Ch. 29591, L.O.F.	1953	Yes	All hospitals	Yes	Yes**	**If the patient shall have employed an attorney, said attorney shall be paid a reasonable fee of not less than twenty-five percent (25%) of the lien claimed by lien or upon collection or satisfaction of the lien.

Appendix F

STATE LIEN LAWS

STATE	Year Lien Law Created	Lienholder	Lien Applicable To	Limitations on Amount of Lien	Attorneys' Fees	Notice Filed; Sent To	Duration of liabilities
Alabama	1955	Any hospital; the hospital has no right of action to determine liability for injuries	All actions and claims, and recruiting judgments and settlements	Reasonable charges for hospital care, treatment and maintenance of injured person who enters hospital within one week after injury; court has full jurisdiction to determine amount due on lien and the manner in distribution of judgment proceeds	Lien subject to an attorney's lien	Within 10 days after discharge; sent to injured person and liable parties	1 year
Alaska	1959	any hospital, physician furnishing services, special nurse in hospital	all sums awarded by judgment or settlement; lien applies to patients hospitalization insurance; payment is a full release of the contractual obligation	reasonable charges plus costs incurred in the enforcement of lien; lien may be enforced within 1 year of filing notice	lien not allowed for attorney fees, BUT person or insurer is only liable for "so much of the value of (hospital or nurse) services as can be satisfied after paying attorney fees, costs and expenses	within 20 days after the date of the injury or 15 days after discharge	180 days
Arizona	1954	any health care provider, institution, firm, association, individual, partnership, corporation or ambulance; lien assignable	all claims of liability and indemnity; does <u>not</u> apply to health insurance	customary charges in excess of \$250	court may allow for attorney's fees and disbursements if claimant prevails; hospital has priority over other health care liens		2 years

Arkansas	1933	any practitioner (doctor, dentist, chiropractor), nurse or hospital; lien in assignable	all claims, rights of action and money awarded; lien may be enforced up to 60 days after last notice filed unless debt barred by statute of limitation	value of services rendered by practitioner, nurse, hospital, ambulance	attorney, fees, and costs paid first	within 60 days of termination of service	180 days
California	1961	person, partnership, any hospital or related facility	all damages recovered in excess of \$100	reasonable charges for emergency or other medical services valued over \$100 during a 72 hour emergency period; lien only attaches to 50% of any final judgment after paying any prior liens (MediCal, county)	Liens of MediCal, County, Hospital (72 hours) paid first for up to 50% of settlement, then all others paid		1 year
Colorado	1963	any hospital or hospital related facility	net recovery	reasonable and necessary charges for hospital care	Hospitals and other liens paid first, only fees for collection and enforcement of liens are paid not attorney's fees directly); Workman's Comp settlements - attorney's are paid first		1 year
Connecticut	1941	any hospital which is non-profit, owned by the state or a municipality; any ambulance service	accident and liability policies	actual cost of services and materials	liens in favor of hospitals and ambulances		
Delaware	1935	any hospital	all claims, demands, suites, rights of action	reasonable charges for all medical treatment, care, nursing and maintenance	hospital is paid first, then attorney and individual	hospital lien docket	1 year

Florida	Lien law by special act or local ordinance						
Georgia	1953	any hospital or nursing home; lien assignable	all causes of action; liable party defined as those liable to pay patient's damages, not the patient	costs and care of treatment, reasonable charges	attorney is paid first	within 30 days after discharge	1 year
Hawaii	1939	any hospital, dentist or physician, doctor, surgeon	judgment for damages for personal injuries	reasonable value of the services provided: room, board, supplies, facilities; if proceeds insufficient they shall be distributed pro rata between lienors after all common law liens have been satisfied	subject to any common law lien		
Idaho	1941	any hospital; separate lien for nursing care and physicians; lien assignable	all causes of action	reasonable charges for hospital care, treatment maintenance	attorney is paid first; court <u>may</u> allow for attorney's fees	file within 90 days of discharge; hospital lien book	indefinite
Illinois	1939	any hospital operated by a unit of local gov't; there is also a separate physician's lien act	all claims or causes of action; attaches to any recovery	reasonable charges to the date when damages are paid; all liens in act shall not exceed 1/3 of settlement	attorney is paid first; attorney paid 1/3; hospital paid 1/3; plaintiff is paid 1/3 (but has to pay remainder of liens out of patient share)	30 calendar days to satisfy lien	5 years
Indiana	1933	any hospital; lien is <u>not</u> assignable	all causes of action and judgments or settlements	reasonable and necessary charges for treatment	attorney is paid first	180 days after discharge	indefinite
Iowa	1939	any hospital	any money paid an injured person	amount the hospital was entitled to receive	attorney is paid first	hospital lien docket	1 year

Kansas	1939	any hospital	any recovery or sum collected	reasonable and necessary charges; lien may not exceed \$5000	attorney is paid first, then hospital		1 year
Kentucky	No lien law						
Louisiana	1970	all hospitals, ambulance, physician, dentist, chiropractor, podiatrist, optometrist, pharmacist, physical therapist, psychologist	total amount of any recovery sum	fair cost of medical services; obligation is not enforced for indigents receiving care from state-supported hospitals	attorney is paid first		indefinite
Maine	1967	any hospital	all causes of action; liens do not apply to health or accident insurance of injured party or catastrophic illness programs	reasonable charges	attorney is paid first	10 day notice after discharge	1 year
Maryland	1957	any hospital	recovery or compensation for injuries	hospital can claim up to 50% of settlement toward lien	attorney is paid first	hospital lien docket	1 year
Massachusetts	1959	any publicly owned hospital, HMO, medical or dental corporation	net amount payable to injured person	limited to "ward" charges	attorney is paid first		1 year
Michigan	No lien law						

Minnesota	1933	any hospital	all causes of action	reasonable charges	attorney is paid first	10 days following discharge	2 years
Mississippi	No lien law (repealed in 1989)						
Missouri	1941	any hospital or clinic	any claims or rights of action	lien limited to \$25/day and reasonable cost of necessary xrays, lab, operating room, Rx; lien limited to 50% of recovery after paying attorney, worker's comp., and any prior liens	attorney is paid first		1 year
Montana	1979	hospitals, nurse, physician, dentist, physical therapist, occupational therapist, psychologist, licensed social worker or professional counselor, chiropractor	lien applies only when person has been injured through fault/negligence of another or when patient has own insurance; excludes payments for property damage	services and products provided	attorney is paid first		indefinite
Nebraska	1927	any hospital, nurses, physicians	awarded claims of damages	usual and customary charges	attorney is paid first		
Nevada	1955	any physician, nurse or hospital	claims damages; hospital also has property lien for care provided to owner	reasonable charges for the value of the hospitalization rendered	attorney, fees and costs paid first		180 days
New Hampshire	1955	any hospital, home health care provider	recovery of claims damages	reasonable and necessary charges of hospital or home health care	hospital is paid first, then attorney		

New Jersey	1930	hospital, physicians dentists, nursing home and services (Rx, supplies, exams, tests, therapies)	settlement rendered for personal injury resulting from another's negligence	lien limited to "ward" rate in hospitals, minimum per diem rate in nursing homes, physician or dentist lien is limited to 25% of total recovery	hospital is paid first	90 days after first treatment	
New Mexico	1953	any hospital for charges by reason of accident; <u>no</u> right to be a party to any settlement	judgment or settlement rendered	emergency, medical and other services	attorney, costs, fees paid first		1 year
New York	1936	any hospital	all rights of action, attaches to proceeds	reasonable charges for emergency or admitted services within one week of personal injury; only to proceeds over \$300	attorney is paid first, hospital lien has no priority over any other lien against estate		1 year
North Carolina	1935	any person, corporation, county or municipality rendering medical care (ambulance can file separate lien)	all funds paid in compensation or settlement	lien for medical and hospital fees may not exceed 50% of the amount recovered exclusive of attorney's fees	attorney is paid first		
North Dakota	1935	any hospital, may be enforced by lienholder in action against tortfeasor up to 1 year after notice filed	all claims; attaches to all proceeds, can attach to any insurance payable to injured person	reasonable value of hospitalization services		within 30 days after services terminated	
Ohio	No lien law						
Oklahoma	1969	any hospital, physicians	claim for damages	reasonable charges	attorney is paid first		

Oregon	1931	every hospital, physicians	claim for damages; lien can also be applied to patient contract for indemnity or compensation	reasonable value of hospitalization and treatment; hospital and physician shall prorate monies if recovery is insufficient to satisfy all	attorney, enforcement costs and expenses first	within 15 days after discharge	180 days
Pennsylvania	No lien law						
Rhode Island	1939	any hospital	claims for damages	reasonable and necessary charges	attorney is paid first		1 year
South Carolina	No lien law						
South Dakota	No lien law	any hospital	recovery of claims for damages	reasonable and necessary charges	attorney is paid first	hospital lien docket	1 year
Tennessee	1970	any hospital	all causes of action	reasonable charges; lien limited to 1/3 of the recovery	attorney is paid first	file within 120 days of discharge	indefinite
Texas	1933	any hospital	claims for damages due to third party negligence; not attached to person's insurance, except for accident insurance	has to be admitted to hospital within 72 hours of an accident	attorney is paid first		lien in effect until paid

Utah	1965	any hospital; <u>no</u> right to be party to any settlement	portion of settlement belonging to patient	does not apply if settlement is less than \$100	attorney is paid first		1 year
Vermont	1963	any hospital, private duty nurses	recovery of damages	cannot exceed 2/3 of recover or \$500, whichever is less (after attorney's fees)	attorney paid first		
Virginia	1950	any hospital, nurse, physician, pharmacist, physical therapist	claim	reasonable charges: lien not to exceed \$2000 for hospital and \$500 each for claims of others	attorney paid first, liens of state take precedence		indefinite
Washington	1937	any hospital, ambulance service, nurse, physician; lien enforceable for 1 year after filing	claims and money recovered	value of services plus costs for enforcing lien; lien limited to 25% of the recovery		within 20 days after date of injury or care	indefinite
West Virginia	No lien law						
Wisconsin	1961	any hospital	all rights of action resulting in recovery	services rendered	attorney, court fees and costs paid first	within 60 days after discharge	1 year
Wyoming	No lien law						
District of Columbia	1939	any hospital	recovery for negligence	reasonable and necessary charges	attorney paid first	lien docket	1 year

Number of states with no lien laws = 9 (FL, KY, MI, MS, OH, PA, SC, WV, WY)

Number of states with lien laws = 42 (including Washington DC)

Number of states specifying that attorney's liens take precedence over all others = 32 (AL, AK, AZ, AR, GA, ID, IN, IA, KS, LA, ME, MD, MA, MN, MO, MT, NE, NV, NM, NY, NC, OK, OR, RI, SD, TN, TX, UT, VT, VA, WI, DC)

Number of states specifying that hospital's liens take precedence over all others = 6 (CA, CO, DE, CT, NJ, NH) Pay to public hospitals only = 3 (CT, MA, IL)

Number of states with some kind of formally shared disbursement model: 1 (IL equal shares to attorney, hospital, patient)

Number of states with disbursement models where the attorney is paid first and then other liens can apply for up to specified amounts: 5:

NC (after attorney, MD and hospital can receive up to 50% of remaining settlement)

CA (MediCal paid 1st, then County or Hospital - total of up to 50% of settlement is paid to any or all of these 3 lienholders, then any remaining funds are applied to outstanding hospital lien)

MD (hospital can claim up to 50% of settlement remaining after attorney is paid)

NJ (physicians and dentists cannot claim more than 25% of settlement remaining after hospital is paid)

NC (lien for medical and hospital fees may not exceed 50% of settlement remaining after attorney is paid)

TN (hospital lien cannot apply for more than 1/3 of settlement after attorney is paid)

VT (lien cannot apply for more than 2/3 of settlement or \$500, whichever is higher, after attorney)

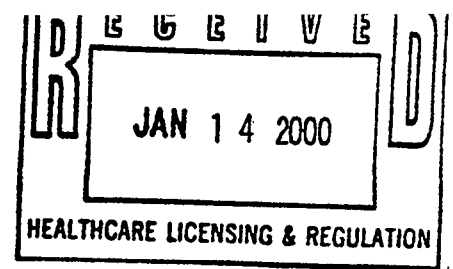
Number of states specifying that Workman's Compensation settlements are exempted from liens: 24

Duration of liabilities: Range = 180 days - indefinite Most common duration = 1 yr (18 of 34 states specifying duration)

Filing of Notice: Days after discharge = 10, 15, 30, 60, 90, 120, 180 Days after injury = 20 Days after first treatment = 9

Appendix G

*Florida Hospital Association
Florida League of Health Systems, Inc.
Association of Community Hospitals and
Health Systems of Florida, Inc.*



January 10, 2000

The Honorable Mike Fasano, Chair
House Committee on Health Care Licensing & Regulation
1101 The Capitol
Tallahassee, Florida 32399-1300

Dear Representative Fasano:

Thank you for the opportunity to provide further comments on the proposed options under consideration by the House Committee on Health Care Licensing and Regulation for creating a statewide lien law policy. We apologize for the delay in our response resulting from Neil's unexpected medical difficulty.

We oppose a statewide lien law and support allowing the current lien laws to remain in effect. Our position is based on the data on the attached chart. The chart has previously been submitted to you, but has since been updated to reflect some additional data we have collected. To put the data in context, we offer the following information. Of the 20 counties with lien laws, two require implementation at the local level, which has not yet occurred (Hillsborough and Pinellas); one has been rendered moot by a court decision (Palm Beach); and four others apply only to a portion of the hospitals within the county (Indian River, Alachua, Lee, Monroe). By our calculation, 116 hospitals in the state currently have lien rights available to them. The attached chart contains data reported by a combination of systems and freestanding facilities totaling 24 individual hospitals. Another five hospitals reported zero recoveries under their hospital lien authority and are not reflected on the chart. These two numbers combined mean that you have received responses from at least 25% of all affected facilities.

As you can see, the existing lien laws assisted these hospitals in collecting nearly \$26 million during 1998 for services rendered to individuals injured through the fault of another. Thus, any effort to diminish or repeal the existing lien rights, as proposed by options three or four, jeopardizes a minimum of \$26 million in hospital revenues. We are confident that this number will increase substantially as we obtain additional data from our member hospitals.

In further support of our position, we offer the following discussion:

1. **Local control.** The State of Florida does not provide a statewide revenue source to fully fund indigent care. In the void, financing for that care has developed county-by-county through a combination of local ad valorem taxing authorities, local option taxes, general revenue dollars, and in some cases effective fund raising from private sources. Given this "patchwork" of funding initiatives, a "patchwork" of local lien laws makes sense. Local communities need flexibility to determine the most appropriate mechanisms for recovering some of their cost and separate and distinct hospital lien laws

provide them this needed control. Communities should have a right to assist hospitals in maximizing reimbursement when doing so eases the local tax burden and minimizes the cost shift to other paying patients.

Eighty-five percent of the counties with lien laws either levy or have authorized, but do not currently levy, taxes for health care. Thus, every dollar collected by lien in one of these counties either assists in the recovery of these tax revenues or avoids the cost of levying a tax in the first place. On the attached matrix, every hospital but one (E) is located within one of these counties. The total of all revenues collected by lien for these hospitals is more than \$21 million. Thus, any change which diminishes existing lien rights (options three and four) has the potential to cost taxpayers at least \$21 million.

2. **Government mandates.** State and federal laws combine to prevent hospitals from obtaining full reimbursement for services provided to the majority of their patients. Medicare or Medicaid pays for the care of two-thirds of all patients treated in hospitals. By law, these programs reimburse at levels below cost. In addition, state and federal laws require hospitals to accept all patients who present through the emergency room regardless of the patient's ability to pay. Thus, expensive care may be rendered to individuals who lack the financial capacity to pay. In this regard, government regulations have taken what was once a free market economy and treated one player—hospitals—differently.

Yet, like any business, hospitals must recover their costs in order to continue. If, on the one hand, government knowingly prevents hospitals from recovering their costs for the majority of their patients, then, on the other hand, it must provide hospitals with tools to maximize collections from other viable payers. Lien laws, in fact, enable hospitals to compensate, in part, for losses directly attributable to government policies by providing a collection tool for obtaining payment from a responsible payer. We believe this is an appropriate "quid pro quo" for government to provide in exchange for involving itself in what was once a purely market issue.

3. **Market instability.** Florida hospitals are facing unprecedented pressures due to declining reimbursement rates and increases in the number of uninsured. Changes in Medicare alone will cost Florida hospitals \$4 billion over the next five years and Florida's hospitals continue to provide a safety net for the state's uninsured—a population of 2.8 million and growing. In the wake of these pressures, hospitals have been forced to close 75 home health agencies, nine skilled nursing units and five obstetrical units. Over 30 hospitals have opted not to renew their trauma center designations. Changes to the lien laws in the current economic climate would further jeopardize the continued viability of vital health care services and facilities.

The Honorable Mike Fasano
January 10, 2000
Page Three

As the committee further deliberates this issue, we respectfully request that it consider the issue in perspective. Substantial evidence exists to demonstrate that, during the 46-year period since the first lien law was enacted, individual hospitals have worked effectively with members of the relevant local bar to obtain fair compensation for all parties in light of available resources. Only within the last six years has the Academy of Florida Trial Lawyers (AFTL) begun its attack. In support of its position, the AFTL has provided the committee with a handful of case summaries—approximately 25. Let us put this number in context. The attached chart shows that in 1998 at least 10,000 hospital liens were filed in the state. Let us assume that all 25 of the cases cited by the AFTL occurred in 1998 (in fact, many of the reported cases are from Hillsborough County which has not had a viable lien law since Tampa General privatized in 1997) and no other hospitals filed liens during 1998. Then the “problem” the committee is being asked to solve occurred in 25 cases out of 10,000 total. Although we believe lien laws on balance can work fairly, we have previously acknowledged that, whenever a law is applied to a variety of factual situations, imperfections and imbalances may occur. The hospital lien law is no exception. We suggest, however, that a law that works 99.75% of the time is probably a pretty good one.

Thank you again for the opportunity to be heard on this issue.

Sincerely,



Karen Peterson
Counsel for
Governmental Relations
Association of Community
Hospitals and Health Systems



Ralph Glatfelter
President
Florida League of
Health Systems



William A. Bell
Sr. V.P./General Counsel
Florida Hospital Association

KP/lz
Enclosure

	# of Liens	Total \$ Collected	Mean Value	Avg. Time to Collect	Basis for Lien	Scope of Services	Payor Distribution	Comments
A	84	\$350,089	\$7505	61 days	(\$2000)	Inpatient	PIP & MedPay	Used for automobile accidents. Very important collection tool. Without a lien the insurance company or adjuster does not have to honor our assignment of benefits.
B	310	\$ 931,809: auto/liabl. \$ 20,447: self-pay \$ 581,985: health ins. \$1,534,241	\$10,006	62 days	Charges	Inpatient	(see total collected)	No policy regarding negotiations—rarely done. Case-by-case basis. Other criteria considered include subrogation of health insurance, potential time until settlement, available insurance coverage, etc. It would be disastrous if required to split auto/liability money. Thinks the reason the hospital collects as quickly as it does is b/c PIP must be paid to the hospital first. If no longer the case, thinks the time to collect will increase and the collected amount will decrease.
C ¹	636	\$4,151,425	\$25,087	Not available	Charges	Inpatient & outpatient	Self-pay: \$258,366 Insur.: \$3,899,295 (86% PIP)	Policy to file a lien against any patient with an account balance exceeding \$5000, when the admission is the result of an auto or other accident involving third party liability. (see file for examples of settlement)
D	877	\$5,999,626	Not provided	12 – 24 mos.	Charges	Inpatient & outpatient over \$5K	PIP: \$3,047,790 Other liability insur.: \$364,580 Indiv. (commercial or patient): \$2,587,256	Negotiated approximately 10% of the cases. Policy: all requests to negotiate are considered. If claims exceed the recovery, the hospital requests copies of all other medical bill along with the attorney's fee. Generally, the hospital will reduce its fee the same percentage as the attorney, sometimes more. The hospital considers the patient's future medical bills. Some attorneys call the hospital before taking a case to get its position on negotiating. Negotiations are based on an estimated settlement. If the settlement is higher, the

¹ System total: 3 hospital system.

E	285	\$4,336,906	\$40,023	Not available	Charges	Inpatient & outpatient		parties split the difference equally. (see file for examples) Always compromises when there are inadequate funds to pay all damages. Generally allows legal costs to be paid off the top, with the remainder apportioned between the patient, his attorney and the medical providers (usually 1/3 – 1/2 of the settlement). Frequently allows other medical providers to share pro rata. This can benefit the patient b/c providers are more willing to reduce their charges when the hospital attempts to include them in a settlement with limited proceeds. Recalls no instance where an attorney abandoned or withdrew from a case b/c a lien was filed.
F	802	\$2,363,075: PIP/Med \$ 156,780: liability \$2,519,855	\$8286 \$7400	70 days 216 days	(\$2000)	Inpatient & outpatient	See collections.	Negotiate when provided with the total amount of the settlement, including the amount for the patient, total outstanding medical bills, total attorney's fees and costs and whether or not the attorney proposed to reduce his or her fees, the amount proposed for the hospital to accept and information regarding any other sources of recovery. Once provided, the hospital may negotiate. Normal reductions/discounts do not exceed 25% of total charges. Special circumstances are handled on a case-by case basis. If an attorney refuses to disclose any of the criteria, the hospital will not discount.
H	1231	\$1,066,699		90 days		Inpatient & outpatient	100% PIP	Filed on charges exceeding \$400 for injuries resulting from auto accidents.
I	3537	\$1.5 million (\$70.2 million charges)		30 – 60 days: PIP 1 year: liability	Charges	Inpatient & outpatient	90% auto-related 10% other	Filed on accounts of \$2000 or more.
J	887	\$2,890,431	\$7255 Median: \$3240	59 days	Charges	Inpatient & outpatient		Filed on accounts of \$2000 or more. Requests to settle accounts for less than full value are submitted to the Hospital Review Committee for consideration. See file for numerous examples of settlements. The hospital also will accept a prorated share of the available funds

									to all medical providers, thus allowing providers who lack lien authority (like physicians) to receive payment.
K	3150		\$30,000	35 days	Charges	Inpatient & outpatient over \$1000			No formal policy regarding negotiations. The hospital always allows attorney's fees and costs to be paid from the recovery. In determining a settlement amount, the hospital reviews the breakdown of charges owed to all creditors, then proposes "the most advantageous and amicable resolution . . . , while respecting the patient's need for monetary compensation for pain and suffering."
L	133	\$190,309	\$1431	32 days		Inpatient & outpatient	PIP; liability; self-pay		
M	114	\$240,653	\$2111	35 days		Inpatient & outpatient	PIP; liability; self-pay		
N		\$350,000							
O	1317 ²	\$2,018,178	\$1532			Accounts with a letter of protection with a lien and auto insurance with charges over \$500			
P		\$58,000							
Q		\$118,000							

Date: January 9, 2000

² 18-month total: 1/1/98 - 7/31/99; \$1,460,812.85 collected in '98; the balance in '99

Appendix H

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

Interim Study on the Feasibility of Establishing a Statewide Lien Law

Florida is the only state with a “patchwork” of local lien laws. Forty-one (41) states have enacted uniform lien laws. Existing lien laws vary from county to county and the majority of counties in Florida do not have lien laws. Uncompensated health care is not a local issue. The current state of the law complicates lawsuits and makes them difficult, if not impossible, to resolve.

Many of the lien ordinances or special acts currently on the books in Florida are onerous to the injured patient. There are many instances where hospitals refuse to take a patient’s health insurance as payment for the hospital bill, or require the patient to make up the difference between the hospital’s premium or “customary” rate and the health insurance rate. Laws that do not allow Floridians to rely on their health insurance when the worst happens need to be repealed.

If the Committee determines that hospitals should have a lien privilege over all other health care professionals and creditors of a person injured by the negligence of another, then the Legislature should enact an equitable uniform lien law. Existing local lien laws in Florida must be repealed because most of them grant all hospitals, whether private for profit or charitable, a 100% lien privilege which does not recognize the cost of collection, other basic needs of the patient, or the services provided by other health care professionals.

The following case summaries illustrate what AFTL members and their clients face every day:

- I. **Examples of hospitals with 100% lien privileges refusing to accept a patient’s health insurance or other benefits as payment for its services.**
 - Hospital would not accept injured patient’s HMO payment for hospitalization. Hospital instead opted to take the patient’s entire PIP policy and placed a lien on the patient’s uninsured motorist benefits. (Attorney John Gillespie, Ft. Lauderdale)
 - A Dade county hospital required a bleeding victim of a car accident to use her credit card to pay the \$400 deductible on her group health insurance policy before treatment. Once the patient was discharged, the hospital refused the health coverage that the group health insurer had agreed to pay. The hospital instead elected to take the entire PIP policy, \$5,000 additional medical payment coverage, and is demanding most of the patient’s \$35,000 uninsured motorist benefits. The patient is a small business owner who has been unable to work for several weeks. (Attorney Angela Kirk, Miami)
 - Patient seriously injured in car accident, rendering him permanently unable to work. Florida Hospital in Orlando initially refused to bill the patient’s PIP and health insurer. The attorney for the patient finally prevailed upon a billing clerk to bill the health insurance, since the time within which to submit the claim was about to run. The patient’s health insurance paid the claim according to the contractual schedule rate. When this was discovered by hospital administrators, the hospital attempted to return the payment to the patient’s health insurer, so they could instead bill the patient directly at a higher rate and exhaust the limited liability coverage available to the patient for his needs. Litigation has been filed to force the hospital to accept the health insurance of the patient. (Attorney Brett Bressler, Winter Park).

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

- The case of the elderly woman seriously injured in a car accident in Palm Beach County. The Palm Beach hospital refused to bill Medicaid for medical expenses and instead pursued the injured senior for amounts in excess of what Medicaid permitted. The hospital attempted to collect almost all of the woman's uninsured motorist benefits, which would have left her without the means to provide for continuing medical care and the assistance with daily living she now required. This was yet another case of limited coverage and the hospital unwilling to recede from its asserted 100% lien right. (Attorney Bill Pruitt, Jr., West Palm Beach).
- A case reported in the Palm Beach Post where Bethesda Memorial Hospital did not submit a bill to the patient's insurance company, but instead sent her a letter notifying her of its lien.
- A case involved the issue of a hospital not accepting Medicare. In this case, a senior citizen injured in an auto accident caused by an underinsured motorist was fully covered for health care services with Medicare and Medicaid Supplement Insurance. Delray Hospital in Palm Beach County "waived" the patient's Medicare and Medicaid Supplement Insurance to instead take the patient's PIP (\$10,000), medical payment coverage (\$5,000) and his uninsured motorist coverage. Had the hospital not waived Medicare, his bill would have been reduced to a "reasonable" level. The patient would then have been required to reimburse Medicare, but under an equitable distribution formula, as opposed to the hospital lien, which takes first priority over the patient, the attorney, and other providers.

Note: The patient's other health care providers in this case did not waive Medicare and Medicare paid their fees. The patient then re-paid Medicare on an equitable basis. Delray Hospital could have and should have proceeded in the same manner. *Schwartz vs. Geico and Delray Community Hospital*, (712 So2d. 723, Fla. 4th DCA 1998). (Attorney Michael Bendell, West Palm Beach)

- Tampa General received a \$35,759 payment from a patient's health insurer and still insisted on taking an additional \$10,000 from the patient's liability settlement. The Tampa Tribune reported that traffic accident victims whose health insurers pay the hospital at the health insurance rate are forced to pay the rest of the hospital's full charges from their accident settlements. (Attorney Bill Wagner, Tampa).
- A husband and wife were seriously injured in an automobile accident. Health insurance paid \$83,000 of \$99,000 hospital bill. Hospital then filed lien to recover most of the wife's \$15,000 uninsured motorist benefits, leaving the couple with nothing to assist them with the impact the accident had on their lives. *Fuchs vs. United States Fidelity and Baptist Hospital* 479 So2d 292, 1st DCA 1985. (Attorney Steve Eschner, Escambia).
- This issue was litigated in the case of *Hillsborough Hospital Authority v. Zimmerman*, 697 So2d 147 (Fla. 2d DCA 1997), where Tampa General routinely filed a notice of lien in all negligence actions demanding that the patient pay the "premium rate," regardless of amounts paid by a patient's health insurer. In this case, Mr. Zimmerman's health insurance company paid the hospital bill pursuant to a Preferred Provider Agreement. Nevertheless, the hospital continued to pursue the balance of the bill from Mr. Zimmerman. The court held that the hospital had been paid in full and that the lien could not attach to further proceeds due Mr. Zimmerman from the person who caused the injury.

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

- A class action was filed in Tampa on the issue of Tampa General Hospital's practice of billing patients over and above what health insurance paid. Initially the case was certified as a class action, but was later decertified. Nevertheless, lawsuits have been filed by the individuals abused by this practice. In these cases, the hospital discounted the rate they would charge the insurance companies and then turned around and filed a lien on the patient for the amount they had discounted to the insurance company; one for \$8,000 and one for \$27,000. (Attorney Emmett Abdoney, Tampa.)
- II. **Examples of cases that were not taken due to hospitals asserting 100% lien privileges AND cases where clients received little or nothing from their recoveries to meet their needs and the needs of their families due to the hospital's privilege of 100% full payment.**
- A severely injured gunshot victim was hospitalized for months. A law firm agreed to pursue a case and filed suit just before the statute of limitations would have run. (*If the statute of limitations had run, there would never have been any chance of the hospital receiving any compensation for its services.*) After 3 years and over \$100,000 in expenses, the firm was able to recover only 1/2 of the patient's damages. Even though the hospital was days away from never collecting anything on its bill, had it not been for the attorneys who agreed to pursue this difficult and expensive case. The hospital refused to negotiate. (Attorney John Gillespie, Ft. Lauderdale)
 - An out of state driver struck a pedestrian who suffered massive injuries to his right leg, knee, hip, arm, and elbow. He underwent several surgeries and was hospitalized for over two weeks. He was going to be out of work for at least 4 to 6 months. It was requested that the \$8,000 worth of PIP coverage be reserved for lost wages. Sarasota Memorial filed a lien for \$19,457.64. The lien law provides the hospital with a lien that takes priority over all other claims, including lost wages, death benefits or even funeral expenses. The effects of the lien were devastating on the client. Without the lost wage benefits he is completely destitute. He has lost his apartment and would be homeless without having relatives to live with nearby. With the hospital still holding a lien of nearly \$12,000 it would not be economically feasible to pursue this matter any further. (James Dreyer, Sarasota)
 - An elderly man was hit by a car and transported to a hospital in Jacksonville where he eventually died. His medical expenses totaled \$120,000 and the hospital filed a lien in Duval County. The car that hit the elderly man carried \$10,000 in liability coverage and the victim held \$50,000 in UM. The family contacted a law firm only a few days before the statute of limitations was to run and filed suit to preserve the claim. In due time the firm collected the defendants coverage and the UM benefits for a total recovery of \$60,000. It was at this point that the hospital stepped in and wanted the full recovery under the lien. They held the position that the family was to get nothing for their damages or costs and that no attorney's fee should be paid to the law firm for collecting the recovery. From the onset the client offered to split the recovery equitably with the hospital, the family, and the firm each receiving one-third. While the recovery was a windfall for the hospital since they took no action to collect the bill and would have lost any recovery if the firm had not filed a claim, they still demanded full recovery. It is troubling that the hospital would take a "do nothing" position on collection of a bill and then demand all of the benefits for the work of others. (Robert J. Denson, Gainesville)
 - A man suffered an attack of coronary arrhythmia and as a result of the cardiac condition, he was hospitalized and incurred medical bills in excess of \$40,000. The health insurance carrier initially denied coverage but later authorized a settlement as a compromise to the full value of the claim. All of the health care providers were brought in and advised of the settlement offer and they all agreed to a reduction in their

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

medical bills to allow the settlement to “work”. However, one hospital refused to reduce their bill and demanded payment in full. They asserted that due to the hospital lien none of the other health care providers could be paid from any settlement money until the hospital bill was paid in full. Ultimately, the other health care providers had to settle for an even greater reduction to get the case resolved and the law firm was forced to forgo any fee for representation. (Steven Rudin, Miami)

- A hospital recorded a lien against an uninsured patient that had been treated following an automobile accident. The accident presented a difficult and time-consuming case for the law firm. Based on the size of the hospital lien the firm decided that unless a prior agreement could be reached with the hospital, it would not be cost effective to pursue the case. Despite numerous discussions, the hospital refused to negotiate at all. The firm was forced to decline this case and the hospital bill remains unpaid. The insurance carrier for the responsible party, who had offered \$20,000 (which was approximately equal to the hospital bill), never made any payment to the client. The only one who received any benefit from the hospital lien law was the insurance carrier, who saved \$20,000. (Steven Rudin, Miami)
- An attorney in the Jacksonville area noted three potential clients whose medical expenses at University Hospital has exceeded \$10,000. In each of these three cases the opposing at-fault party in an automobile accident had minimum PIP policy limits of \$10,000. The law firm was forced to inform the clients of the lien law and that the law firm could not help them because the hospital would be entitled to the entire award. There would be no additional money available for future out-of-pocket medical expenses. These clients did not understand why there was a law to that effect when they were not at fault in the accident, were required to be off work for numerous months, and had were required to reduce other medical providers bills but not the hospitals. (Lane Burnett, Jacksonville)
- A three-year old child was the victim of horrendous burn injuries in Dade County. The minor’s tragic injuries were substantially caused by the County’s own negligence. Ironically, the county demanded reimbursement on its \$46,000 hospital bill. The county refused to permit disbursement of any settlement funds until its lien was paid in full. They even refused a partial distribution so that the child’s family could buy food and medicine. The law firm presently does not accept any cases involving a large hospital bill unless the lien is resolved in advance. Law firms do not wish to become the hospital’s free collections lawyer. (Jose Smith, Miami)
- An eighty-five year old lady was walking beside a road when an automobile struck her. EMS took her to Hollywood Memorial Hospital where she remained for three months, comatose part of the time. A firm was able to obtain a settlement on behalf of the client. The hospital, upon her discharge some three months after the accident informed her that they would not accept her Medicare and would place a lien on proceed of any recovery. The hospital already had obtained the no-fault liability limits of \$10,000 and placed a lien of \$161,000 against our client effectively eliminating any opportunity for the lady to process her bills through her health insurance company. Upon further investigation we found that Medicare would have paid \$35,000 of a \$171,000 hospital bill whereas using the hospital lien tactic they obtained full payment of their hospital bills. Hospitals shouldn’t be able to place their lien against someone that has available insurance and should be required to exhaust any insurance before being allowed to avail themselves of any lien laws that the Legislature enacts. (Ed Middlebrooks, Ft. Lauderdale)
- A woman was involved in an auto accident. As a result of accident related injuries she has incurred medical expenses totaling \$10,607 to date. She will be facing the likelihood of significant future medical expenses and her PIP coverage only totaled \$10,000. There is a total of \$55,000 available in BI and UM coverage. Her

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The Trouble with Hospital Liens

total recovery will not cover her tangible much less her intangible costs notwithstanding the fact that her attorneys may not be compensated at all for facilitating the recovery. (Gary Wilkins, Port Charlotte)

- A man was severely injured in a motor vehicle accident. He was hospitalized for a considerable period of time and was confined in a halo cast due to broken cervical vertebrae. The person who caused the accident only maintained \$10,000 BI. Medical bills were incurred primarily at Tampa General Hospital. The attorneys could have obtained \$10,000 but Tampa General Hospital was unwilling to relinquish any portion of the hospital lien. Settlement proceeds would not have gone to the injured man nor would there have been any money for the attorney's fees or related costs. In light of the facts of this case the firm decided not to pursue a settlement. (Erik Abrahamson, Clearwater)
- A twelve year old boy was rendered a quadriplegic and confined to a wheelchair for the rest of his life due to the negligence of a third party. The Tampa General Hospital lien was approximately \$200,000. There was strong evidence of third party liability but TGH was unwilling to enter into an arrangement. As a result of the actions of Tampa General Hospital, the attorney had to tell the young quadriplegic and his father that there was nothing they could do for them about pursuing a recovery from the third party. (Richard Mulholland, Tampa)
- A pedestrian was struck by a motor vehicle that ran off the road. As a result of the accident, he was hospitalized in Brevard County. The medical bills for his initial hospitalization totals \$111, 537.10. This bill is just the beginning as he anticipates another two months in the hospital. There is \$25,000 in liability coverage available, but because of the lien law in Brevard County, the firm had to decline this case because there would be no way for it to receive any payment for services. (George Anderson, Orlando)
- While a patient at Broward General Medical Center, a man fell from his bed and sustained a serious hip fracture requiring extensive medical treatment including bipolar hip replacement and arthroplasty. The accident was caused by a hospital nurse's negligence in failing to properly lock the hospital bed's siderail mechanism. The hospital agreed to a settlement of \$100,000. The hospital sought to assert a lien against the settlement proceeds to be reimbursed for charges related to injuries caused by the hospital's own negligence. (Robert Roselli, Ft. Lauderdale)
- A person who had significant injuries sustained in an automobile accident retained an attorney to represent him. The at-fault party only had \$25,000 in liability coverage. The injured person's medical bills at a local hospital greatly exceeded the \$25,000 in question and the hospital filed a lien in Escambia county which would supercede any proceeds for the injured person and even an attorney's fee for collection of the money. The law firm contacted the hospital and attempted to negotiate a compromise, which they refused. After lengthy discussion, the injured person decided not to pursue the case and no money was recovered to compensate the client or the hospital for any of its bills. (Terence Gross, Pensacola)
- A man fell at a friend's house and broke his neck. His bills for medical treatment exceed \$43,000. The total funds available under the bodily injury liability portion of the homeowner's policy are \$25,000. The total bill from Tampa General Hospital, including air ambulance transport totals \$28,048.50. The injured person and the attorney who facilitated a recovery will not receive any portion of the settlement money. (Gary Wilkins, Port Charlotte)

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The Trouble with Hospital Liens

- A child on a bicycle was struck and severely injured by an automobile. The lawyer for the defendant offered the policy limits of \$15,000. The client declined to accept the offer because University Hospital had placed two liens totaling \$37,303.30 on any settlement proceeds. In addition, there were five other medical service providers who also had not been paid for their medical services. The hospital was contacted one month before the statute ran and informed that unless they reduced the lien so that all parties would receive a portion of the settlement, the client intended to decline the settlement offer, refuse to file, and let the statute run. (Richard Watson, Jacksonville)
- A young man was seriously injured due to improper maintenance of guardrails on a county roadway. His medical bills exceed \$100,000. Even with clear liability, litigation would be required in order to recover a settlement. Shands Teaching Hospital filed a lien against any recovery. The potential suit would be filed against a state agency and damages recovered would be capped at \$100,000. The law firm is unable to pursue this claim because the liens exceed recovery and the hospital will not agree that any portion be set aside for attorneys fees, costs, and expenses. In other words, the hospital would like for law firms to advance expenses and represent the injured party without any assurance that these out-of-pocket expenses would be repaid or that the law firm would receive anything for collecting the hospital bills. (Rod Bowdoin, Lake City)
- A man rear-ended a client and four other cars at 2:00 in the morning while driving drunk at approximately ninety miles an hour. The negligent driver's liability limits were only \$10,000. The client was hospitalized for approximately six weeks. The law firm is unaware of the total medical bills, as the firm turned down this case due to the potential for the hospital in question to assert a lien on all recovery. (F. Gregory Barnhart, West Palm Beach)
- A client was attempting to trim a tree when the ladder upon which he was standing broke. He suffered a serious fracture to his leg that required three surgical procedures. The hospital lien was approximately \$90,000. The only source of recovery was a \$100,000 liability insurance policy. Because of the hospital's refusal to reduce the amount of their lien, the client gave up his claim and will not be compensated in full for his medical bills much less his pain and suffering. (Patrick Sprague, Tampa)
- A man was involved in a serious automobile accident in Marion County. Due to the severity of his injuries he was airlifted to Alachua General Hospital for treatment. He remained in intensive care for eight days and in the hospital for a total of twenty days. His total hospital bill was \$41,298.63. The hospital was only willing to reduce its bill by \$2,000. The law firm settled the negligence case for \$75,000. The client owed additional medical expenses that totaled approximately \$15,000 and expert witness fees in the case amounted to an additional \$15,000. Due to the hospital lien, the client was unable to receive any substantial recovery for his injuries. (Gregory Martin, Melbourne)
- A Pensacola attorney states that at least twice a week his firm encounters a problem due to hospital liens. For example, they recently turned down a case where an individual had his leg amputated. He could not even get hospital to agree to release bus money to the individual so that he could continue his treatment in South Florida. Liens cause major problems when hospitals are unwilling to reduce their bill at all. The typical lien in a serious automobile accident is in excess of \$200,000, with the policy itself valued at \$20,000 or less. In these cases, the only winner is the at-fault party and the insurance company, because the client cannot find an attorney to take the case. (Martin Levin, Pensacola)

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

- A client was injured in an automobile accident and tore the cartilage in his knee. He was admitted to the hospital for surgery and developed a severe staph infection during the surgery. This required an extended hospitalization and an additional surgical procedure. The hospital filed a lien for the full amount of their bills. When the PIP coverage was exhausted the group health insurance carrier was requested to pay and they refused unless the plaintiff signed an agreement to reimburse them for all bills. The plaintiff objected, as he was required to pay attorney's fees and other costs of collection. The end result was that the hospital received the full amount of their lien, the insurance carrier did not have to spend any money in spite of having received premiums for coverage, and the injured person was not able to be fully compensated. (Patrick Sprague, Tampa)
- An infant suffered an amputated arm when he was thrown from a vehicle. The child has his arm reattached at Tampa General Hospital by surgeons from the University of South Florida. The attorney for the father was unable to place liability clearly on one party and the result was the liability insurance available to pay for the child's damages was quite low. Efforts began to negotiate the lien with Tampa General without result. Two options became apparent, turn over the great majority of the settlement to Tampa General or ask for equitable distribution. At the equitable distribution proceeding, counsel for Tampa General refused to negotiate, relying on hospital lien statutes and case law. There was no justice or equity done that day for the little boy. (Ray Calafell, Tampa)
- A client was severely injured in a head-on automobile accident with a drunk driver who carried \$10,000 of liability coverage. The injured person also made a claim against the county for failure to maintain the shoulder in proper condition. The case against the driver was settled for the policy limits with all the money going to Tampa General. In addition to a \$75,000 lien filed by Tampa General (which included \$4,000 interest) my client had also incurred other medical expenses in excess of \$15,000. Tampa General has continuously refused an equitable distribution which would provide money for the clients' future medical needs, paying other medical providers for their services and fees and costs for legal services. Because of Tampa General's inflexible position regarding their lien privileges, the client has refused to pursue any negligence case. As a result, the injured person has been left severely disabled and will require ongoing surgeries. He is without the ability or means to meet his current and future needs. (W. Clinton Wallace, Lakeland)
- A client was involved in a motor vehicle accident and was admitted to a local hospital for back surgery. The surgery was necessitated in part because of injuries sustained in the accident and in part because of preexisting conditions related to his back. A settlement agreement was reached with the uninsured motorist carrier and the client requested the hospital to reduce its lien because of the pre-existing condition unrelated to the accident and because the client had to incur legal fees and costs in order to bring the suit. The hospital refused to budge, even though it played no part and incurred no expense in securing the settlement funds. The law must be changed. There have been numerous cases presented to law firms which they cannot accept simply because based on the amount of available liability of UM limits, there would be nothing left for the injured party, or attorney to bring about a settlement. Since the law favors hospitals at the expense of the patients, the hospitals either refuse to negotiate or impose very strong terms which allow them to claim for themselves the overwhelming bulk of the available settlement proceeds. With the hospitals, it seems it's all or nothing. As a result, hospitals have frequently chosen to take nothing rather than what would be an equitable proportion. It is amazing how much money hospitals have ended up losing because of this hardball attitude. (Robert Robbins, Coral Gables)

THE ACADEMY OF FLORIDA TRIAL LAWYERS

The Trouble with Hospital Liens

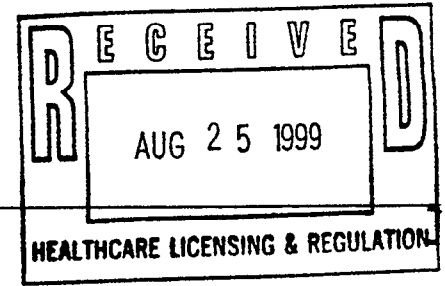
- A woman suffered serious injuries in an automobile accident. Unfortunately, there was only a \$10,000 liability limit and a hospital lien in excess of \$50,000. There should be a formula where the client with limited recovery can pay the hospital an equitable percentage. She will probably never work again and has tremendous expenses associated with her life and raising a child. (Richard Troutman, Winter Park)
- A 38 year old mother who was the sole bread-winner for her children, one of whom is disabled, was run over by a Volusia County School Bus and was treated in the surgical intensive care unit of Halifax Hospital. The attorney in this case requested that the hospital not take the woman's \$10,000 PIP benefits, which are intended to be used for lost wages as well as medical bills. The lawyer appealed to the hospital to instead await the resolution of the case against the school board for payment of the hospital bill. The hospital took the position that it would not forgo compensation, notwithstanding the fact that the family urgently needed immediate funds and would lose the family home. The matter is still in litigation. (Eric Faddis, Daytona Beach)

Appendix I

F.A.C.T.

Florida Action Coalition Team

P.O. Box 100
Largo,
FL 33779-0100
USA



August 20, 1999

Attention: Lucretia Shaw Collins
Staff Director

The following documents were faxed to the Health Care Licensing and Regulation Committee on this date, however, I am taking the liberty of sending you hard copies in the event the fax was not received or was received in illegible condition to insure our comments in the record.

Please keep us advised of the committee's scheduled dates and the agenda for those meetings. We do intend to be present at those specific meetings with agenda items of interest and concern to both the Florida Action Coalition Team and the Florida Silver-Haired Legislature, whom I also represent as Senate President Pro-Tem and state Legislative Issues Chairman.

Very truly yours,

Ernest Wm. Bach
Executive Director: F.A.C.T.

Florida Silver Haired Legislature
Ernest Wm. Bach
Senate President Pro-Tem
P.O. Box 100, Largo, FL 33779-0100
Telephone or Fax (727)585-1111 - E-Mail: ernieb@gte.net

August 19, 1999

Honorable Rep. Mike Fasano, Chairman
Health Care Licensing and Regulation Committee
1101 The Capitol
Tallahassee, FL 32399-1300

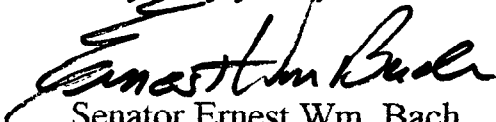
Dear Chairman Fasano,

A similar letter of response to your Hospital Lien Law questionnaire has been sent to you over my signature and the letterhead of another statewide organization that I represent, the Florida Action Coalition Team. Our questionnaire response page is a duplicate, for our comments and answers are identical for both organizations.

While in Tallahassee during the 1999 legislative session, I participated in the hearings on this issue and will as necessary, be in Tallahassee to testify again as the need arises. Over the past few years, the Florida Silver Haired Legislature has become much more informed and pro-active on the serious issues which specifically and directly affect them. This is one of those issues. In my position with the group, I am doing the final collection, drafting and collating of the many resolutions and bills that we will be discussing during our annual legislative session at the Capitol in October. There are a number of health related bills that our members wish to be heard on, so I am quite sure you will see me as a regular at the lectern during your committee hearings. Please take the time to peruse the comments and answers to your questionnaire which is included with this letter.

As I stated in that other letter, the statewide members of the F.S.H.L. also wish to become a positive factor in solving the many problems facing our growing state, and it is our wish to assist you and your committee in whatever way we can to finalize fair and equitable solutions for all interested parties, especially the many who comprise your senior citizen constituency.

Very truly yours,



Senator Ernest Wm. Bach
Senate President Pro-Tem
State Legislative Issues Chairman

Florida Silver Haired Legislature

Response to Lien Law Questionnaire:

Questions 1, 3, 5, 7, 8 are not answerable by us at this time.

#2. The primary concern on hospital collection in excess of insurance company or HMO coverage is that it is going on now, which in all too many cases becomes an unbearable burden to the patient, particularly the senior community and most specifically, those on fixed incomes. In plain language, they get wiped out. The Florida law permitting hospitals the option of not billing Medicare, and to later opt to capture all the money the patient receives from another insureds proceeds or coverage, should be changed. This option callously utilized by medical facilities allows them to bill higher amounts than Medicaid or a private insurance plan would pay, an undue burden, especially on senior citizens.

#4. I am researching a comment made to us by a speaker at one of our statewide meetings, that attorneys are not permitted to take cases where there is a substantial hospital lien or inadequate insurance coverage from an individual found at fault. I understand that this has happened to some of our own members, when Medicare is refused by the hospital. This does not just become a dilemma, it frequently becomes a disaster for that senior patient.

#6. This is not just a senior issue, but has had a devastating effect on one of my own family. Hit by a car with the other driver at fault, this injured man was unable to work while undergoing treatment. The at fault driver had only PIP coverage and when his insurance company paid off, the doctors took half and the lawyers took half, leaving absolutely nothing for the patient. Unfortunately, his pain and suffering have continued through three additional operations which have still left him in constant pain and suffering. He is also unable to work. A later law suit did come up with a small settlement however, the hospital grabbed it all with a lien, and to this day, this man has not collected one cent, is still unable to work and it has now been almost seven years since this has occurred. The basic needs of this patient were not met during the last legal activity, yet the hospital grabbed theirs.

There are a number of suggestions that we would hope you and your committee will consider in the upcoming legislation, including but not limited to: permit patients to hold on to a portion of their money for their basic needs, which frequently are many; effect a change in patients, especially seniors, methodology to pursue a law suit, so that the burden is not entirely on the patient; require hospitals to accept an insurance plan, Medicaid or Medicare or an HMO plan as payment in full without dunning a needy patient from possible lawsuit recovery monies.

F.A.C.T.

Florida Action Coalition Team

P.O. Box 100
Largo,
FL 33779-0100
USA

August 19, 1999

Honorable Rep. Mike Fasano, Chairman
Health Care Licensing and Regulation Committee
1101 The Capitol
Tallahassee, FL 32399-1300

Dear Representative Fasano,

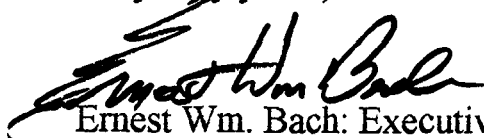
I have just come into possession of materials regarding the Hospital Lien Laws issue, and, since this was legislation that F.A.C.T. was active with during the 1999 session, I wish to respond to that which is applicable to our concerns and knowledge. We are very pleased to hear that your concern for "fundamental fairness" regarding hospital lien laws calls for input from all interested parties, not just hospitals, physicians, lawyers and lobbyists. The most important equation in this, as in most issues, is "patients."

Your 1999 legislative committee's concern for the Florida taxpaying consumer was greatly appreciated. Logic Mr Fasano, states that without medical patients, none of the above listed interest groups would have any problems. Nor would they have a vocation or an income. So yes, let us please continue to realize who the most important segment of this issue is, and then, and only then, let us all find the necessary steps to take to provide for equitable fairness for all.

In response to your questionnaire, it stands to reason that a citizen consumer group is not privy to many of the details that you ask, therefore, we will offer our opinions on those questions to which we have a genuine and serious concern and some knowledge.

Please accept this letter and comments as a further offer to assist you and your committee in any way that we may in finding a good solution to the issue. You will be receiving an additional letter of response over my signature from another statewide group that I represent and our offer as stated above includes that organization, the Florida Silver Haired Legislature.

Very truly yours,



Ernest Wm. Bach: Executive Director

Florida Action Coalition Team

Response to Lien Law Questionnaire:

Questions 1, 3, 5, 7, 8 are not answerable by us at this time.

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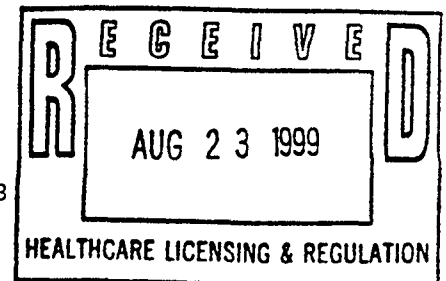
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FLORIDA LEGAL SERVICES, INC.
2121 DELTA BOULEVARD, TALLAHASSEE, FLORIDA 32303
(850) 385-7900
(850) 385-9998 Fax

HOWARD M. CAMERIK
PRESIDENT



KENT R. SPUHLER
DIRECTOR

August 20, 1999

BY U.S. MAIL & FACSIMILE (488-9933)

Lucretia Shaw Coiins, Staff Director
Florida House of Representatives
Health Care Licensing & Regulation
11101 The Capitol
Tallahassee, Fl. 32399-1300

Dear Ms. Collins:

Florida Legal Services, Inc. is a statewide non-profit organization which advocates on behalf of low income Floridians on a range of civil legal issues, including access to health care. We understand that the committee is reviewing hospital lien laws and wanted to provide you with some comments on this issue from the perspective of low income consumers.

First, we wanted to bring to your attention that there are no resources available to represent low income individuals on personal injury cases without attorneys from the private bar who are willing to undertake this representation. Legal aid and legal services programs in Florida do not have the capacity to provide this representation if incentives are eliminated for private attorneys to pursue these cases. Attorneys and their collection efforts on behalf of injured individuals are key to getting money flowing from insurance companies and in many instances no one will get paid, including medical providers, unless attorneys get involved.

Further, if there are no incentives for the low income injured person to pursue these cases, they will be unwilling to suffer through the emotional and financial burdens of litigation. Under such a scenario the perpetrator of the injury will prevail and medical providers will have a lien on nothing.

To strike a fair balance between the interests of consumers and health care providers, we support the enactment of a statewide uniform hospital lien law which gives the court the authority and flexibility to make an equitable distribution of settlement proceeds, with consideration of the individual circumstances of the injured person.

Additionally, a state lien law should require hospitals to accept Medicaid payments made on behalf of the injured party as payment in full. This is required by federal law. See 42 C.F.R. §

Collins letter
August 20, 1999
Page 2

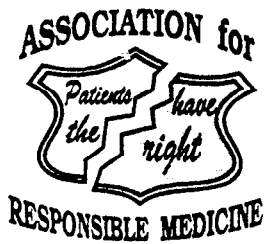
447.15. Similarly, there are federal limitations on what providers can charge Medicare beneficiaries which also should be incorporated into a hospital lien law. *See* 42 C.F.R. § 489.30.

We appreciate the opportunity to provide these comments. Please let us know if we can be of any further assistance or if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Anne Swerlick".

Anne Swerlick
Staff Attorney



Association for Responsible Medicine

ARM is the Voice for the Victims of Medical Injury

*If you must go into the hospital...
Go ARMed with the facts.*

August 19, 1999

WWW.A-R-M.ORG

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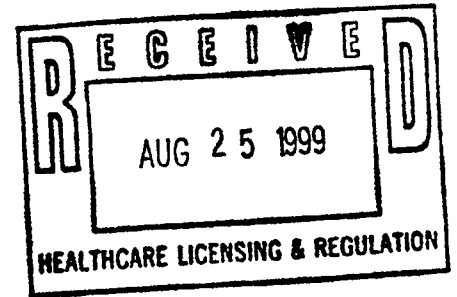
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Honorable Mike Fasano, Chair
Health Care Licensing & Regulation
Florida House of Representatives
1101 The Capitol
Tallahassee, Florida 32301



Dear Mr. Chairman:

I am responding as president of the Association for Responsible Medicine to your request for comments on the hospital lien law review your committee is conducting.

As a consumer group concerned with injuries caused by doctor and hospital negligence, we have a perspective on this issue even though our members are not generally affected by it. From the perspective of the medical malpractice victim who is more often than not unable to find legal representation because of the high cost of litigation, hospital liens appear to place the rights of well paid lawyers and hospital investors above the right of the injured citizen. The proposal to allow equitable distribution of a settlement among the lawyers for both sides and the hospital is even more cynical than the laws now in effect. If this change should become law, it would encourage collusion among the beneficiaries to use injured people as mere pawns for their own advantage.

While hospitals obviously perform a very important social purpose, they have become profit making businesses which should not be favored over other creditors. I urge you to repeal all of the hospital lien laws.

Sincerely yours,

Ray McEachern

August 19, 1999

Honorable Mike Fasano, Chair
Health Care Licensing & Regulation
Florida House of Representatives
1101 The Capitol
Tallahassee, Florida 32301

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Ray McEachern

Fax Cover Page

SUBJECT:

Please consider the attached letter in your review of hospital
lien laws.

Thank you.



To: Lucretia Collins

From : Ray McEachern

For Information Call: 8132946772

At: Assoc. for Responsible Medicine

Pages: 2

My Fax Number : 8132946772

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