

House Bill No. 885

An act relating to Hillsborough County; amending chapter 98-499, Laws of Florida, relating to liens authorized by ordinance in favor of hospitals providing medical care, treatment, or maintenance to a patient, and in favor of the County when it pays for medical care, treatment, or maintenance of a patient; providing definitions; providing optional and mandatory components, both substantive and procedural, of any such implementing ordinance including establishing limitations on lien amounts, and providing for the treatment of other claims, noneconomic damages, and attorney's fees; requiring the ordinance to provide identical procedural remedies to hospitals and the County; providing for an offset for the cost of an insurance policy resulting in payment of any part of the lien amount; barring a lienholder or the lienholder's legal representative from additional compensation from the patient and others in relation to the charges covered by a lien; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 98-499, Laws of Florida, is amended to read:

Section 1. As used in this act:

(1) "Applicable lien rate" means charges arising from a covered event in effect at the time the care and treatment were delivered for the covered event, which shall in no event exceed:

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

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

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

(2) "Board" means the Board of County Commissioners of Hillsborough County.

(3) "County" means Hillsborough County.

(4) "Covered event" means an illness, injury, deformity, infirmity, abnormality, disease or pregnancy, which results in medical care, treatment or maintenance of a person and forms the basis for a cause of action, suit, claim,

counterclaim, demand, judgment, settlement or settlement agreement pursued by the patient against a third party.

(5) “Hospital” means any establishment operating in the county that:

(a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy.

(b) Regularly makes available at least clinical laboratory services, diagnostic x-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent but does not include any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person.

(6) “Lienholder” means a hospital or the county, that has a claim of lien pursuant to this act.

(7) “Medicare Act” means the law embodied at 42 U.S.C. s. 426, as amended.

(8) “Patient” means a person who receives medical care, treatment, or maintenance from a lienholder in the county in connection with a covered event or the patient’s legal representatives.

(9) “Patient’s claims” means the total of all claims attributable to medical care, treatment, or maintenance not provided by a lienholder and includes lost wages, noneconomic damages, and future medical costs, as applicable, and reasonable attorney’s fees and reasonable collection costs except as otherwise provided in paragraph (1)(g) of section 2.

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

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

Section 2.

(1) ~~The board of county commissioners of Hillsborough County may provide by ordinance for:~~

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

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

(c) Limiting the amount of a lien to the applicable lien rate.

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

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

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

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

(2) Any ordinance enacted in accordance with this act shall:

(a) Include a procedure by which a patient may bring a claim of alleged abuse by a lienholder in the exercise of the lien privilege granted by this act and the manner in which the claim will be considered and resolved.

(b) Provide all operators of hospitals in Hillsborough County and in favor of Hillsborough County when it pays for medical care, treatment, or maintenance of qualifying residents of the county upon all causes of action, suits, claims, counterclaims, and demands accruing to persons to whom care, treatment, or maintenance is furnished by such hospital or is paid for by

~~Hillsborough County on behalf of a qualifying resident of the county, or accruing to the legal representatives of such persons, and upon all judgments, settlements, and settlement agreements entered into by virtue thereof on account of illness, injury, deformity, infirmity, abnormality, disease, or pregnancy giving rise to such causes of action, suits, claims, counterclaims, demands, judgments, settlements, and settlement agreements, and which necessitated such care, treatment, or maintenance; and may provide by ordinance for the attachment, perfection, priority, and enforcement of such liens and for such procedural and other matters as may be necessary or appropriate to carry out the purposes of the ordinance. If the patient is covered by or is a beneficiary of commercial, nongovernmental health insurance coverage through a health maintenance organization or other nongovernmental entity that is under contract with the hospital to provide care to the patient at the time care and treatment are delivered, then the lien shall be limited to the covered charges in effect at the time care and treatment were delivered, and the lien shall not exceed the amount that the hospital has contracted to accept from all sources for the care and treatment of the patient. In the event of a claim or action by the patient against a third party for which the settlement or judgment is less than or equal to a sum of the debt actually due and owing the hospital, the settlement or judgment 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 or judgment attributable to the hospital lien. In the event of a claim or action by the patient against a third party for which the settlement or judgment exceeds the debt actually due and owing the hospital but is not adequate to cover the amount actually due and owing the hospital, as well as the patient's attorney's fees, then the settlement or judgment 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's fees, which for the lien assessment shall be capped at 25 percent. Any ordinance adopted by Hillsborough County under this act must grant, without exception, for all lienholders both to every hospital operating in the county and to the County Indigent Health Care Plan the identical procedural remedies.~~

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

Section 2. This act shall take effect July 1, 2001.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.