

SUBJECT: Liens by health care practitioners

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek, Woolley
0 nays
1 absent — Solomons

WITNESSES: For — Kevin Kanz, Des Taylor, Texas Chiropractic Association
Against — Don Bowen, Texas Trial Lawyers Association; Matthew T. Wall, Texas Hospital Association

BACKGROUND : Chapter 55 of the Property Code authorizes hospital liens on causes of action or claims of individuals who receive hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital no later than 72 hours after the accident.

The lien is for the amount of charges for services provided to the injured individual during the first 100 days of hospitalization and only for charges that do not exceed a reasonable and regular rate for the services. To secure a lien, the hospital must file written notice of the lien with the county clerk of the county in which the injury occurred.

DIGEST: CSHB 1171 would provide licensed health care practitioners the right to a lien on a cause of action or claim of a injured patient against a party charged with causing the injury due to negligence. The lien would attach to a cause of action for damages arising from the injury or a judgment of a court or public agency to recover damages and the proceeds of the settlement of the cause of action or claim.

The lien would not attach to a worker's compensation claim or the proceeds of an insurance policy in favor of the injured individual, except public liability insurance that protects the insured against loss caused by an accident or collision.

The lien would be for the amount of the health care practitioner's charges for services, which could do not exceed a reasonable and regular rate. Procedures for securing a lien would be specified and would include filing a written notice of the lien with the county clerk in the county in which the injury occurred, and if different, with the county clerk of the county in which the individual resides, and notifying all parties of the practitioner's right to recover from the settlement or action.

To discharge the lien, the practitioner would have to execute and file with the county clerk notice that the lien had been paid or released within two business days of lien payment. A release of the cause of action or judgment to which lien was attached would not be valid unless the practitioner's charges were paid in full or paid to the extent of any full and true consideration paid to the injured individual, or the practitioner was a party to the release. A judgment to which a lien attached would remain in effect until the practitioner's charges were paid in full or to the extent set out in the judgment.

Health care practitioners would have to make available as promptly as possible patient records of the injured individual, upon request by an attorney for a party by, for, or against whom a claim is asserted. The practitioner could impose reasonable requirements for granting access to patient records, and records would be admissible in civil suits arising from injury.

A lien filed by a practitioner would be subordinate to a hospital lien and could not be enforced until the hospital's lien was discharged. Hospital liens could also include the amount of physician's charges for emergency room services, and a hospital could act on behalf of the physician with respect to securing and discharging the lien.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSHB 1171 would grant to health care practitioners, such as doctors, chiropractors and other individuals licensed in Texas to provide health care, the same right that hospitals and other service-oriented businesses have to secure liens for nonpayment of rendered services.

Liens are a common and legitimate recourse; the Property Code contains several chapters granting the right to secure liens for businesses such as mechanics, garment workers, contractors and landlords. Health care practitioner liens, however, would only be used in limited circumstances, when a patient was involved in an accident that was the result of negligence by someone else, who would therefore be responsible for adequately compensating the patient for health care bills.

Liens would ensure that health care practitioners get paid for the services they provided to the patient. Practitioner charges and patient evaluations are often used in insurance lawsuits and other claims to substantiate the extent to which the claimant is injured and the costs incurred by the patient in healing the injury. However, once a judgment is granted or settlement is reached, payment to health care practitioners is not always guaranteed. There have been plenty of cases in which the lawyer pays some, but not all, of the health care practitioners involved in the patient's health care; or the money and the responsibility for paying outstanding health care bills are left to the patient, who never pays the practitioner.

CSHB 1171 would not make more difficult the settlement of lawsuits or judgments; in fact, health care practitioner liens could help patients receive full compensation for all health care expenses incurred because the payors would be assured that compensation would be directly paid to the practitioners. CSHB 1171 also would require liens to be filed not only in the county in which the accident occurred, but also in the injured individual's county of residence, so that liens by multiple providers would be available in one county clerk's office, which would help in situations when patients are treated by practitioners in several counties or when the accident occurred outside the patient's county of residence. Also, attorneys would have no trouble identifying all liens attached to a claim, because health care practitioners would have to notify the injured individual, the insurers and other parties, or lose their right to recovery.

Liens would not result in overpayment or heightened claims by health care practitioners. "Reasonable and regular rate" is the standard used by hospitals when securing liens and is substantiated by case law. Health care practitioners would not have any additional incentive to provide unnecessary or unnecessarily prolonged amount of services to injured patients because

the practitioners would have no way of knowing how much money the patient could end up receiving. If unnecessary care was being provided, it would be because the practitioner was not upholding professional standards of conduct and would be subject to licensing sanctions and other penalties by the professional licensing board.

Liens place practitioner payment issues in a legal setting and properly separates payment concerns from patient care concerns. Health care practitioners are loathe to use collection agencies or to sue patients for payment, because it creates an adversarial provider-patient relationship that can erode the trust of the practitioners' other patients. Also, suing patients for payment of services often leads to countersuits claiming practitioner malpractice. Liens on causes of action or claims are the most cost-effective recourse because these kind of cases can take years to settle, and the longer a bill is outstanding the harder it is for anyone, even collection agencies, to collect.

OPPONENTS
SAY:

CSHB 1171 would make settlement of lawsuits and other accident-related claims extremely difficult, if not impossible in some cases, and potentially allow health care practitioners to require as full payment health care charges that are almost unlimited. Health care practitioners already have effective recourses, such as billing the patient for payment and using collection agencies when patients refuse to pay, and do not need the right to secure liens on injured patients' claims.

An injured individual could be the patient of a number of practitioners, who could each secure a lien on a cause of action or claim. For example, a car accident victim could have been seen by emergency medical personnel in a hospital emergency room, and later by their family physician, several specialists and a chiropractor and a dentist. Under CSHB 1171, each practitioner could secure a lien on the patient's claim, and the case could not be completely settled until the hospital first received payment for services rendered, and each practitioner agreed to accept as full payment the allocation of any money that was left over. The case could be even more difficult to settle if a health care practitioner neglected to file a lien in the patient's county of residence, or failed to sufficiently notify all parties.

Liens could tie up a case so that it is never settled. CSHB 1171 would not grant sufficient negotiating room for the settlement of claims in which multiple providers are involved because *each* practitioner would be entitled to full payment, to the extent the injured individual received any payment, and the patient may not be offered enough to satisfy every practitioner's requirement. There also are no provisions limiting the duration of the lien; discharge of the lien would be left solely up to the practitioner, and practitioners could hold a lien on a patient for an unlimited period of time if full or satisfactory payment was never offered.

Health care practitioners could use this bill as an incentive to provide lengthy and unnecessary care, or to inflate charges. CSHB 1171 would allow practitioners to submit charges based on "reasonable and regular rates," not "reasonable and *necessary* rates," which is the standard requirement for such cases and whose definition and limitations are well substantiated by case law. "Regular rates" could mean anything and could be used to justify any charge, as long as the practitioner declared it was the regular rate. CSHB 1171 also does not contain any limitations on the amount of services provided, unlike for hospital liens, which are limited to services provided during the first 100 days of hospitalization, and the patient must have used hospital services within 72 hours of the accident.

NOTES:

The committee substitute removed provisions in the original version of the bill that would have required health care practitioners to pay a fee to the claimant's attorney in an amount not to exceed 33.3 percent of the amount collected. Other changes included adding provisions related to hospital liens.

A related bill, SB 202 by Harris, which would allow hospital liens to include physician charges for emergency room services, passed the Senate on April 3 and was reported favorably as amended by the House Business and Industry Committee on April 23.

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House Research Organization
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