

SUBJECT: Hospital and physician liens

COMMITTEE: Business and Industry— favorable, with amendment

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

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: For — Eugene Dabezies, Texas Medical Association; James G. Gumbert, Hermann Hospital; Steve Montgomery, Harris Methodist Hospital
Against — None

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: SB 202 would amend chapter 55 of the Property Code to allow a hospital lien to include the amount of a physician's charges for services, including surgical, medical and inpatient fees, provided to an individual in the hospital's emergency room and to include charges for skilled nursing care or home health care provided by a nursing facility or home health agency that is owned or operated by the hospital.

SB 202 also would allow a hospital to act on behalf of the physician with respect to securing and discharging the lien and to file a lien to recover the full amount of hospital charges for services provided to a Medicaid recipient. On recovery from a third party, the hospital would have to reimburse the Medicaid program for any amount previously paid to the hospital. The combined amounts received by the hospital provider from Medicaid and the third party could not exceed the amount charged by the hospital for the injured recipient's first 100 days of hospitalization.

The bill would take effect September 1, 1997, and would apply only to services rendered on or after that date.

**SUPPORTERS
SAY:**

SB 202 would provide to hospital physicians the same recourse hospitals have to recoup costs of emergency room services rendered to patients covered by third party payors. It also would expand a hospital's privilege to file liens to include home health and skilled nursing care, and thereby assist vertically integrated hospital systems in recouping related emergency room costs.

Hospitals, and their emergency room physicians, are the only health care providers deserving of lien privileges because they are required by federal and state laws to treat any patient in an emergency or life-threatening condition. This bill should *not* be extended to include lien privileges for other health care providers, because they are rarely called upon to provide emergency services regardless of the patient's ability to pay, and such provisions would make settlement of lawsuits and other accident-related claims extremely difficult, if not impossible. Other health care practitioners already have effective recourses to recoup costs, 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.

SB 202 would place in statute a practice that has been used by hospitals for over 20 years but is now being questioned by state health care authorities. Hospitals have reimbursed state Medicaid coffers with about \$6 million annually from charges recovered from third-party sources. When filing a lien on a third-party source for an injured Medicaid patient, the hospital is seeking payment from the third-party, not the patient, which is prohibited by federal laws. Court decisions vary widely as to the legality of such

recoveries — the Nebraska Supreme Court recently ruled that Medicaid requirements did not preclude hospitals from seeking payment under liens, and the federal government is now looking into the issue.

OPPONENTS
SAY:

SB 202 could jeopardize state receipt of federal matching Medicaid funds by authorizing hospital providers to recover more than their Medicaid assignment. Hospitals and other health care providers have 90 days under federal requirements to choose whether to accept Medicaid assignment as payment in full or to seek payment from other sources. The U.S. Court of Appeals for the Seventh Circuit has ruled that such third party recovery conflicts with federal Medicaid law (*Evanston Hospital v Hauck, et al.*, No. 92-3551, July 30, 1993, 1 F.3d 540).

OTHER
OPPONENTS
SAY:

SB 202 should be amended to grant to other licensed health care practitioners, such as chiropractors, 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. 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.

NOTES:

The committee amendments would 1) specify that physician charges include medical, surgical and inpatient fees, 2) authorize hospitals to file liens to recover full charges for services provided to Medicaid patients, and 3) to file a lien for skilled nursing and home health care.

Related bills include SB 534 by Harris, which would authorize hospital providers and the Health and Human Services Commission to file liens to recover medical charges; passed by the House on May 25; and HB 1171 by Alvarado, which would have authorized all licensed health care practitioners to file third-party liens, which died on the House General State Calendar.