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FLORIDA'S HOSPITAL LIEN LAWS

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During both the 1992 and 1993 Florida legislative sessions, legislators introduced several bills that proposed creating a general hospital lien law. Hospitals liens are liens against the proceeds of settlements or judgments awarded to persons that have received medical services for injuries resulting from the incidents giving rise to the cause of action settled or adjudicated. The bills had two main purposes. The first was to eliminate the uneven patchwork of hospital liens created by special acts or local ordinances, and to create a uniform, statewide hospital lien statute. The second, and more controversial, purpose was to address a claimed "deficiency" in the special acts by providing for both attorneys' fees and patient disability compensation.

Although few would consider the subject of hospital liens worth more than a yawn, the issue pits Florida's hospitals against Florida's trial lawyers and remains on the legislative agenda of the Academy of Florida Trial Lawyers. Under present law, thirteen of the eighteen special acts plus two county ordinances make no provision for attorneys' fees, addressing only a 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 courts in-

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1. Fla. HB 1297 (1992); Fla. SB 1866 (1992); Fla. HB 1053 (1993); Fla. SB 976 (1993).
2. See infra note 26 and accompanying text.
3. A "special act" or "local law" in Florida is a law passed by the Legislature that applies only to a particular person, or category of persons, or a particular place or district rather than to the public generally, or a class of persons or things regardless of where they exist within the state. With regard to hospital liens, a special act authorizing hospital liens will apply only to one or more particular hospitals, or to all the hospitals in a particular hospital district or county. See 10 Fla. Jur. 2d Constitutional Law § 329-38 (1979).
4. In anticipation of the 1994 session, the March 1993 issue of The Academy of Florida Trial Lawyers Journal includes a general call requesting information on problems that attorneys have experienced with hospital lien laws—in particular, situations where the attorney had to turn down a case because of a hospital lien or because a hospital would have taken all or most of the settlement or judgment. Jeffrey J. Sneed, Assignments of Medicare or Medicaid to a Hospital, ACADEMY OF FLA. TRIAL LAW. J., Mar. 1993, at 2, 11-12.
5. See infra notes 52-92 and accompanying text.
terpret these laws as granting hospital liens priority over both attorney liens and patient disability compensation. Hospitals argue that unless they are assured priority in reimbursement, the cost of indigent care to the state will increase. In response, the trial lawyers contend that when neither the attorney or the plaintiff have any hope of compensation, there is no motivation to bring suit. Consequently, both the hospitals and the injured plaintiffs lose and potentially liable tortfeasors and their insurance companies avoid payment.

Surprisingly little has been written about hospital liens both in Florida and throughout the states. This Article will review the history and present state of Florida's hospital lien law as well as briefly summarize hospital lien law throughout the country. This review will include an analysis of Florida's constitutional prohibition against special acts or general laws of local application that relate to certain types of liens, which may present a serious challenge to the constitutionality of hospital liens created by special act. Finally, the Article will discuss the present policy rationale for hospital liens and recommend the adoption of a general law to impose uniformity, predictability, and fairness with respect to the equitable distribution of tort claim proceeds.

I. INTRODUCTION

Traditionally, a lien is a charge, encumbrance, or security upon real or personal property for the payment of some debt, obligation, or duty. "It does not constitute a right of property in the thing itself, but a right to levy on [the property] and sell it for satisfaction of the debt." A lien may be created by contract or by operation of law, that is, common law or statute.

A lien created by express contract includes an agreement that certain property will be held as security for the payment of a specified

6. See infra notes 139-42, 146-47 and accompanying text.

7. The author was unable to uncover a single article generally addressing the subject of hospital liens other than a 1969 American Law Reports annotation, J.F. Rydstrom, Annotation, Construction, Operation, and Effect of Statute Giving Hospital Lien Against Recovery from Tortfeasor Causing Patient's Injuries, 25 A.L.R. 3d 858 (1969), and a reference to a 1960 survey and bibliography on hospital liens in the University of Pittsburgh Health Law Center, Hospital Law Manual, Financial Management (Attorney's Volume 1959-60).

8. All but nine states (Florida, Kentucky, Michigan, Mississippi, Ohio, Pennsylvania, South Carolina, West Virginia, and Wyoming) presently have general laws providing hospital liens. Only Florida uses the curious arrangement of authorizing hospital liens by special acts. See infra notes 88-123 and accompanying text.


10. 34 FLA. JUR. 2d Liens § 1 (1982).

11. id. § 2.
debt or other obligation, for example, a mortgage. Usually there is some connection between the debt and the property subject to the lien. In the absence of a lien created by express contract, a court may nevertheless equitably infer a lien from the relationship of the parties and the circumstances of their dealings. A party is entitled to an equitable lien, however, only when it has in good faith relied on fraud or misrepresentation of essential facts.

Common law liens depended on actual and continued possession of the property. Thus, the common law has recognized liens in favor of innkeepers, common carriers, and warehousemen, as well as the various artisans, tradesmen, mechanics, and laborers that receive property for the purpose of repairing or improving the property. Liens created by statute require privity of contract between the lien claimant and the party bound by the lien. Nevertheless, there exists no requirement that the contract expressly create the lien. The statute simply creates the lien as an artifact of the contractual relationship.

The relationship between hospitals and their patients is always contractual, whether express or implied. Although most hospital-patient contracts are express and are completed prior to or upon patient admission, an implied or quasi contract results when persons are admitted under emergency situations where there is no opportunity to obtain prior consent. Under such circumstances, the common law implies consent.

All hospital liens are statutory liens; there is no basis for such liens at common law. Unlike most states, whose hospital liens exist by virtue of general law, Florida hospital liens exist on a county-by-county basis by virtue of special acts and local ordinances.

While a hospital lien secures payment for labor and services, it does not attach to property in the usual sense. Instead, the lien attaches to all rights of action which the injured person may assert, as

11. Id. § 8.
12. Id. § 9; Jones v. Carpenter, 106 So. 127 (Fla. 1925).
13. Id. § 10; Merrit v. Unkefer, 223 So. 2d 723 (Fla. 1969).
well as the proceeds of any settlements or judgments arising from the
causes of action that necessitated hospitalization and medical treat-
ment. Therefore, the hospital need not bring suit against the patient
to recover payment for the care it has provided. The lienholder, how-
ever, cannot usually enforce the lien unless the patient brings a claim
or cause of action.

Hospital liens assure hospitals a source of payment for the medical
care they provide to nonpaying or indigent accident victims. Never-
theless, in recent years, with the advent of Medicare's prospective
payment system and its subsequent adoption by private insurance
programs, hospitals often prefer to seek payment through the impo-
sition of a lien even when the patient has adequate health insurance.
Hospitals favor this procedure because automobile and liability insur-
ance reimburse hospitals at a higher rate than health insurance. Such
reimbursement is based on the hospital's actual charges rather than
on a fee schedule tied to the patient's diagnosis.

Because Florida case law has given priority to hospital liens over all
other liens or claims, attorneys are reluctant to take cases where the
potential recovery would not be sufficient to meet other patient needs

18. See infra notes 112-14 and accompanying text.
So. 2d 793 (Fla. 3d DCA 1969):

No lien is necessary against the injured patient as the usual channels of legal recourse
are available against a solvent patient indebted to the hospital for services. The prob-
lem to which the Legislature addressed itself arises for the hospital when it is con-
fronted with an insolvent patient whose treatment results in a mounting bill for
expenses.

Id. at 798.

20. Under the Diagnosis-Related Groups (DRG) method of payment, Medicare takes all
medical diagnoses, groups them according to their relative medical resource consumption, and
assigns an average cost per grouping. Medicare then determines the amount it will reimburse
hospitals prospectively according to the patient's diagnosis, rather than retrospectively accord-
ing to the hospital's cost per patient. The DRG system attempts to reward hospitals for operat-
ing more efficiently. Many private health insurance companies have adopted this payment
system. Mark A. Hall & Ira Mark Ellman, Health Care Law & Ethics in a Nutshell 24-
according to a formula or criteria).

payor if payment can be made under an automobile or liability insurance policy or plan or
reasonable measures to ascertain the legal liability of third parties to pay for care or services
available under Medicaid and, where legal liability is found, to seek reimbursement for such
assistance. Thus, under Florida's Medicaid Third-Party Liability Act, Fla. Stat. §
409.910(1)(c) (Supp. 1992), the Department of Health & Rehabilitative Services has an auto-
matic lien for the full amount of medical assistance provided by Medicaid for medical care
required as a result of any covered injury or illness for which a third party is or may be liable.

22. See, e.g., Fla. Stat. § 627.736(1) (Supp. 1992) (requiring all automobile personal in-
jury protection policies to pay 80% of all reasonable expenses for necessary medical services).
or expenses, including attorneys' fees. Unless the attorney works out an arrangement with the hospital before pursuing a claim, there is no incentive to take a patient's case. This allows the tortfeasor's insurance company to avoid payment even when their insured is clearly liable. Furthermore, even if attorneys' fees are provided, little motivation exists to pursue a claim if the claimant will not receive some portion of the recovery, particularly if the plaintiff is indigent. Often the injured party is also liable for costs in addition to hospital medical expenses, such as physician fees, nursing fees, or therapeutic care costs, not to mention compensation for lost income.

II. LIEN LAWS

A. Florida's 1951 Population Act

In 1951, the Florida Legislature passed a general law of local application授予 all hospitals in counties with populations over 325,000 the right to impose liens. At the time, only Dade County qualified, with a population of 425,000 according to the official 1950 U.S. census. The Act, which has served as the model for most of the subsequent special acts granting hospital liens on a county by county basis, provided:

Every individual, partnership, firm, association, corporation, institution, and governmental unit, and every combination of any of the foregoing, operating a hospital... 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, counterclaims and demands accruing to the persons to whom such care, treatment or maintenance are furnished, ... and upon all judgments, settlements and settlement agreements rendered or entered into by virtue thereof, on account of illness or

23. Laws of this nature are referred to as "population acts" because their applicability is based on each county's population.
24. Ch. 27032, 1951 Fla. Laws 1316. A "general law of local application" differs from a "special law" in that it operates uniformly throughout the state upon a specified classification (usually population) wherever it exists in the state, rather than being limited to a particular person, group, or locality. 10 FLA. JUR. 2d Constitutional Law § 329 (1979). Nevertheless, the classification scheme is such that the law's application is restricted to particular localities. Id. § 336. A general law of local application is often vulnerable to constitutional challenge as being a special act in disguise. See generally id. §§ 327-38.
injuries . . . which necessitated or shall have necessitated such hospital care, treatment and maintenance. 26

According to the Act, to perfect the lien, the hospital must file a verified claim with the clerk of the circuit court in the county where the hospital is located before the patient is discharged or within ten days thereafter. 27 The claim must include the names of the patient, the hospital and its agent, the dates of admission and discharge, the amount due, and the names and addresses of all persons the injured person claims are liable for his injuries. 28 In addition, the hospital must mail a copy of the claim to all persons listed as liable within one day of filing the claim. 29

The Act further stipulated that no release or satisfaction of any claim by the patient is valid unless the lienholder (the hospital) joined in it or executed a release of such lien. 30 Further, in the absence of participation by the lienholder, any acceptance of a release or satisfaction between the patient and those claimed to be liable “shall prima facie constitute an impairment of such lien, and the lienholder shall be entitled to” damages, including attorneys’ fees, from either the party accepting or the party making the settlement. 31 The Act specified no time period following settlement within which the hospital must bring suit or lose its right of action.

The Act allowed a lienholder to intervene in any action brought by the patient and recover the reasonable cost of such hospital care. 32 Additionally, the jury was required to set forth the amount it found the lienholder was due in any verdict rendered in favor of the patient. 33 That amount must also be stated in the judgment. 34 The Act also exempted any claim under the Workmen’s Compensation Act. 35

The subsequent 1960 census would have added Broward (pop. 333,900), Duval (pop. 455,500), Hillsborough (pop. 397,900), and Pinellas (pop. 374,700) counties to the list of those covered by the Act. 36 Several 1961 acts, however, eliminated Broward, Hillsborough,

27. Id. § 2, 1951 Fla. Laws at 1317.
28. Id.
29. Id.
30. Id. § 4, 1951 Fla. Laws at 1318.
31. Id.
32. Id. § 5, 1951 Fla. Laws at 1318.
33. Id.
34. Id.
35. Id. § 6, 1951 Fla. Laws at 1319.
36. FLORIDA STATISTICAL ABSTRACT 1967 22-23 (Alvin B. Biscoe et al. eds., 1967). By 1960, Dade's population had grown to 935,100. Id.
and Pinellas counties. Chapter 61-577\(^{37}\) amended the 1951 Act to exclude those counties with populations between 350,000 and 385,000, thus excluding Pinellas County for the remainder of the decade. Two additional special acts, chapters 61-588\(^{38}\) and 61-1468,\(^{39}\) specifically excluded Broward\(^{40}\) and Hillsborough\(^{41}\) counties from the reach of the 1951 Act regardless of future population growth. Thus, the Act only applied to Duval and Dade Counties. In 1965, counties with populations between 390,000 and 450,000 according to the "latest statewide decennial census" were also excluded from the Act.\(^{42}\)

By 1971, the year the 1951 Hospital Lien Act was repealed, the Act applied only to counties with populations between 325,000 and 350,000, between 385,000 and 390,000, and over 425,000.\(^{43}\) According to the 1970 census, this would have included Dade (pop. 1,267,792), Duval (pop. 528,865), Orange (pop. 344,311), and Palm Beach (pop. 348,993) counties.\(^{44}\) According to the stated purpose of the 1971 Act,\(^{45}\) which repealed many other population acts, the Legislature intended to reduce dependence on general laws of local application that were often subject to constitutional challenge and, at the same time, to expand the home rule powers of local government.\(^{46}\)

In keeping with the latter goal, the Act further declared that certain previous acts, including the 1951 Hospital Lien Act, were to become ordinances in the counties in which they applied on the effective date of the 1971 Act.\(^{47}\) Such ordinances could be subject to modification and repeal in the manner of other ordinances.\(^{48}\) Both Dade and Duval counties subsequently codified the hospital lien law by ordinance. With the exception of the order of the sections, the Dade County ordinance is substantively identical to the 1951 Act.\(^{49}\) The Duval ordinance, which was modified in the early 1980s, differs from the 1951

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40. By 1955, Broward already had its own Hospital Lien Act and thus had no need for the 1951 Act. See infra note 53.
41. Hillsborough County obtained its own Hospital Lien Act in 1980. See infra note 77.
42. Ch. 65-862, 1965 Fla. Laws 371. It is unclear why these counties were excluded because no additional counties fell into this bracket according to the 1960 census.
43. See supra text accompanying notes 24, 37, and 42.
45. Ch. 71-29, § 1, 1971 Fla. Laws 96.
46. Id.
47. Id. § 3, 1971 Fla. Laws at 116.
48. Id.
By 1957, both Orange and Palm Beach counties had succeeded in acquiring their own special acts, thus precluding any necessity to adopt the 1951 Act by ordinance.\footnote{50}

### B. Florida’s Special Acts

Between 1951 and 1971, Volusia,\footnote{52} Broward,\footnote{53} Escambia,\footnote{54} Marion,\footnote{55} Seminole,\footnote{56} Jackson,\footnote{57} Orange,\footnote{58} Palm Beach,\footnote{59} Indian River,\footnote{60} Bradford,\footnote{61} and Sarasota\footnote{62} counties successfully sought special acts authorizing hospital liens. Generally speaking, the Legislature based these hospital lien acts upon the 1951 Hospital Lien Act and essentially mirrored its provisions.\footnote{63} Some significant variations, however, do exist. For example, the Palm Beach\footnote{64} and Indian River\footnote{65} county acts apply only to public hospitals. The Orange County hospital lien belongs to any Orange County hospital as well as to “any governmental agency paying for hospital charges or medical treatment of individuals in Orange County.”\footnote{66}

Three of the acts permit attorneys’ fees. In Volusia County, the patient’s attorney may “be paid a reasonable fee of not less than twenty-five per cent [sic] (25%) of the lien claimed by the lienor upon collection or satisfaction of said lien.”\footnote{67} The Orange County Act limits the hospital lien to the lesser of “reasonable charges for care and

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\footnote{50} Duval County, Fla., Health Code ch. 482 (1993).

Several other counties also have hospital lien ordinances, but these seem to be merely restatements of their special acts. See, e.g., Broward County, Fla., Code ch. 16 (1993); Orange County, Fla., Code art. IV (1993).

\footnote{51} See infra notes 58-59. At the time Palm Beach County obtained its special act, which applied only to public hospitals, it did not qualify under the 1951 Act. By the time the 1951 Act was repealed in 1971, Palm Beach County had, and theoretically still has, the potential to qualify under the 1971 Act and thus could adopt an ordinance that includes all the other hospitals.

\footnote{52} Ch. 29591, 1953 Fla. Laws 3184.

\footnote{53} Ch. 30615, 1955 Fla. Laws 307.

\footnote{54} Ch. 30733, 1955 Fla. Laws 964.

\footnote{55} Ch. 30965, 1955 Fla. Laws 2241.

\footnote{56} Ch. 31274, 1955 Fla. Laws 3353.

\footnote{57} Ch. 57-1420, 1957 Fla. Laws 1797.

\footnote{58} Ch. 57-1644, 1957 Fla. Laws 2689.

\footnote{59} Ch. 57-1688, 1957 Fla. Laws 2827. During the 1993 legislative session, the Palm Beach Health Care District also obtained a lien. See infra notes 80, 88-92 and accompanying text.

\footnote{60} Ch. 59-1384, 1959 Fla. Laws 1715.

\footnote{61} Ch. 61-1897, 1961 Fla. Laws 455.

\footnote{62} Ch. 61-2868, 1961 Fla. Laws 4418. This was amended in 1986. See infra notes 71-72 and accompanying text.

\footnote{63} But see Sarasota’s act, Ch. 61-2868, 1961 Fla. Laws 4118.

\footnote{64} Ch. 57-1688, § 1, 1957 Fla. Laws 2827, 2827.

\footnote{65} Ch. 59-1384, § 1, 1959 Fla. Laws 1715, 1716.

\footnote{66} Ch. 57-1644, § 1, 1957 Fla. Laws 2689, 2690.

\footnote{67} Ch. 29591, § 4, 1953 Fla. Laws 3184, 3187.
treatment or the net amount of settlement or judgment after deducting costs of procuring the settlement or judgment. 68

Sarasota County's lien act requires court costs to be paid first, followed by the plaintiff's attorneys' fees. 69 Pursuant to that act, after payment of court costs and attorneys' fees, the hospital lien and the plaintiff were to be on equal footing such that, if the proceeds of the settlement or judgment were insufficient to fully pay the hospital, then such proceeds were to "be prorated on a parity between the hospital and the plaintiff or counter-claimant." 70 In 1986, the Legislature gave hospitals in Sarasota priority over plaintiffs. 71 The 1986 amendment to this act is also distinctive in that it broadly defines "hospital care" to include both hospital and non-hospital health care services provided by health care facilities owned or operated by the hospital board or its subsidiaries, affiliates, or not-for-profit corporations. 72 The Sarasota hospital lien also extends to "the amounts due or payable under hospitalization insurance, . . . [or] under public liability policies or other indemnity . . . ." 73 Both the Sarasota and Indian River acts require the hospital to perfect the lien within thirty days of the patient's discharge, rather than the usual ten days. 74

Following the 1971 repeal of the 1951 Act, five other counties, Monroe, 75 Lee, 76 Hillsborough, 77 Alachua, 78 and Lake, 79 also obtained lien laws. Additionally, the Palm Beach Health Care District recently obtained its own lien provision. 80 The original Lee County act only applied to Lee Memorial Hospital; 81 but, in 1989, a separate special

68. Ch. 57-1644, § 1, 1957 Fla. Laws 2689, 2690.
70. Id. § 4, 1961 Fla. Laws at 4421.
71. Ch. 86-373, § 5, 1986 Fla. Laws 100, 105.
72. Id.
73. Id.; Ch. 61-2868, § 1, 1961 Fla. Laws 4418, 4419.
75. Ch. 73-555, 1973 Fla. Laws 416. The Monroe County act only applies to the Lower Florida Keys Hospital District.
77. Ch. 80-510, 1980 Fla. Laws 145.
80. Ch. 93-382, 1993 Fla. Laws 177. Recall that Palm Beach County public hospitals have had their own lien since 1957. See supra note 59.
81. Ch. 78-552, § 1, 1978 Fla. Laws 185, 185.
act granted hospital lien powers to all non-profit organizations operating charitable hospitals in Lee County.\textsuperscript{82} As does the Sarasota act, the county-wide Lee County act also extends to hospitalization insurance and public liability policies.\textsuperscript{83} Like the Sarasota and Indian River acts, the 1989 Lee County act contains a three-day notice allowance as well as a thirty-day, rather than a ten-day, perfection schedule.\textsuperscript{84} The Alachua act similarly applies only to non-profit corporations operating charitable hospitals.\textsuperscript{85}

The Hillsborough lien law is distinctive in that it is merely one paragraph of a larger act that establishes the Hillsborough County Hospital Authority.\textsuperscript{86} Section seventeen simply entitles the Hospital Authority to a lien for all reasonable hospital care upon any causes of action accruing to persons for whom such treatment has been furnished.\textsuperscript{87}

The 1993 Lake County act\textsuperscript{88} and Palm Beach Health Care District Act\textsuperscript{89} are significant because they represent victories for both attorneys and plaintiffs. For example, a Lake County hospital lien is limited to the lesser of the following: reasonable charges for care and treatment, minus a pro-rata share of the reasonable cost of procuring the settlement or judgment, or two-thirds of the net amount of settlement or judgment after deducting the reasonable cost of procuring the settlement or judgment. Reasonable costs of procuring the settlement or judgment include reasonable attorney's fees.\textsuperscript{90}

In addition, the Lake County act gives the hospital 180 days to file a claim with the circuit court.\textsuperscript{91}

\begin{itemize}
\item 82. Ch. 89-540, § 1, 1989 Fla. Laws 414, 414.
\item 83. \textit{Id.} at 415.
\item 84. \textit{Id.} § 2, 1989 Fla. Laws at 415.
\item 85. Ch. 88-539, § 1, 1988 Fla. Laws 284, 284.
\item 86. Ch. 80-509, § 17, 1980 Fla. Laws 145, 149.
\item 87. \textit{Id.}
\item 88. Ch. 93-346, 1993 Fla. Laws 41.
\item 89. Ch. 93-382, 1993 Fla. Laws 177.
\item 90. Ch. 93-346, § 1, 1993 Fla. Laws 41, 42.
\item 91. \textit{Id.} § 2, 1993 Fla. Laws at 42.
\end{itemize}
Similarly, the Palm Beach Health Care District’s arrangement provides:

The amount of the lien created by this section shall be the entire amount paid by the district . . . less the district’s pro rata share of reasonable attorney’s fees, costs, and expenses of litigation 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.\(^9\)

Both the Lake County and Palm Beach Health Care District arrangements not only give priority to attorneys’ fees, but guarantee that at least one-third of the recovery will go to the plaintiff.

C. Other States

At present, forty-one states and the District of Columbia have general laws authorizing liens for medical care provided for injuries resulting from an accident or wrongful act.\(^93\) Almost half of these

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92. Ch. 93-382, § 1, 1993 Fla. Laws 177, 178 (adding section 18 to ch. 87-450, 1987 Fla. Laws 68, as amended by ch. 88-460, 1988 Fla. Laws 50; ch. 91-343, 1991 Fla. Laws 35; and ch. 92-340, 1992 Fla. Laws 128). Palm Beach County is now in the curious situation of having a hospital lien law that does not provide for attorneys’ fees and a Health Care District lien law that does so provide.

statutes were enacted during the Depression; six were enacted in 1939\(^9\) and the remainder date from 1953 to 1979.\(^9\) These statutes are fairly similar. Usually, the lien applies to any person, individual, partnership, firm, association, corporation, institution, or governmental unit maintaining and operating a hospital in the state.\(^9\) Some statutes, however, also apply to other health care services (e.g., ambulance services),\(^7\) providers (e.g., physicians, nurses, dentists, physical or occupational therapists, chiropractors, podiatrists, optometrists, psychologists),\(^9\) and facilities (e.g., nursing homes,\(^9\) health maintenance organizations and dental corporations,\(^10\) home health agencies\(^10\)) as well as to hospitals.\(^10\) On the other hand, seven states take the more traditional approach (reimbursement for unpaid medical care) and limit the lien to non-profit, charitable, or publicly owned and operated hospitals.\(^10\)

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94. Arkansas (1933), Connecticut (1941), Delaware (1935), Hawaii (1939), Idaho (1941), Illinois (1939), Indiana (1933), Iowa (1939), Kansas (1939), Minnesota (1933), Missouri (1941), New Jersey (1930), New York (1936), North Carolina (1935), North Dakota (1935), Oregon (1931), Rhode Island (1939), Texas (1933), Washington (1937), and District of Columbia (1939).

Nebraska has the earliest and shortest hospital lien law (1927).


96. See the following state statutes cited supra note 93: Alabama, California, Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, and District of Columbia.

97. See the following state statutes cited supra note 93: Arizona, Connecticut, Louisiana, and Washington.

98. See the following state statutes cited supra note 93: Alaska, Arizona, Arkansas, Hawaii, Louisiana, Massachusetts, Montana, Nebraska, New Jersey, Oregon, Vermont, Virginia, and Washington.

99. See the Georgia and New Jersey statutes cited supra note 93.

100. See the Massachusetts statute cited supra note 93.

101. See the New Hampshire statute cited supra note 93.

102. Some states have separate statutes granting liens for ambulance, physician, and similar services. See, e.g., the following state statutes cited supra note 93: Idaho, North Carolina, Oklahoma, Oregon, and South Dakota.

103. See the following state statutes cited supra note 93: Connecticut, Delaware, Illinois, Massachusetts, Missouri, New York, and Wisconsin.
Although the lien usually attaches to any settlement, judgment, or compromise resulting from a cause of action,\textsuperscript{104} it may also attach to the claim itself,\textsuperscript{105} or, as with Florida liens, both.\textsuperscript{106} Some statutes, however, are more restrictive. For example, a Connecticut lien attaches only to the proceeds of an accident or liability insurance policy.\textsuperscript{107} The lien laws of Alaska,\textsuperscript{108} Montana,\textsuperscript{109} North Dakota,\textsuperscript{110} and Oregon\textsuperscript{111} only apply to the patients' accident, liability, and health insurance.\textsuperscript{112} Finally, almost all the statutes specifically exempt workers' compensation claims.

Significantly, over seventy-five percent of the lien statutes address attorneys' fees and court expenses. Thirty states expressly provide either that the hospital lien shall not have priority over or is subject to an attorney's lien or contract, or that the hospital lien attaches only after attorneys' fees and court costs have been paid.\textsuperscript{113}

\begin{quote}
104. See the following state statutes cited supra note 93: Alaska, California, Colorado, Hawaii, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and District of Columbia.

105. See the following state statutes cited supra note 93: Arizona, Georgia, Idaho, Maine, Minnesota, Missouri, Tennessee, and Virginia.

106. See the following state statutes cited supra note 93: Alabama, Arkansas, Delaware, Illinois, Indiana, Montana, New Jersey, New York, North Dakota, Texas, Washington, and Wisconsin.


Two other states limit the proceeds of any recovery to expressly allow for attorneys' fees and at least some direct patient recovery. For example, California limits the lien to fifty percent of any final judgment, compromise or settlement exceeding $100 after payment of any prior liens.114 Washington limits the lien to twenty-five percent of the award.115

Seven states give priority to attorneys' expenses and limit the lien to insure some patient recovery. For example, Illinois116 and Tennessee117 expressly state that the hospital lien shall not affect the priority of an attorney's lien and limit the hospital lien to one-third of the patient's recovery. In Indiana, the hospital lien is inferior to all claims for attorneys' fees, court costs, and the like, and the lien is limited to assure the patient at least twenty percent of any settlement or judgment.118 Maryland,119 Missouri,120 and North Carolina121 expressly state that a hospital lien is subordinate to an attorney's lien and limit the lien to fifty percent of the patient's recovery. Vermont states that its hospital liens shall not attach to one-third of the recovery or $500, whichever is less, and shall be subordinate to an attorney's lien.122 Finally, Alabama,123 Arizona,124 and Virginia125 give the court discretion over the distribution of judgment proceeds among the plaintiff, the plaintiff's attorney, and the lienholder.

All of the lien statutes impose notice requirements on the lienholder. Such requirements are fulfilled either by filing with the ap-

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116. ILL. REV. STAT. ch. 82, para. 97, 101 (1991)  
118. IND. CODE §§ 32-8-26-2 to -3 (1980 & Supp. 1992). The Indiana statute is also distinctive in that it requires that the hospital lien "be reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient." Id. § 32-8-26-3. In other words, the hospital must first seek payment through the patient's medical insurance.  
propriate county clerk, or by directly mailing a notice to the injured person, his or her attorney, and all potentially liable parties and their insurers. The statutes usually require both forms of notice. Most jurisdictions require that notice be filed in the county or district where the hospital is located. A significant number, however, require that notice be filed in the area where the injury occurred. Almost all of the statutes hold the tortfeasor or his insurer liable for payment to the lienholder, even if they have already settled with the injured party, if they received notice prior to payment. Usually, a time limitation is also placed on the payor’s continued liability.

III. Florida Case Law

Some courts have characterized Florida’s hospital lien law as well established by a long line of precedent upholding hospital liens. Stated more accurately, however, there exists a long line of precedent upholding Dade County’s lien law. This lien law was originally enacted as the 1951 General Act of Local Application and subsequently transformed into Dade County’s hospital lien ordinance. This section summarizes the line of cases interpreting Dade County’s hospital lien law and examines the two non-Dade County cases that involve special acts granting hospital liens.

A. The Dade County Cases

The first appellate decision considering the 1951 Act, Palm Springs General Hospital, Inc. v. State Farm Mutual Automobile Insurance Co., considered two issues: first, when does a hospital lien attach; and second, whether the 1951 Act is, in reality, a special act and,

126. See the following state statutes cited supra note 93: Hawaii, North Carolina, Texas, and Washington.
127. See the following state statutes cited supra note 93: California, Connecticut, Louisiana, Massachusetts, Missouri, Montana, Nebraska, and Vermont.
128. See the following state statutes cited supra note 93: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Wisconsin, Washington, and District of Columbia.
129. See the following state statutes cited supra note 93: Arkansas, Georgia, Idaho, Indiana, Kansas, Maine, Maryland, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Dakota, Tennessee, Utah, Vermont, and Washington.
130. See the following state statutes cited supra note 93: Alabama, Alaska, Arizona, Delaware, New Jersey, Texas, and Wisconsin.
131. Fernandez v. South Carolina Ins. Co., 408 So. 2d 753, 754-55 (Fla. 3d DCA 1982) ("The validity and priority of a hospital lien have been firmly established."); see also Hospital Bd. of Directors v. McCray, 456 So. 2d 936, 939 (Fla. 2d DCA 1984).
132. 218 So. 2d 793 (Fla. 3d DCA 1969), aff'd, 232 So. 2d 737 (Fla. 1970).
therefore, unconstitutional because it did not meet the notice and referendum requirements required of a special act.

In *Palm Springs*, the Third District Court of Appeal concluded that a hospital lien attaches when the injured person is admitted as a patient, and is perfected when notice of the lien is filed with the clerk of the circuit court. The court rejected the argument that the 1951 Hospital Lien Act was a special act and found a reasonable relationship between the Act’s purposes and its classification by population. "In the highly populated counties, the hospitals are far more wont to be administering care to the indigent accident victim and thus in greater need of a lien-type means of assuring payment from such persons." The Florida Supreme Court affirmed the district court’s holding.

Notably, neither the Third District nor the Florida Supreme Court addressed the issue of whether the 1951 Hospital Lien Act offended the then newly-enacted provision of the 1968 Florida Constitution which prohibited special laws or general laws of local application pertaining to the "creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts." Nevertheless, subsequent decisions have held special acts providing for hospital liens are *ipso facto* constitutional without regard to the grounds for the constitutional challenge because the Florida Supreme Court upheld the constitutionality of the 1951 Act as a legitimate population act.

133. *Id.* at 798; *see also* Public Health Trust v. Carroll, 509 So. 2d 1232, 1234 (Fla. 4th DCA 1987) (also holding Dade County’s hospital lien valid despite late filing: "tardy filing does not invalidate the hospital lien, but only results in the lienor or creditor being an unsecured creditor, at least until such time as the lien is filed").

134. 218 So. 2d at 799. Article III, section 11, paragraph (b) of the Florida Constitution, permits general laws of local application, affecting only certain categories of persons, political subdivisions, or other governmental entities, provided the classification is "reasonably related to the subject of the law." *See supra* note 24.

The court is apparently unaware that, by 1969, eleven other counties had hospital liens by special act, including counties such as Bradford County with a population of only 12,400 according to the 1960 census. *Florida Statistical Abstract* 1967 at 22-23 (Alvin B. Biscoe et al., eds.). Other counties with lien laws and low populations at the time of this decision include: Marion, 51,600; Seminole, 54,900; Jackson, 36,200; Indian River, 25,200; and Sarasota, 76,900. *Id.*

135. 218 So. 2d at 799.


138. Hospital Bd. of Directors v. McCray, 456 So. 2d 936, 939 (Fla. 2d DCA 1984) ("A
In *Dade County v. Bodie* and *Dade County v. Perez*, the Third District also considered issues concerning the 1951 Act. Both *Bodie* and *Perez* rejected the argument that a court may reduce the amount a hospital may receive when the correctness of the amount of the hospital's charges is not challenged. The Third District based its decisions on the fact that the 1951 Act stated that the amount of the lien shall be for the hospital's reasonable charges and contained no provision suggesting that the hospital's lien should be for anything less than the full amount. Although not stated, one could reasonably assume that the trial court had made some adjustments for attorneys' fees and patient compensation.

Following the 1971 repeal of the 1951 Act, the Third District continued to uphold the provisions of the 1951 Act, now a Dade County ordinance. In *Dade County v. Pavon*, the Third District nullified a settlement between the widow of a patient and the patient's uninsured motorist insurance carrier which ignored the hospital's properly noticed lien claim. The court based its decision on the lien ordinance, which provided that no release or satisfaction of any claim would be valid unless the lienholder was part of the settlement or had executed a release of the lien. The court also rejected the argument that the hospital lien did not attach to benefits paid under an uninsured motorist policy.

In *Public Health Trust v. O'Neal*, the Third District refused to reduce the amount of a hospital's lien to provide for the patient's attorney's fees. It found that the Dade County ordinance did not pro-

similar hospital lien act withstood a constitutional attack and was approved by the supreme court in *State Farm Mutual Automobile Insurance Co. v. Palm Springs General Hospital, Inc.*, 232 So. 2d 737 (Fla. 1970).

139. 237 So. 2d 553 (Fla. 3d DCA 1970).

140. 237 So. 2d 781 (Fla. 3d DCA 1970).

141. 237 So. 2d at 554; 237 So. 2d at 783.

In *Bodie*, the hospital's charges were $4,362.05, and the amount available was $5,000. The trial court reduced the amount paid to the hospital to $1000. 237 So. 2d at 553-54.

In *Perez*, the settlement was for $1,780, and the hospital's charges amounted to $1,931.95. The trial court reduced the hospital's portion to $200. 237 So. 2d at 782.

142. *Bodie*, 237 So. 2d at 554; *Perez*, 237 So. 2d at 783.

143. 266 So. 2d 94 (Fla. 3d DCA 1972).

144. *Id.* at 96-97; *see also* HCA Health Servs., Inc. v. Ratican, 475 So. 2d 981 (Fla. 3d DCA 1985) (holding lower court's approval of a settlement between the injured party and the patient and invalidation of the hospital lien not binding since the hospital was not a party to the suit).

Along similar lines, the Third District held that the hospital lien was extinguished when the patient and the hospital amicably settled the underlying debt upon which the lien was based. *Maxwell v. South Miami Hosp. Found., Inc.*, 385 So. 2d 127 (Fla. 3d DCA 1980).

145. *Pavon*, 266 So. 2d at 97.

146. 348 So. 2d 377 (Fla. 3d DCA 1977).
vide for an equitable distribution of settlement monies between the plaintiff’s attorney and the hospital. 147

In examining the issue of the proceeds to which the lien may attach, the Third District held in Fernandez v. South Carolina Insurance Co. 148 that the lien attached to the patient’s personal injury protection (PIP) benefits even though such benefits could also be applied to funeral expenses, lost wages and earning capacity, as well as for medical care. 149

B. Special Acts

Only the Second District Court of Appeal, in Hospital Board of Directors v. McCray, 150 has explored the constitutionality of special acts granting hospital liens. In 1978, the Legislature granted Lee Memorial Hospital, Lee County, the right to impose a hospital lien. 151 This special act virtually mirrored the 1951 Hospital Lien Act except that it applied only to Lee Memorial Hospital rather than to any hospital within a county or district. 152 Jackie McCray and her son, former hospital patients of Lee Memorial, contended that the special act violated article III, section 11, subsection (a), paragraph (9) of the Florida Constitution, which forbids special acts pertaining to the “creation, enforcement, extension or impairment of liens based on private contracts.” 153 The trial court agreed and dismissed the hospital’s claim with prejudice. 154

The Second District reversed, however, holding that because chapter 78-552 creates a lien by statute rather than by private contract, it does not violate the Florida’s Constitution. 155 The court supported its holding by citing to State Farm Mutual Automobile Insurance Co. v.

147. Id. at 378; see also Crowder v. Dade County, 415 So. 2d 732 (Fla. 3d DCA 1982).
148. 408 So. 2d 753 (Fla. 3d DCA 1982).
149. Id. at 754. The applicability of hospital lien laws to personal injury protection (PIP) insurance coverage is problematic. On one hand, it is often the only source of coverage for the patient’s injuries and is, therefore, of considerable significance to the hospital. On the other hand, the coverage belongs to the patient and is not subject to a cause of action or a resulting settlement or judgment. Whether or not attorneys’ fees should be applicable to PIP coverage is also arguable. Because the coverage benefits are directly accessible by the medical provider, attorney intervention is often not necessary. FLA. STAT. § 627.736 (1991 & Supp. 1992).
150. 456 So. 2d 936 (Fla. 2d DCA 1984).
152. Id. § 1, 1987 Fla. Laws 186. A subsequent act, ch. 89-540, 1989 Fla. Laws 414, granted a hospital lien to all nonprofit hospitals in the county.
154. McCray, 456 So. 2d at 938.
155. Id. at 939.
Palm Springs General Hospital, Inc. for the proposition that similar hospital liens have withstood constitutional attack.\textsuperscript{156}

As the McCrays ably pointed out in their Motion for Rehearing, if a special act is exempted from the constitutional provision simply because it is statutory, then a special act could never be unconstitutional under article III, section 11, subsection (a), paragraph (9), because all special acts are statutory.\textsuperscript{157} In addition, as explained above,\textsuperscript{158} \textit{State Farm} was concerned with the constitutionality of the 1951 Act as a general act of local application and did not consider the Act’s relevance to article III, section 11, subsection (a), paragraph (9).

While hospital liens may not violate the prohibition against liens contained in the Florida Constitution, it is not for the reasons stated in the \textit{McCray} opinion. Exactly what this constitutional provision was intended to proscribe and whether it applies to special acts creating hospital liens remain difficult questions.

The only other decision involving a county other than Dade County is \textit{Orlando Regional Medical Center, Inc. v. Estate of Heron}.\textsuperscript{159} In \textit{Heron}, the Fifth District held that Orange County’s hospital lien ordinance did not apply to proceeds resulting from a wrongful death action.\textsuperscript{160} The court reasoned that a wrongful death action derives from the survivor’s loss and not from the injured party’s claims.\textsuperscript{161}

\textbf{IV. THE STATE CONSTITUTION}

Article III, section 11, subsection (a), paragraph (9)\textsuperscript{162} of the 1968 Florida Constitution is a new provision.\textsuperscript{163} The 1885 Constitution did

\begin{itemize}
\item \textsuperscript{156} Id.
\item \textsuperscript{157} Id. Appellee’s Motion for Rehearing at 1, Hospital Bd. of Directors v. McCray, 456 So. 2d 936 (Fla. 2d DCA 1984)(No. 83-2375) (available at Fla. Dep’t of State, Div. of Archives, Tallahassee, Fla.).
\item \textsuperscript{158} See supra notes 132-38 and accompanying text.
\item \textsuperscript{159} 596 So. 2d 1078 (Fla. 5th DCA), rev. denied, 604 So. 2d 487 (Fla. 1992). The opinion in \textit{Heron} infers that Orange County’s hospital lien ordinance derives from the 1971 repeal of the 1951 Hospital Lien Act. The 1971 repeal authorized qualifying counties to incorporate the 1951 Act by ordinance. The court seemed to be unaware that Orange County’s ordinance is based on the county’s special act enacted in 1957, ch. 57-1644, 1957 Fla. Laws 2689. \textit{See Orange County, Fla., Code art. IV} (1992).
\item \textsuperscript{160} 596 So. 2d at 1079.
\item \textsuperscript{161} Id.
\item \textsuperscript{162} Section 11. Prohibited special laws.—
\item \textsuperscript{163} ROBERT A. GRAY, REVISED FLORIDA CONSTITUTION PROPOSED BY THE LEGISLATURE AND EXPLANATION OF CHANGES 5, 18 (discussing the 1957 proposed revision of the Florida Constitution).
\end{itemize}
not contain a similar provision. The first draft of the section on special laws that was prepared for the 1966 Constitution Revision Commission was lifted verbatim from the 1957 constitutional initiative. That language simply states, "there shall not pass any special or local laws pertaining to . . . creation, enforcement, extension, or impairment of liens, or fixing of interest rates on private contracts." The phrase "based on private contracts," which is part of the present Florida Constitution, was not included in either the 1957 or early 1966 drafts. This phrase proves most problematic because it qualifies the type of lien that may be created by special act. Unfortunately, the phrase was added prior to the Constitutional Convention held in November of 1966 and not by convention amendment. No written record explaining the inclusion of this phrase seems to exist.

There are several ways of looking at the constitutional provision prohibiting the creation of special acts based on private contract. Assuming *arguendo* that all contracts are private, it is possible that the

165. See Staff of Fla. Legislative Committee of the 1966 Florida Constitution Revision Commission, First Draft of the Constitution 6 (1966) (available at Fla. Dep't of State, Div. of Archives, ser. 720, carton 6, folder 2, Tallahassee, Fla.).
166. A concurrent resolution of the 1955 Legislature created the Florida Constitution Advisory Commission, which was instructed to propose recommendations for the revision of the state constitution. Fla. HCR 92 (1955). The draft was submitted in 1957. Nevertheless, because of a procedural complication, it was not presented in a manner that easily permitted ratification and the draft was abandoned. Constitution Committee, The Florida Bar, Proposed Constitution for Florida 3-6 (1960).

167. Id.
168. The liens section of the draft dated June 14, 1966, retained most of the language of the first draft. It was prepared for use at public hearings on the Constitution held during the summer of 1966 (available at Fla. Dep't of State, Div. of Archives, ser. 720, carton 2, folder 6, Tallahassee, Fla.).
169. See Drafting & Style Comm., Fla. Const. Revision Comm'n, Proposed art. III § 11 (revised draft dated Nov. 10, 1966) (prepared for the Constitutional Convention) (available at Fla. Dep't of State, Div. of Archives, ser. 720, carton 2, folder 8, Tallahassee, Fla.). No amendments were offered to the subsection on liens during the convention. See Fla. Const. Revision Comm'n, edited transcript of debate on art. III, pt. 2 at 236 (1966, vol. 18) (available at Fla. Dep't of State, Div. of Archives, Tallahassee, Fla.). One may presume that this was a non-controversial issue.
170. The author conducted an extensive search of the files relating to article III of the Florida Constitution, from the 1957 Florida Constitution Advisory Commission, the 1966 Florida Constitution Revision Commission, and the 1978 Constitutional Revision Commission found at the Florida State Archives and the Florida Supreme Court Library. Tapes from the public hearings held around the state are also available at the Florida Archives. The author did not listen to those tapes. Perhaps some explanation can be found therein.
provision was simply intended to exclude liens based on contract. In evaluating this possibility, one must distinguish between liens "based on contract" and liens "created by contract." All liens are based on some type of contractual relationship even if the contract is equitably implied by a court to avoid unjust enrichment.\textsuperscript{171} That the lien is created by statute and not expressly contained in the contract is irrelevant.\textsuperscript{172} Statutorily created liens do not require an express statement of the lien to be a condition of the contract, it is sufficient that the lienor contracted to perform a statutorily defined service.\textsuperscript{173} The lien arises from the performance of that service, not as a condition of the contract. Excluding all liens based on contract would exclude all liens except those created by contract. If a contract, however, expressly creates a lien, the need for a statutory lien disappears. The law recognizes contractually created liens and will enforce them.

Therefore, the key must be that the lien must be characterized as a "private" contract rather than a "public" one. In \textit{McCray},\textsuperscript{174} the appellant, Lee County Hospital, argued this point, asserting that "since Lee Memorial Hospital is a public agency, its contracts must be characterized as 'public contracts.'"\textsuperscript{175} Therefore, all hospital liens emanating from public hospitals would avoid any constitutional prohibition.\textsuperscript{176} The appellant, however, cited no authority to support this interpretation of the term "public contract."\textsuperscript{177} However, just because the hospital is a public agency, its contract with a private citizen is not necessarily a public contract.\textsuperscript{178}

Instead, as appellees argued, what distinguishes a public contract from a private one is whether the contract involves a public service or project. Such contracts are extensively regulated and publicly scrutinized.\textsuperscript{179} The vast body of literature on "public contracts" tends to support this interpretation.\textsuperscript{180} If this latter definition is correct, then

\textsuperscript{171} See \textit{supra} notes 8-15 and accompanying text.
\textsuperscript{172} \textit{Id.}
\textsuperscript{174} Note that this argument was not discussed in the opinion and was not the basis of the court's holding.
\textsuperscript{175} Initial Brief of Appellants at 5-6, Hospital Bd. of Directors v. McCray, 456 So. 2d 936 (Fla. 2d DCA 1984)(No. 83-2375) (available at Fla. Dep't of State, Div. of Archives, Tallahassee, Fla).
\textsuperscript{176} Note that most of the special acts granting hospital liens apply to both public and private hospitals.
\textsuperscript{177} None can be found in the Appellant's Brief. See \textit{supra} note 174 and accompanying text.
\textsuperscript{178} \textit{Id.}
\textsuperscript{179} Answer Brief of Appellee at 7-9, \textit{McCray} (available at Fla. Dep't of State, Div. of Archives, Tallahassee, Fla).
\textsuperscript{180} For example, \textit{WEST DIGEST} contains a title on "Public Contracts" addressing precisely
contracts that form the basis for hospital liens are private. A contract between a hospital and a patient to provide medical care involves neither the building of a public project nor the providing of a public service. If that is true, all hospital liens created by special act violate the Florida Constitution because they are not based on public contracts as that term is customarily understood.

A third, and more compelling, interpretation requires a broader view of the constitutional provision. This explanation focuses on the "public purpose" served by the entity that holds the lien rather than the relationship between the contracting parties. That a hospital is statutorily required to provide emergency medical care to the public, or to provide indigent care, would be an expression of this purpose and could be viewed as a public contract between the state and the hospital. In this case, the obligatory relationship exists between the state and the entity, not between the lienholder and the person upon whom the lien is imposed. In other words, liens held by public bodies that provide public services would be permissible. Accordingly, liens to reimburse hospitals that are obligated to provide medical care to all citizens, regardless of their ability to pay, would meet this limitation. Liens created by special act, however, and which serve only a private purpose would be prohibited.

Two sources of historical evidence provide support for this perspective. First, in 1960, the Florida Bar sponsored a proposed revision to the constitution that prohibited special or local laws pertaining to the "[c]reation, enforcement, extension, or impairment of liens, except liens levied or imposed by municipalities, or fixing of interest rates on private contracts." Because municipalities are formed to serve the public, this proposal suggests that there should be some distinction between liens created to serve public bodies and those imposed for the benefit of private interests.

An amendment, proposed during the 1966 Constitutional Convention, to a different portion of section 11 also supports this perspective. During the discussion of this amendment, the constitutional
commission clearly communicated its desire not to hamper public bodies, such as hospitals, in exercising liens. While these two sources of evidence are suggestive, interpretation of the text of the constitutional provision proves difficult to support unless one assumes that the principal contract is the one between the public entity and the state rather than the one between the lienholder and the person to whom the lien applies.

One other view of this problem focuses on the policy behind constitutionally prohibiting certain categories of special acts. To under-

property interest of persons under legal disabilities or of estates of decedents." See Revised Draft dated Nov. 10, 1966 (available at Fla. Dep't of State, Div. of Archives, ser. 720, carton 2, folder 8, Tallahassee, Fla.).

185. The following discussion of this amendment took place at the convention:

MR. EARLE: Mr. Chairman, members of the Commission, subparagraph (r) of this section we are working on reads as follows:

"Transfer of any property interest to persons under legal disabilities or of estates or decedents"

Mr. Pettigrew desires to add the following language:

"Except in enforcement of public liens"

It is his view that this section, as worded here, may preclude local bills enabling public bodies, such as hospitals and others, from exercising liens on the people — on property of the people described in this section.

In light of what has been happening here the last two motions, I don’t intend to argue this one extensively either.

I move its adoption.

CHAIRMAN SMITH: Extensively is a rather limited word as you use it.

MR. EARLE: Yes, sir.

CHAIRMAN SMITH: Will the gentleman yield?

MR. EARLE: Yes, sir, I yield.

MR. BARKDULL: Will the gentleman yield?

MR. EARLE: Yes, sir.

MR. BARKDULL: Mr. Earle, is the purpose of this to protect, for instance, a welfare hospital lien?

MR. EARLE: That is my understanding, sir.

MR. BARKDULL: Thank you.

MR. EARLE: And I don’t believe it is necessary.

CHAIRMAN SMITH: Gentlemen, we debated the issue already; didn’t we?

MR. YOUNG: Mr. Chairman, I was going to point out we already had and the committee opposed this in keeping with the philosophy that has been established here several times this morning.


186. Recall that at the time of the Constitution Commission there were eleven counties that had special acts granting hospital liens, plus Dade and Duval that had hospital liens by virtue of the 1951 Act. See supra notes 24-25, 36-44, 53-63 and accompanying text.

187. There is a fifth, somewhat cynical interpretation of why the phrase “based on private contract” was included. It is possible that it was simply for clarification. Note that the second part of subsection (9) prohibits the “fixing of interest rates on private contracts.” Perhaps some draftsman assumed that the term “private contract” must apply to both the first part of the sentence relating to liens, and the second part relating to interest rates, and simply wanted to clarify that by repeating the term in the lien section.
stand this view, one must understand that a lien is a charge on property. But because it is often not collectible until the sale of the property, or, as in the case of hospital liens, until a settlement or judgment is reached, it is hidden or dormant. Whereas those liens expressly stated in a contract or which exist by virtue of general law do not present this element of unpleasant surprise, liens created by a special act, which are not stated in any contract and which do not operate uniformly throughout the state, augment the hidden aspect of liens. From this perspective, the original drafters acted wisely when they included a provision prohibiting the creation of all liens by special act in the Florida Constitution. Qualifying that prohibition by preventing only those liens "based on private contract" would be reasonable because one would want to prevent the statutory creation of liens which depend on private contracts, as such contracts often involve legally unsophisticated individuals who would be unaware of the existence of liens crafted by special acts and their legal obligations. There need be no prohibition of liens based on public contracts, however, because they are by nature the subject of public review and scrutiny. Persons or entities seeking to obtain these contracts often have experience in the process of reviewing the statutory obligations that regulate these arrangements.

Because hospital liens created by special act involve individuals in private contractual arrangements, they would be vulnerable to the concerns raised above. All of the special acts granting hospital liens make persons participating in settlements prior to satisfaction of the hospital liens liable for payment to the hospital, regardless of settlement. Therefore, such persons must be aware of the special act and bear the burden of searching the public records before settling any suit or paying any insurance proceeds. As this liability does not arise by virtue of a general act, an unsuspecting claimant from outside the county or hospital district or an out-of-state insurance carrier might ignore the special act and suffer the consequences.

Most importantly, because the hospital lien preempts attorneys' fees, an injured plaintiff may not be able to find counsel to represent him or her in seeking reimbursement for medical costs. It is unthinkable that access to the courts could be dependent on the county in which a potential plaintiff is hospitalized or even perhaps on the particular hospital to which he is admitted.

While few would argue with a public policy supporting the ability of hospitals to find a logical source of reimbursement for unpaid medical bills—in this case, from the tortfeasors accident or liability insurance coverage—such a policy should operate uniformly throughout the state and not by special act. Indeed, article III, section 11, is
intended to prohibit the legislature from doing by special act what it should do by general law. 188 A review of article III, section 11, demonstrates that general law regulates those things which the section prohibits. 189

The factors discussed above cast doubt on the continued constitutionality of hospital liens created by special act. Given the plain meaning of the Florida Constitution, not only are such acts doubtful, they challenge policy considerations implicit in the prohibition of certain types of special acts. Even if these hospital lien acts prove to be

188. See Carlton v. Johnson, 55 So. 975 (Fla. 1911).

The effect of the organic provision requiring that laws upon stated subjects shall not be local or special, but shall be general and of uniform operation throughout the state, is to forbid the enactment of a law on the stated subjects that is arbitrarily made applicable to one or to several of the territorial subdivisions of the state, where a general law on the same subject could properly be made applicable to the entire state or to all that portion of the state similarly situated or conditioned with reference to the subject regulated.

Id. at 976; see also Manatee County v. Davidson, 181 So. 889, 891 (Fla. 1938).

189. Section 11. Prohibited special laws.—

(a) There shall be no special law or general law of local application pertaining to:

(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;

(2) assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability;

(3) rules of evidence in any court;

(4) punishment for crime;

(5) petit juries, including compensation of jurors, except establishment of jury commissions;

(6) change of civil or criminal venue;

(7) conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefor;

(8) refund of money legally paid or remissions of fines, penalties or forfeitures;

(9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;

(10) disposal of public property, including any interest therein, for private purposes;

(11) vacation of roads;

(12) private incorporation or grant of privilege to a private corporation;

(13) effectuation of invalid deeds, wills or other instruments, or change in law of descent;

(14) change of name of any person;

(15) divorce;

(16) legitimation or adoption of persons;

(17) relief of minors from legal disabilities;

(18) transfer of any property interest of persons under legal disabilities or of estates of decedents;

(19) hunting or fresh water fishing;

(20) regulation of occupations which are regulated by a state agency; or

(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.

Fla. Const. art. III, § 11(a).
constitutional, the concepts of fairness and providing full access to legal remedies counsel that this procedure be applied in a uniform manner.

V. PRESENT SITUATION

A. Attorneys' Fees

Given the present fragmented system of seeking reimbursement for unpaid health care, one can reasonably support a procedure that grants hospital liens on sums recovered in liability claims. A survey of other states’ lien laws shows that hospital liens are an established, widespread method for easing the burden of indigent health care. Nevertheless, if the Florida Legislature continues to sanction this method of obtaining payment for medical care, it should do so in a uniform manner. It appears that the only obstacle blocking attainment of uniformity remains disagreement over provisions for attorneys' fees.

A hospital lien should make some allowance for attorneys' fees and patient losses. The present situation, which depends on the largess of the hospital, can discourage worthy claimants from seeking any sort of recovery whenever there is an insufficiency of funds to cover litigation expenses and claimant disability compensation. This permits liable tortfeasors to avoid payment. As a result, both hospitals and plaintiffs suffer.

It is not surprising that hospitals in counties with lien laws that make no allowances for plaintiff attorneys' fees are not interested in disturbing the current arrangement because they enjoy a superior bargaining position. Hospitals argue that they should continue to enjoy this advantage because under Florida law they have no choice but to provide emergency care, unlike attorneys who may select their clients.

In counties with these types of lien laws, both the attorney and the hospital are forced to scale back their expectations and participate in some sort of pro-rata distribution of any proceeds when the potential recovery is insufficient to cover all costs, in order for all to receive at least some portion of the recovery. A lien law that places attorneys first would eliminate the bargaining power of hospitals. Attorneys

190. Under the contingent fee arrangement, the attorney is limited to a certain percent of the proceeds depending upon the progress of the action and the size of the recovery. See FLA. BAR. R. PROF. CONDUCT 4-1.5 (1993).

191. See supra note 181.
would simply have switched places with hospitals, except that the attorneys would have no need to bargain with the hospitals.

A review of hospital lien laws among the several states reveals several options. The most obvious alternative requires some sort of pro-rata distribution between the hospital, the plaintiff, and the plaintiff's attorney when there are insufficient funds to meet all expenses.

A second solution would be to retain the present arrangement, which gives priority to the hospital lien, but permit the court to apportion the recovery if necessary. Similarly, primacy could be given to court costs and attorneys' fees with the court having discretion to alter the distribution of the proceeds. Florida's Workers' Compensation Law prescribes a fee schedule but also includes factors which allow the judge of compensation claims to alter the attorneys' fees.

Florida's Medicaid Third-Party Liability Act suggests a third solution. Section 409.910(11)(f), Florida Statutes, provides that in the event the amount of a judgment, award, or settlement is equal to or less than 200% of the amount of medical assistance provided by Medicaid, the recipient's attorney shall receive twenty-five percent of that recovery, less costs and expenses of litigation. The section further provides that Medicaid receive two-thirds of the amount remaining after attorneys' fees and litigation costs, and the recipient receive the remainder. This solution has appeal because it requires the attorney to reduce his or her customary contingency proportion, but guarantees a twenty-five percent share of whatever is recovered. In addition, the plaintiff is assured some portion of the award.

B. 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 adequate health insurance. This was not the original intent of the hospital lien statute. As previously stated, hospital liens were instituted as a means of obtain-

192. See supra notes 139-42 and accompanying text, discussing Dade County v. Bodie and Dade County v. Perez, where the court tried to reduce the hospital's lien; see also Arizona's hospital lien law, Ariz. Rev. Stat. Ann. § 33-934 (1990 & Supp. 1992), which does not provide for attorneys' fees and court cost but permits the court to allow for reasonable attorneys' fees and disbursements if the claimant prevails.


See also Fla. Stat. § 713.29 (Supp. 1992) (directing the court to determine and award a reasonable fee for the prevailing party's attorney's services).


196. Id.
ing reimbursement for medical care provided to insolvent patients.\textsuperscript{197} Under Florida's Collateral Source Rule,\textsuperscript{198} 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 attorneys' fees incurred by the claimant.\textsuperscript{199} 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.\textsuperscript{200} 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. As previously mentioned, the hospital would also prefer to seek payment from the tortfeasor's liability insurance as it pays at a higher rate than health insurance.\textsuperscript{201} Unfortunately, by seeking payment first against automobile and liability insurance, a source of payment for expenses such as lost wages and litigation costs can be quickly exhausted by medical expenses alone. 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.\textsuperscript{202} 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.\textsuperscript{203}

The answer to this complicated question depends, to some extent, on success in instituting methods of reducing redundancy in our present system of health care, the subrogation relationship between the different forms of insurance, and the need of the patient to maximize his or her ability to draw upon a variety of sources for excessive medical bills.

\textsuperscript{197} See supra note 19 and accompanying text.
\textsuperscript{198} Fla. Stat. § 768.76 (1991). This section was amended during the 1993 legislative session. See Ch. 93-245, 1993 Fla. Laws 2436.
\textsuperscript{199} Ch. 93-245, § 1, 1993 Fla. Laws 2437 (amending Fla. Stat. § 768.76(4) (1991)).
\textsuperscript{200} Id.
\textsuperscript{201} See supra notes 20-22 and accompanying text.
\textsuperscript{202} See Ind. Code § 32-8-26-3 (1980 & Supp. 1992) (requiring the lien to be first reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient).
\textsuperscript{203} As previously noted, neither Medicare or Medicaid coverage would ever pay before liability coverage since both are always the payors of last resort. See supra note 21.
V. Conclusion

The purpose of this article was to explore the historical, statutory, and constitutional issues relating to hospital liens in order to clarify and narrow the present controversy between attorneys and hospitals. It seems that it is to everyone's advantage to have a uniform statewide law. Although those hospitals that presently enjoy a lien law which makes no allowances for attorneys' fees would be surrendering their superior bargaining position, nothing would be lost provided that the attorneys were made to share in any reimbursement reductions. After all, hospitals claim that they already engage in informal pro-rata arrangements with plaintiffs' attorneys in order to ensure at least some recovery. Therefore, a statute that formalizes this arrangement would seem to offer no disadvantage. In addition, a statutory mandate requiring some sort of pro-rata distribution of limited proceeds would eliminate the discouragement that plaintiffs experience in counties in which hospitals refuse to allocate any portion of the proceeds to the plaintiffs or their attorneys.

A statewide law would also provide additional advantages. First, a statewide law should cut down on settlement arrangements between injured persons and tortfeasors and their insurance carriers which exclude hospitals. Because hospital liens exist by virtue of special acts or local ordinances, they are often invisible to out-of-state insurance companies, attorneys whose chief area of practice is in counties that do not have hospital lien laws, and to plaintiffs who are simply unaware that hospital lien laws exist. Since hospital lien laws are not codified, anyone familiar with hospital lien laws in other states who searched the Florida Statutes could easily come to the conclusion that Florida has no lien law. A visible statewide lien law would go a long way toward eliminating this problem.

Second, a statewide law would make hospital liens available to the majority of Florida hospitals, both public and private, which do not presently have the benefit of a lien law. Furthermore, a statewide law should increase revenues available to hospitals in counties that have lien laws that permit attorneys' fees to be paid first.
### APPENDIX A

<table>
<thead>
<tr>
<th>State</th>
<th>Year of Law Change</th>
<th>Liens Applicable To</th>
<th>Limitations on Amount of Lien</th>
<th>Attorney's Fees</th>
<th>Notice Filed</th>
<th>Notice Sent To</th>
<th>Development of Liability of Payor for Treatment of Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>1955</td>
<td>Any hospital; special nursing service</td>
<td>Reasonable charges for hospital and related services and for judgment or settlement; lien applies to insurance proceeds</td>
<td>Lien subject to an attorney's lien</td>
<td>Within 10 days after discharge; officer of county probate judge where cause of action arose</td>
<td>Injured person and liable parties</td>
<td>180 days after date of injury or within 15 days after discharge with recording officer in district where injury occurred</td>
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<tr>
<td>Alaska</td>
<td>1999</td>
<td>Any hospital and licensed special nurses</td>
<td>Reasonable charges plus costs incurred in the enforcement of lien, including attorneys' fees, costs, and expenses secured by the lien</td>
<td>Although &quot;a lien is not allowed for attorney's fees, costs, and expenses incurred by the injured person in securing a settlement, compensating, or recovering for any person or entity for so much of the value of the judgment or compromise (hospital or nurse) as can be recovered after paying attorney's fees, costs, and expenses</td>
<td>Within 20 days of discharge; officer of county recorder where injury occurred</td>
<td>Injured person, liable parties and their insurance carriers</td>
<td>2 years after discharge in county or year injury occurred</td>
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<tr>
<td>Arizona</td>
<td>1954</td>
<td>Any health care provider or provider's liability insurance</td>
<td>All claims of liability and indemnity; does not apply to health care provider's liability insurance</td>
<td>Customary charges; non-probably owned provider, provider's lien only; providers' lien only for charges in excess of $250</td>
<td>Within 30 days of discharge in county where injury occurred</td>
<td>Injured person, liable parties and their insurance carriers</td>
<td>1 year after discharge in county where injury occurred</td>
</tr>
</tbody>
</table>

*Note:* The table above provides a summary of laws regarding claims and liens for medical injuries in different states. The specific details and terms may vary, so it's important to consult the actual statutes for precise information.
<table>
<thead>
<tr>
<th>State</th>
<th>Year Lien Law Created</th>
<th>Lienholder</th>
<th>Lien Applicable To</th>
<th>Limitations on Amount of Lien</th>
<th>Attorneys' Fees</th>
<th>Notice Filed</th>
<th>Notice Sent To</th>
<th>Duration of Liability of Payor for Impairment of Lien</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>1933</td>
<td>Any practitioner (doctor, chiropractor, or dentist), nurse, or hospital; lien may be enforced by lienholder up to sixty days after last notice filed unless debt barred by statute of limitation; lien assignable</td>
<td>All claims, rights of action, and money awarded</td>
<td>Value of services rendered plus costs and attorneys' fees incurred in enforcing lien; if the amount available is insufficient to pay all claims then there shall be a pro rata distribution of recovery between each practitioner, nurse, and hospital in proportion that each claim bears to the total amount</td>
<td>Lien may not repeal or affect statutory liens in favor of attorneys</td>
<td>At time of service and/or within 60 days after termination of services with court clerk in county where services have been rendered</td>
<td>Injured person, liable parties or insurer, or notice of claim filed in court where action pending</td>
<td>Indefinite</td>
</tr>
<tr>
<td>California</td>
<td>1961</td>
<td>Any hospital or hospital related facility</td>
<td>All damages recovered in excess of $100</td>
<td>Reasonable charges for emergency medical services or other services valued over $100 during a 72 hour emergency period; lien only attaches to 50% of any final judgment, compromise or settlement agreement after paying any prior liens (i.e., Medi-Cal, county)</td>
<td>----</td>
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<td>Liable parties and insurance carrier prior to payment of any monies</td>
<td>1 year</td>
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<tr>
<td>Colorado</td>
<td>1963</td>
<td>Any hospital; lien is assignable</td>
<td>Net recovery</td>
<td>Reasonable charges</td>
<td>Attorneys' statutory liens have precedence over these liens</td>
<td>With Office of the Division of Insurance which shall maintain hospital lien records prior to any judgment or settlement</td>
<td>Injured person and attorney, liable parties, and insurance carrier, or by filing notice in pending action</td>
<td>1 year</td>
</tr>
<tr>
<td>State</td>
<td>Year Lien Law Created</td>
<td>Lienholder</td>
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<tr>
<td>Conn.</td>
<td>1941</td>
<td>Any non-profit hospital, hospital owned and operated by a municipality or the state, or any ambulance service</td>
<td>Proceeds of accident or liability policy</td>
<td>Actual cost of services</td>
<td>----</td>
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<td>Insurer or insurance commissioner before payment</td>
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<tr>
<td>Delaware</td>
<td>1935</td>
<td>Charitable hospitals</td>
<td>All rights of action; attaches to award or settlement</td>
<td>Reasonable charges</td>
<td>----</td>
<td>In office of county Prothonotary where injuries occurred prior to the payment of any monies</td>
<td>Injured person, all interested parties</td>
<td>1 year</td>
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<tr>
<td>Florida</td>
<td>Lien law by special act or local ordinance in 18 of 67 counties</td>
<td>Any hospital or nursing home; no independent right of action to determine liability; lien assignable</td>
<td>All causes of action</td>
<td>Reasonable charges</td>
<td>Subject to attorneys' lien</td>
<td>Within 30 days after discharge with court clerk in county where hospital is located and where patient resides</td>
<td>Liable parties</td>
<td>1 year</td>
</tr>
<tr>
<td>Georgia</td>
<td>1953</td>
<td>Any hospital, dentist, or physician</td>
<td>Proceeds of judgment</td>
<td>Reasonable charges; if proceeds insufficient proceeds shall be distributed pro rata between liens after all common law liens have been satisfied</td>
<td>Subject to any common law lien</td>
<td>Prior to satisfaction of judgment with clerk of circuit court where judgment recovered</td>
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<tr>
<td>Hawaii</td>
<td>1939</td>
<td>Any hospital, dentist, or physician</td>
<td>Proceeds of judgment</td>
<td>Reasonable charges; if proceeds insufficient proceeds shall be distributed pro rata between liens after all common law liens have been satisfied</td>
<td>Subject to any common law lien</td>
<td>Prior to satisfaction of judgment with clerk of circuit court where judgment recovered</td>
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<tr>
<td>State</td>
<td>Year Lien Law Created</td>
<td>Lienholder</td>
<td>Limitations on Amount of Lien</td>
<td>Attorneys' Fees</td>
<td>Notice Filed</td>
<td>Notice Sent To</td>
<td>Duration of Liability of Payer for Impairment of Lien</td>
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<tr>
<td>Idaho</td>
<td>1941</td>
<td>Any hospital; separate lien for nursing care and physicians; lien assignable</td>
<td>All causes of action</td>
<td>Reasonable charges</td>
<td>Only for nursing or physician liens</td>
<td>Within 90 days after discharged in office of recorder where hospital is located</td>
<td>All liable parties</td>
<td>Indefinite</td>
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<tr>
<td>Illinois</td>
<td>1939</td>
<td>Any non-profit hospital, or hospital maintained and operated entirely by a county; lienholder may bring action to enforce lien</td>
<td>All claims or causes of action; attaches to any recovery</td>
<td>Reasonable charges for services based on &quot;ward&quot; rates; lien limited to 1/3 of sum paid or due injured person</td>
<td>Attorneys' statutory liens have priority</td>
<td></td>
<td>Injured person and liable parties</td>
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<tr>
<td>Indiana</td>
<td>1933</td>
<td>Every hospital; no right of action to determine liability; lien is not assignable</td>
<td>All causes of action and judgments or settlements</td>
<td>Reasonable charges; lien must be reduced by the amount of any medical insurance proceeds paid to the hospital on behalf of the patient after the hospital has made all reasonable efforts to pursue the insurance claims in cooperation with the patient; if funds are insufficient, all liens must be reduced on a pro rata basis to permit the patient to receive 20% of settlement</td>
<td>Lien is subordinate to an attorney's lien, and subject to court costs, and all other expenses incurred in the recovery of claims</td>
<td>180 days after discharge with recorder in county where the hospital is located</td>
<td>Patient's attorney, liable parties, and Department of Insurance</td>
<td>Indefinite</td>
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<tr>
<td>Iowa</td>
<td>1939</td>
<td>Every hospital</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien may not interfere with any attorney lien or contract</td>
<td>With court clerk in county where hospital is located prior to the payment of any monies</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
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<td>State</td>
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<td>Kansas</td>
<td>1939</td>
<td>Any hospital</td>
<td>Recovery</td>
<td>Reasonable charges; lien may not exceed $5,000</td>
<td>Lien may not interfere with any attorney lien or contract</td>
<td>With district court clerk in county where the hospital is located prior to payment of any monies</td>
<td>Injured person, liable parties and insurance carrier</td>
<td>1 year</td>
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<td>Kentucky</td>
<td>No lien law</td>
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<tr>
<td>Louisiana</td>
<td>1970</td>
<td>Any health care provider (physician, dentist, chiropractor, podiatrist, optometrist, physical therapist, psychologist), hospital, or ambulance service</td>
<td>&quot;Privilege&quot; (lien) is on recovery</td>
<td>Reasonable charges</td>
<td>Attorney &quot;privilege&quot; (lien) has priority</td>
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<td>Injured person and attorney, all liable parties and insurance carrier</td>
<td>Indefinite</td>
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<tr>
<td>Maine</td>
<td>1967</td>
<td>Any hospital</td>
<td>All causes of action; expressly states that the lien does not apply to health or accident insurance of injured party</td>
<td>Reasonable charges</td>
<td>Lien does not have precedence over an attorney's lien or contract</td>
<td>10 day notice after discharge with clerk of municipality in which the hospital is located</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
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<tr>
<td>Maryland</td>
<td>1957</td>
<td>Any hospital</td>
<td>Recovery</td>
<td>Reasonable charges; lien limited to 50% of the recovery</td>
<td>Subordinate only to an attorney's liens</td>
<td>With circuit court clerk of county where the medical services were provided prior to payment of any money</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
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<td>State</td>
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<td>Mass.</td>
<td>1959</td>
<td>Any publicly owned hospital, HMO, medical or dental corporation</td>
<td>Net amount payable to injured person</td>
<td>Limited to &quot;ward&quot; charges</td>
<td>Attorneys' liens have precedence over hospital liens</td>
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<td>Injured person and his attorney, liable parties and insurance carrier prior to judgment or settlement</td>
<td>1 year</td>
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<td>Michigan</td>
<td>No lien law</td>
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<td>Minnesota</td>
<td>1933</td>
<td>Any hospital; lien assignable</td>
<td>All causes of action</td>
<td>Reasonable charges</td>
<td>Lien subject to an attorney’s lien</td>
<td>10 days</td>
<td>Liable parties</td>
<td>2 years</td>
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<tr>
<td>Miss.</td>
<td>No lien law (repealed in 1989)</td>
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<tr>
<td>Missouri</td>
<td>1941</td>
<td>Any public hospital or clinic, or private charity hospital</td>
<td>All causes of action and claims</td>
<td>Lien limited to $25/day and the reasonable cost of necessary x-rays, laboratory, operating room, and medication service; no dollar limits if medical expenses are paid for public assistance recipients from state and/or federal funds; lien limited to 50% of recovery after paying attorney's lien, workers' comp. liens, and any prior liens</td>
<td>Attorneys' liens have priority</td>
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<td>Liable parties and insurance carrier prior to payment of monies</td>
<td>1 year</td>
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<td>State</td>
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<td>Lien Applicable To</td>
<td>Limitations on Amount of Lien</td>
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<td>Duration of Liability of Payor for Impairment of Lien</td>
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<td>Montana</td>
<td>1979</td>
<td>Any physician, nurse, physical or occupational therapist, chiropractor, dentist, and hospital</td>
<td>Cause of action, recovery, health insurance</td>
<td>Specifies that lien applies only when: (1) person has been injured through the fault or neglect of another; or (2) when patient has own insurance</td>
<td>Lien is subject to an attorney's lien</td>
<td>----</td>
<td>Liable persons and insurance carrier</td>
<td>Indefinite</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1927</td>
<td>Any physician, nurse or hospital</td>
<td>Sum awarded</td>
<td>Reasonable charges</td>
<td>----</td>
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<td>Notice to persons liable or filed in pending court action</td>
<td>----</td>
</tr>
<tr>
<td>Nevada</td>
<td>1955</td>
<td>Any hospital</td>
<td>Sum awarded (hospital also has property lien for care provided to property owner)</td>
<td>Reasonable charges plus costs incurred in enforcing lien</td>
<td>Lien cannot reach sums necessary to pay attorney's fees, costs, and expenses and must be paid from money left after such costs are paid</td>
<td>90 days following discharge filed with county recorder in county where hospital is located and where the injury was suffered</td>
<td>Liable parties and insurance carrier</td>
<td>180 days</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1955</td>
<td>Any hospital or home health care provider</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien subject to any prior liens</td>
<td>10 days after discharge with clerk in town or city where hospital or home health provider is located</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1930</td>
<td>Any hospital, nursing home, physician, or dentist</td>
<td>Rights of action and proceeds</td>
<td>Lien limited to &quot;ward&quot; rates in hospitals; min. num per diem rate in nursing home; physician or dentist lien is limited to 25% of the total recovery</td>
<td>----</td>
<td>Within 90 days after date of first treatment with clerk on county where injuries occurred</td>
<td>Injured person and liable parties</td>
<td>1 year</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1953</td>
<td>Every hospital; no right to be a party to any settlement</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien applies after paying attorneys' fees, court costs, and other expenses for obtaining settlement or judgment</td>
<td>With clerk in county where hospital is located</td>
<td>Injured person or attorney, liable parties and insurance carrier prior to payment of money</td>
<td>1 year</td>
</tr>
<tr>
<td>State</td>
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<td>New York</td>
<td>1936</td>
<td>Any charitable hospital or hospital owned and operated by a governmental body; good for 10 years but may be extended for additional periods of 10 years by refiling</td>
<td>All causes of action; attaches to proceeds</td>
<td>Reasonable charges; lien limited to hospitals &quot;cost rates&quot; for care of injuries received up to 1 week prior to hospitalization; lien only attaches to proceeds over $300</td>
<td>Lien is subject and subordinate to an attorney's lien; and does not have priority over any other lien against the patient's estate</td>
<td>With clerk of county where hospital is located</td>
<td>Liable parties and insurance carrier prior to payment of monies</td>
<td>1 year</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1935</td>
<td>Any person, corporation, municipality, or county rendering medical care (separate lien for ambulance services on property of injured person)</td>
<td>Sums recovered in civil actions, and on settlements</td>
<td>Lien may not exceed 50% of the amount recovered exclusive of attorney's fees</td>
<td>Lien may not interfere with any amount due for an attorney's services</td>
<td>Within 90 days after institution of civil action with clerk of court where action is instituted</td>
<td>Persons receiving settlement prior to disbursement</td>
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<tr>
<td>North Dakota</td>
<td>1935</td>
<td>Any hospital; may be enforced by lienholder in action against tortfeasor up to one year after notice filed</td>
<td>All claims; attaches to all proceeds; can attach to any insurance payable to injured person</td>
<td>Reasonable charges</td>
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<td>Within 30 days after services terminated with district court clerk in county where services were rendered</td>
<td>Liable parties</td>
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<td>Ohio</td>
<td>No lien law</td>
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<td>Oklahoma</td>
<td>1969</td>
<td>Any hospital (separate physician's lien)</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien is inferior to an attorney's lien or claim</td>
<td>With clerk in county where hospital located prior to payment of any monies</td>
<td>Injured person, liable parties and insurance carrier</td>
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<tr>
<td>Oregon</td>
<td>1931</td>
<td>Any hospital or physician</td>
<td>Sum awarded; lien also applies to patient contract for indemnity or compensation</td>
<td>Reasonable charges plus costs of enforcing lien; hospital and physician shall prorate available monies if recovery is insufficient to satisfy all liens</td>
<td>Lien not allowed against sums for attorneys' fees, costs and expenses</td>
<td>Within 15 days after discharge with recording officer of county where hospital is located</td>
<td>Liable parties and insurance carrier</td>
<td>180 days</td>
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<td>Penn.</td>
<td>No lien law</td>
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<tr>
<td>Rhode Island</td>
<td>1939</td>
<td>Any hospital</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien shall not have precedence over an attorney's lien</td>
<td>With clerk in city or town where hospital is located prior to the payment</td>
<td>Injured person, liable parties and attorneys, and insurance carrier</td>
<td>1 year</td>
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<td>South Carolina</td>
<td>No lien law</td>
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<td>South Dakota</td>
<td>1964</td>
<td>Any hospital</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>Lien may not prejudice or interfere with an attorney's lien or contract</td>
<td>With register of deeds in county where hospital is located prior to payment of any monies</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
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<tr>
<td>Tennessee</td>
<td>1970</td>
<td>Any hospital; no right of action to determine liability</td>
<td>All causes of action</td>
<td>Reasonable charges; lien limited to 1/3 of the recovery</td>
<td>Lien subordinate to an attorney's lien; and shall not have priority over a mechanic's lien or prior recorded lien upon a motor vehicle involved in an accident</td>
<td>Within 120 days after discharge with clerk of circuit court in county where hospital is located</td>
<td>Plaintiff's attorney and liable parties</td>
<td>Indefinite</td>
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<td>Texas</td>
<td>1933</td>
<td>Any hospital</td>
<td>Causes of action, attaches to proceeds; does not attach to injured person's insurance except for accident insurance</td>
<td>Lien limited to hospital's charges for the first 100 days of hospitalization for person admitted to hospital within 72 hours of accident</td>
<td>----</td>
<td>With clerk of the county where injury occurred prior to payment of money</td>
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<td>Lien in effect until paid</td>
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<td>Utah</td>
<td>1965</td>
<td>Any hospital; no right to be a party to any settlement</td>
<td>Proceeds</td>
<td>Reasonable charges; lien does not apply if recovery is less than $100</td>
<td>Lien applies to recovery less attorneys' fees, court costs and expenses</td>
<td>With clerk of county where hospital is located</td>
<td>Liable parties and insurance carrier prior to payment of money</td>
<td>1 year</td>
</tr>
<tr>
<td>Vermont</td>
<td>1963</td>
<td>Any hospital plus private duty nurses</td>
<td>Recovery</td>
<td>Lien shall not attach to 1/3 of recovery or $500, whichever is lesser</td>
<td>Lien is subordinate to an attorney's lien</td>
<td>With clerk of town where hospital is located prior to payment of any monies</td>
<td>Injured person, liable parties and attorneys, and insurance carrier</td>
<td>1 year</td>
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<tr>
<td>Virginia</td>
<td>1950</td>
<td>Any hospital, physician, nurse, physical therapist</td>
<td>The claim</td>
<td>Reasonable charges; lien limited to $1,500 for hospital and $300 for physician, nurse, or physical therapist; if medical costs are reimbursed by the Commonwealth, then the Commonwealth shall have a lien for the total amount paid which may also attach to the person's own insurance coverage; court has discretion to apportion recovery between plaintiff, plaintiff attorney, and Commonwealth</td>
<td>Lien is inferior to claim or lien of an attorney (both hospital and Commonwealth lien)</td>
<td>----</td>
<td>Notice to injured party, liable parties or attorney</td>
<td>Indefinite</td>
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<td>Washington</td>
<td>1937</td>
<td>Any hospital, ambulance service, nurse, physician; lien assignable; lien enforceable for 1 year after filing notice</td>
<td>Claims and money recovered</td>
<td>Value of service plus costs for enforcing lien; lien limited to 25% of the recovery</td>
<td>Within 20 days after date of injury or receipt of care with auditor in county where service provided</td>
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<td>Indefinite</td>
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<tr>
<td>West Virginia</td>
<td>No lien law</td>
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<td>Wisconsin</td>
<td>1961</td>
<td>Any charitable hospital</td>
<td>All actions and claims, and resulting recovery</td>
<td>Reasonable charges</td>
<td>Lien may not interfere with attorney lien or contract, or payment of court taxes and costs</td>
<td>Within 60 days after discharge with circuit court clerk in county where injuries occurred</td>
<td>Injured person, liable parties and insurer</td>
<td>1 year</td>
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<tr>
<td>Wyoming</td>
<td>No lien law</td>
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<tr>
<td>District of Columbia</td>
<td>1939</td>
<td>Any hospital</td>
<td>Recovery</td>
<td>Reasonable charges</td>
<td>With Office of Records &amp; Deeds prior to payment of any monies</td>
<td>Liable parties and insurance carrier</td>
<td>1 year</td>
<td></td>
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