

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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**Meeting Date:** July 22, 2014 ( ) Consent (X) Regular  
( ) Ordinance ( ) Public Hearing  
**Department**  
**Submitted By:** Administration  
**Submitted For:** Administration  
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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff requests Board Direction on:** preparation of an ordinance authorizing hospitals in the County to place a lien on the proceeds of settlements or judgments in order to receive payment for services rendered to a patient.

**Summary:** On November 5, 2013, the Board of County Commissioners directed staff to research a possible lien law (ordinance) that would assist local hospitals in the collection of bill payments through placement of liens on the proceeds of legal settlements or judgments in personal injury matters. Staff has conducted research and gathered ordinances from other jurisdictions that have addressed this issue. Additionally, meetings have been held with hospital administrators, trial attorneys, and Health Care District of Palm Beach County representatives, and some correspondence has been received and reviewed. Based on the information gathered to date and legal research by the County Attorney's office, staff has concluded that it is possible for the County to adopt a hospital lien ordinance. A current Hillsborough County ordinance has been identified as a possible model. It is expected, however, based on the preliminary meetings and correspondence mentioned above, that there will be varying levels of support and some opposition from affected parties to a countywide ordinance on this subject. Issues to be addressed include the rate at which hospitals will get paid for medical care, measures to protect the injured individuals, and compensation for attorney's fees. If staff is directed to proceed with the preparation of an ordinance, additional outreach will be conducted to ensure that concerns of all interested parties are considered. The countywide ordinance must be presented to the League of Cities for review and comment prior to first reading. A preliminary draft ordinance based on the Hillsborough County model has been prepared by the County Attorney's office and is attached to this item. The proposed draft also extends authority to the Health Care District and Palm Beach County Fire Rescue to place liens. Countywide (TKF)

**Background and Justification (Continued on page 3)**

**Attachments:** Preliminary Draft Ordinance

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**Recommended by:** N/A  
**Department Director** **Date**  
**Approved by:** [Signature] 6/25/14  
**Assistant County Administrator** **Date**

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	✱ _____	_____	_____	_____	_____

**ADDITIONAL FTE  
POSITIONS (Cumulative)**

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_  
 Budget Account No.: Fund \_\_\_ Agency \_\_\_ Org. \_\_\_ Object \_\_\_  
 Program Code \_\_\_\_\_

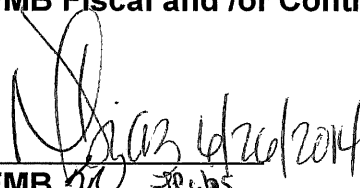

**B. Recommended Sources of Funds/Summary of Fiscal Impact**

✱ The fiscal impact of a proposed ordinance for this purpose has not been determined.

**C. Department Fiscal Review:**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and /or Contract Administrator Comments:**

 _____ OFMB <i>6/26/2014</i> <i>6/25</i>	 _____ Contract Administrator <i>6-27-14</i>
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

## Background Justification (Continued from page 1)

According to the Florida Hospital Association, approximately 21 Florida counties have some type of hospital lien law. There is no law of statewide application in Florida. The local laws are not uniform throughout the state and they vary in applicability to public, private and non-profit hospitals. The authority to attach liens was granted to the majority of these counties through special acts of the legislature. The remainder established the authority through local ordinances. Palm Beach County obtained its hospital enabling act in 1957 (Ch. 57-1688, Laws of Florida) and, prior to 1998, all hospitals in Palm Beach County utilized this law for placement of liens.

This situation changed in 1998 when the Fourth District Court of Appeals determined that the authority provided by the law was limited to public hospitals [*Schwarz v. GEICO Ins. Co.*, So. 2<sup>nd</sup> 773 (Fla 4<sup>th</sup> DCA 1998)]. More recently, the Florida Supreme Court in *Shands Teaching Hospital and Clinics, Inc. v. Mercury Insurance Company of Florida*, SC09-2069 (Fla. June 7, 2012) invalidated a special act which entitled Alachua County hospitals to sue an insurer for damages for impairing liens for medical services. The Court did, however, uphold the constitutionality of the Alachua County ordinance that mirrored the special act, leading to the conclusion that counties are permitted to enact local ordinances entitling hospitals to recover damages from third parties for the impairment of their liens. This decision is likely to affect hospitals and hospital authorities in all counties that have secured the lien authority through special acts of the legislature including the Health Care District of Palm Beach County. The District has been exercising the lien authority under a 1993 Special Act (Chapter 93-382, Laws of Florida).

The need for a local hospital lien law in Palm Beach County has been presented to the County by private and non-profit hospital representatives and the Health Care District of Palm Beach County. The recent court decisions have limited the hospitals' ability to recover the costs of medical services when a third party is responsible for the expenses associated with the injured patient. Uncompensated care costs at Palm Beach County Hospitals in 2010 exceeded \$115 million (Florida Hospital Uniform Reporting System data compiled by Health Council of Southeast Florida, 2012). Hospitals interests are representing that an ordinance for this purpose would help insure the financial stability of the institutions.

ORDINANCE NO. 2014 - \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING A COUNTYWIDE ORDINANCE TO BE ENTITLED "THE PALM BEACH COUNTY HOSPITAL LIEN ORDINANCE;" PROVIDING FOR TITLE; PROVIDING DEFINITIONS; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, The Board of County Commissioners acknowledges the public purpose of hospitals, the Palm Beach County Health Care District and Palm Beach County receiving payment for medical services rendered or paid for from settlement proceeds or judgments.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**SECTION 1. TITLE:**

This Ordinance shall be known and may be cited as the "Palm Beach County Hospital Lien Ordinance."

**SECTION 2. DEFINITIONS:**

For the purpose of this article, the definitions contained in this section shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in singular number include the plural.

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

- (1) The amount that a lienholder has contracted to accept from all sources for the care and treatment of the patient whether the source is commercial, nongovernmental health insurance coverage through a health maintenance organization, or other nongovernmental entity that is under contract with the lienholder;
- (2) For other uninsured patients, a rate not exceeding that rate which is

customarily paid to a lienholder for services provided to a patient, in compliance with the payment provisions established by the Medicare Act; or

(3) If the patient is covered by the Palm Beach County Health Care District, all amounts payable by the District in connection with services provided to the patient pursuant to the District's indigent health care plan.

*Board* means the Board of County Commissioners of Palm Beach County.

*County* means Palm Beach County, Florida.

*Covered event* means an illness, injury, deformity, infirmity, abnormality, disease or pregnancy, which results in medical care, treatment or maintenance of a person and forms the basis for a cause of action, suit, claim, counterclaim, demand, judgment, settlement or settlement agreement pursued by the patient against a third party.

*District* means Palm Beach County Health Care District.

*Hospital* means any establishment operating in the County that:

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

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

*Legal representative* means a person such as a guardian, conservator or personal representative of a patient who is responsible for the care of such patient or for the administration of the patient's estate.

*Lienholder* means a hospital, District, or the County that has a claim of lien pursuant to this article.

*Medicare Act* means the law embodied at 42 USC 426, as amended.

*Patient* means a person who receives medical care, treatment, or maintenance from a lienholder in the County in connection with a covered event, or the patient's legal representative.

*Patient's claims* means the total of all claims attributable to medical care, treatment or maintenance not provided by a lienholder, and includes lost wages, noneconomic damages, and future medical costs, as applicable, and reasonable attorney's fees and reasonable collection costs except as otherwise provided herein.

*Pro rata share* means a percentage amount of the recovery proceeds, which shall be derived by dividing the total amounts claimed by either a lienholder, the patient, or when applicable, the patient's attorney, by the total sum of all claims arising out of the covered event which are payable from the recovery proceeds, including all of the patient's claims, and multiplying the resulting percentage by the total recovery proceeds.

For the purpose of calculating pro rata share, if the patient is uninsured, a lienholder hospital may calculate its lien amount as an amount equal to its full billed charges for services provided in connection with a covered event. However, in no event may the hospital's pro rata share of the recovery proceeds exceed the payment amount established by the Medicare Act for all services provided.

*Recovery proceeds* means the total amount of all settlement, settlement agreement and/or judgment proceeds along with any other remuneration for damages arising directly or indirectly from a covered event, minus amounts secured by statutory liens having priority over liens created by this ordinance, an offset for insurance proceeds as provided herein, and in the event litigation is filed, the patient's attorney's fees as provided herein.

### **SECTION 3. LIENS.**

This ordinance authorizes the County, District, and hospitals in the County to establish liens as follows:

(1) Every hospital providing medical care, treatment or maintenance to a patient, and District when it pays for medical care, treatment, or maintenance of qualifying residents of the County, and County when it provides emergency medical care and transport through its Fire Rescue Department, shall be entitled to a lien upon all causes of action, suits, claims, counterclaims, and demands in connection with a

covered event accruing to a patient, and upon all judgments, settlements, and settlement agreements entered into by virtue thereof.

(2) The amount of the lien created by this ordinance shall be limited to the applicable lien rate.

(3) In the event the recovery proceeds are not adequate to cover the amount actually due and owing the lienholder, as well as the patient's attorney's fees, the recovery proceeds will be equitably distributed on a pro rata share basis. In the event a pro rata share cannot be calculated because noneconomic damages and future medical costs are not itemized in the settlement, settlement agreement or judgment, and/or cannot be otherwise agreed upon, the parties will mediate their dispute with a mutually agreed upon mediator who is certified by The Florida Bar. The mediator's decision as to the amount of noneconomic damages and future medical costs that will be used to determine pro rata share, shall be final unless litigation is filed. The mediator fee will be assessed in equal portions as a cost for the patient and the lienholder.

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

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

#### **SECTION 4. ELECTION OF REMEDIES.**

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

**SECTION 5. PERFECTION OF LIEN.**

(a) In order for a hospital to perfect a lien pursuant to this article, an executive officer or authorized agent of the hospital shall file with the Clerk of the Circuit Court of Palm Beach County not later than 12 months after discharge of the patient from the hospital, or the date services were provided, a written, verified claim of **lien** containing the following information:

(1) The name and location of the hospital.

(2) The name and address of the hospital's representative, and the representative's relationship to the hospital.

(3) The name and address of the patient as it appears on the records of the hospital.

(4) The dates of admission to and discharge of the patient from the hospital or the dates of services provided, as applicable.

(5) The amount claimed to be due and owing for hospital care, treatment and maintenance and the basis for calculating such claimed amounts.

(6) The names and addresses of all known potential third party payors that may be liable for payment in connection with the covered event and an affirmative statement declaring that to the best knowledge of the hospital's representative, no other potentially liable third party payors for the covered event are known.

(b) In order for the County or District to perfect a lien against a qualified resident, an authorized agent of the County or District shall file with the Clerk of the Circuit Court of Palm Beach County at any time, but no later than 12 months after the patient has received emergency medical services or transport from County Fire Rescue or no longer qualifies to receive medical care, treatment, or maintenance, paid for by the District's indigent health care plan, a written claim containing the following information:

(1) The name and address of the County's or District's representative, and the representative's relationship to the County or District.

(2) The name and address of the patient as it appears on the records of the County or District.

(3) The dates of eligibility for medical services rendered paid for by the County or District.



(4) The amount claimed to be due and owing for medical care, treatment, or maintenance rendered or paid for by the County or District.

(5) The names and addresses of known potential third party payors that may be liable for payment in connection with the covered event and an affirmative statement declaring that to the best knowledge of the County's or District's representative, no other potentially liable third party payors for the covered event are known.

(c) Within ten business days of the filing of a claim of lien with the Clerk of the Circuit Court of Palm Beach County, Florida, a copy thereof shall be sent, by first class mail, postage prepaid, to the patient, the patient's attorney or legal representative, if known, and to all other potential third party payors identified in the claim of lien. The filing of such a claim of lien with the Clerk of the Circuit Court of Palm Beach County, Florida, and the effectuation of notice thereof as described herein, shall perfect such lien.

(d) Any claim of lien recorded in accordance with the above provisions, may be amended as necessary and/or any defect may be corrected by amendment of the claim of lien and such amendment(s) does not affect the validity or enforcement of such claim of lien. Any amendment to cure a defect relates back to the time of the filing of the original claim of lien. The lienholder is not required to amend its claim of lien each time the balance which is subject to the lien changes due to additional charges incurred or payments received on behalf of the patient. However, the lienholder shall reconcile any such amounts prior to settlement of its lien or any trial proceeding concerning the amount or validity of the lien.

**SECTION 6. EFFECT OF FILING CLAIM WITH CLERK.**

The filing of a claim of lien in accordance with the procedures described herein shall constitute notice to all persons and entities which may be liable, in whole or in part, on account of the covered event, whether or not said persons or entities are named in the claim of lien and whether or not a copy of the claim shall have been provided directly to said persons or entities.

**SECTION 7. RECORDATION OF CLAIM OF LIEN.**

The Clerk of the Court shall record in the public records of Palm Beach County each claim of lien filed pursuant to this ordinance and shall include by endorsement on

each claim of lien the date and hour the same was received by the Clerk for filing on the claim form. The Clerk shall be paid by the claimant the applicable fees for filing and recording of each claim to be the same fee charged for filing and recording other such instruments under the recording laws.

**SECTION 8. ACTIONS BY OTHERS TO INCLUDE LIENHOLDER.**

No patient shall be entitled to recover or receive damages on account of care, treatment and maintenance provided by the hospital, County or District, unless the patient affirmatively proves that charges associated therewith as perfected by a lien pursuant to this ordinance have been paid or otherwise satisfied; except that in any action, suit, or counterclaim brought on account of illness or injury, the plaintiff or counterclaimant may include as an item of damages the lien amounts for such care, treatment, or maintenance if prior to the trial on the action, plaintiff or counterclaimant shall have notified the lienholder referred to in this article of the pendency of such action or counterclaim allowing the lienholder to intervene in the case and present its claim.

**SECTION 9. RELEASE OR SATISFACTION OF ACTION, SUIT, CLAIM, COUNTERCLAIM, DEMAND, JUDGMENT, OR SETTLEMENT OR SETTLEMENT AGREEMENT.**

No release or satisfaction of any action, suit, claim, counterclaim, demand, judgment, settlement or settlement agreement, or any of them, filed on behalf of a patient, shall be valid or effectual as against a recorded claim of lien unless such lienholder shall join therein or execute a release of such lien. Any acceptance by a patient of a release or satisfaction of any such cause of action, suit, claim, counterclaim, demand, or judgment, and any settlement of any of the foregoing in the absence of a release or satisfaction referred to in this article shall prima facie constitute an impairment of such lien, and the lienholder may recover, from anyone accepting such release or satisfaction or making such settlement, the reasonable costs of such hospital care, treatment, or maintenance. Satisfaction of any judgment rendered in favor of the lienholder in any such action shall operate as a satisfaction of the lien.

**SECTION 10. PRIORITY.**

Unless otherwise expressly provided by law, the priority of lien created and perfected pursuant to this ordinance shall be determined based upon the time and date of recording. The earliest recorded **lien** in Palm Beach County, Florida, shall be used for determining priority.

**SECTION 11. ABUSE OF LIEN AUTHORITY BY LIENHOLDER.**

Any person who has knowledge of an abuse of the lien authority conferred by this ordinance may submit a written statement to the lienholder containing the specifics of the abuse alleged and the relief sought. After the written statement is received by the lienholder, the complaint shall be heard in a duly constituted meeting of the lienholder's governing board or body to be held in an expedited manner after public notice of such meeting is provided by the lienholder. This meeting shall be open to the public and reasonable advance notice of the meeting shall be given consistent with the notice provisions of F.S. § 286.011. Minutes shall be taken of these meetings which shall be promptly recorded and shall be open to inspection by the public.

**SECTION 12. PENALTIES.**

Any violation of any portion of this Ordinance shall be punishable as provided by law.

**SECTION 13. ENFORCEMENT:**

This Ordinance is enforceable by all means provided by law. Additionally, the County may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

**SECTION 14. SEVERABILITY:**

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**SECTION 15. REPEAL OF LAWS IN CONFLICT:**

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 16. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 17. CAPTIONS:**

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

**SECTION 18. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2014.

**SHARON R. BOCK, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**EFFECTIVE DATE:** Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.