

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Ninth Session
March 2, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Thursday, March 2, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Matthew L. Sharp, representing Nevada Justice Association
Bill Bradley, representing Nevada Justice Association
James L. Wadhams, representing Nevada Hospital Association
Shelly Toddy, Director of Patient Accounting, University Medical Center of Southern Nevada

Chairman Yeager:

[Roll call was taken. Committee protocol and rules were explained.] We have only one bill on our agenda today. At this point, we will go ahead and open the hearing on Assembly Bill 183, which revises provisions governing the collection of a hospital bill. Our own Vice Chairman of the Committee, Assemblyman Ohrenschall, is presenting it today.

Assembly Bill 183: Revises provisions governing the collection of a hospital bill. (BDR 40-694)

Assemblyman James Ohrenschall, Assembly District No. 12:

I feel honored today to have the entire hearing for this bill, and I appreciate the Committee's taking the time to hear it. I am the Assemblyman for District No. 12, which includes parts of Henderson and unincorporated Clark County. I will briefly outline Assembly Bill 183, and then I will give you some history as to why I decided to introduce this bill.

Assembly Bill 183 revises provisions governing the collection of a hospital bill. Currently, if a hospital has been providing care to a patient, the hospital must first submit a bill to the insurer, or the public program if the injured party is on Medicare or Medicaid. The hospital must wait to hear from the insurer or public program before applying a statutory lien for the amount due for the care given to a patient. Assembly Bill 183 seeks to further protect the patient, the innocent accident victim, by requiring the hospital to wait before asserting, perfecting, foreclosing, or otherwise enforcing its statutory lien and by limiting the amount the hospital may collect.

Before this session began, I learned that some hospitals were filing liens against accident victims who suffered serious injuries, and that is why I decided to introduce A.B. 183. In many cases, the liens were filed at the billed rate, even though the accident victims had insurance and were eligible for the contracted rate under their health insurance plans.

I am sure many of us who have had an emergency room visit or a hospital stay have received the bill or the explanation of benefits in the mail. The original bill is often enough to give us a heart attack, especially when we see \$10,000 or \$20,000 in charges. Those of us who are lucky enough to have health insurance see the negotiated amount, or the contracted rate between our insurer and the hospital. This contracted rate is usually quite a bit less. The issue that this bill seeks to address, and the problem it seeks to solve, is the filing of liens against innocent accident victims in the original billed amount rather than the negotiated amount.

A good example was recently brought to my attention. Suppose you have two elderly aunts. One elderly aunt falls in her home, breaks her hip, and goes to the hospital. As far as I and the people I have been working with on this bill are aware, it would be almost unheard of that a lien would be filed against the aunt who, through no fault of her own, fell and broke her hip in her home. Suppose you have another elderly aunt who is driving down Carson Street near the Capitol, when someone sideswipes her. When this happens, she is obeying all the traffic laws—she is not speeding or doing anything illegal—she is not doing anything she should not be doing. In the second scenario many hospitals will file this lien not for the contracted amount—we are assuming both aunts have the same health insurance policies, are similarly situated persons, and both are innocent victims—but for the original billed amount. Even though both had health insurance, the lien will be for the billed amount and not the contracted amount. This causes a problem for the victim. The goal, whether it is tort or any other type of law, is to make innocent victims whole. The practice that I see going on that A.B. 183 seeks to remedy is to try to further remove any impediments toward making the victims whole.

Assemblyman Pickard:

I am curious: you said that many hospitals are going directly after the full, billed amount. My understanding of the existing law is that *Nevada Revised Statutes* (NRS) 449.757 already states, "When a person receives hospital care, the hospital must not proceed with any efforts to collect on any amount . . ." and that the filing of a lien is the first step of a collections action. Why are we not just enforcing the existing law, or are hospitals actually just ignoring it?

Assemblyman Ohrenschall:

I have had quite a few conversations with many different representatives, and there is some debate about whether a lien is a collection effort. I believe a lien is a collection effort. If a lien is recorded against me, I would certainly consider that a collection effort. It is something that, if I were to apply to purchase a home or make another purchase that required a credit check, I believe the lien would negatively impact me.

As far as current practices and whether they are compliant with NRS 449.757, I will defer to Mr. Sharp or Mr. Bradley at this point. I think this bill is an example of where we are trying to tighten up the statute to make sure that it is compliant, ensure the practices are compliant, and ensure we preserve the original intent behind NRS 449.757.

Chairman Yeager:

Thank you, Assemblyman Ohrenschall. If the Committee is okay with it, I think we should hear the next two testifiers and then return to Assemblyman Pickard's question. I think that might give us a little more context.

Matthew L. Sharp, representing Nevada Justice Association:

I would like to outline the bill; hopefully I can clarify some of the Committee members' questions, or perhaps raise additional concerns for consideration. There are three interrelated concepts in this bill. The first is the hospital lien. Many years ago, NRS 108.590 provided hospitals with a lien right as a mechanism for recovering payments resulting from personal injuries. The idea was that if somebody was uninsured and they sought treatment at a hospital, there should be some mechanism for the hospital to collect that bill. This is why NRS 108.590 was created.

Then, over the years, managed care developed. Through managed care programs, insurance companies began to contract with health care providers and create provider networks where the insured was given significant financial incentives to go to those hospitals contracted by his or her insurance company. As a result of this, the industry developed what are known as contracted rates, which are the agreed-upon billing rates with the insurance company. The theory behind this was that the benefits of contracted rates should be extended to the insured.

The third concept is what is known as medical payment coverage, which is commonly found in auto insurance policies. If you or a passenger in your car is injured in an automobile accident, medical payment coverage must cover a certain amount of the bills incurred due to the accident. Medical payment coverage is what is called a "no-fault benefit." That policy works as a mechanism to allow the insured to pay his or her deductible or to pay for things that are not covered by the health insurance policy. This is because most health insurance policies include limitations on the amount of rehabilitation a person can recover. These are the interrelated mechanisms I referred to in A.B. 183. We are trying to make the process less adversarial and more simplistic, and to provide patients who had the foresight of obtaining insurance the benefit of the contracted rate.

Under NRS 449.757, as Assemblyman Pickard pointed out, the hospital cannot begin collection efforts until a claim is filed with the health insurance company, whether through Medicare, Medicaid, a self-funded plan through the casinos, or a straight health insurance plan. Once a claim is filed and processed, collections can begin. We have found that in disputes between hospitals and patients, hospitals are of the position that filing a lien under the hospital statutes is not a collection effort. I side with Assemblyman Ohrenschall; I believe that filing a lien is a collection effort. We are just trying to clarify that point in section 1 of A.B. 183.

Section 2 deals with NRS 449.758. This statute applies only in a situation where the patient has health insurance and the hospital has a contracted rate with that health insurance company. In this situation, we seek to clarify the mechanism of collection as well

as the amount that may be collected. We believe that the patient should receive the benefit of the contracted rate; this is not something controversial. I believe that if you spoke to health insurance people they would agree that the idea of a contracted rate is to extend that benefit to the patient. The Insurance Commissioner authored a bulletin regarding this point.

In section 2, subsection 1 (b) we are confirming that, if a patient has health insurance, his or her financial responsibility to the hospital is the lesser of the deductible, copays, or the billed rate. We included the billed rate because we are in an era of high deductibles. Over the past 15 years, deductibles have consistently increased; there are instances where an individual may have a high deductible and find that the contracted rate is less than their deductible. Assembly Bill 183 sets the maximum amount that a hospital may collect as the contracted rate.

Section 2, subsection 1, paragraph (c), subparagraph (1) states that hospitals must first go through the motion of processing a claim before they begin direct collection efforts; subparagraph (2) clarifies that the hospital may proceed on collection against the health insurance provider only. The change in this section of the bill concerns medical payment coverage in auto insurance policies. We have experienced a problem on our end where hospitals bill the medical payment company, such as State Farm, but they do not provide an account as to how that money moves through the system. Is it being processed towards the deductible? Is it being used to recoup more than the contracted rate?

Subsection 4 of section 2 is a housekeeping measure. It does not provide any substantive changes to what already exists in the law, but it inserts the definition of third party from NRS 439B.260 into the law. This is just a Legislative Counsel Bureau structural issue.

Section 3 of the bill amends NRS 108.590, which is the hospital lien bill. The amendment specifies that, if the provisions of NRS 449.757 or NRS 449.758 apply, the lien is limited to that amount. This means that individuals who have health insurance get the benefit of the contracted rate. If a patient owes the deductible, the hospital is free to file a lien to collect the personal injury recovery as against the deductible.

Chairman Yeager:

Assemblyman Pickard, could you restate your question so the record is clear?

Assemblyman Pickard:

My question concerns section 1 and changing NRS 449.757 to include more specific items. It is generally understood in the law that the more specific rules over the broad. When you add a broad tail end to a list, it opens the door to interpretation. A plain reading says that a hospital must not proceed with any efforts to collect. I know, however, when I try to collect on behalf of a client, the process starts with the filing of a lien. I recognize, too, that the filing of a lien is intended to protect the right to collect later but, in my view, it is the first step in the collections process. This works as long as it is filed and everyone is on notice that the lien right exists within the statute of limitations.

Why are we adding specific language to the most broad language there can be? As you cannot start a collection action under these circumstances, it seems odd to me to add specific items to the broadest language that exists. Assemblyman Ohrenschall mentioned that hospitals were actually starting the collection action. I am not aware of this as I do not practice in this area, and I am surprised by this. Can you address that? I am sorry that was not a more concise question, but I wanted to give some context to you.

Bill Bradley, representing Nevada Justice Association:

Your question reminds me of the questions that were asked concerning this exact statute in 2011. The Committee at that time also seemed to agree that the filing of a lien was a collection effort. The only individuals who did not agree with that were the hospitals, who took the position that filing a lien is not initiation of a collection effort. It has been frustrating, to say the least, to deal with that mentality. When you indicate—Why do you not just enforce that?—to try to enforce that a lien is not a collection effort, you would have to file a lawsuit against the hospital, and you would just be delayed another year, fighting the hospital on whether or not filing a lien is a collection effort when it seems patent on its face that it is. We added this language because we want to ensure there is no argument that filing a lien is a collection effort.

It is important to remember that the first thing that happens when a patient enters a hospital is that they sign a series of documents. One of the documents they sign is the assignment of rights. Patients have rights in their insurance contracts. Every patient who has health insurance has rights included in their insurance contracts. The minute a patient enters a hospital they sign that assignment of rights to the hospital. If the patient gets into an argument with the hospital over a lien and then a certain period of time goes by, the hospital then loses the opportunity to submit the bill to the insurance company, which inures to the hospital's benefit. The hospital can then say that they just did not get the bill out to the insurance company and their only recourse is to come after the client for the full amount. Assembly Bill 183 is simply an effort to say that this legislative body recognizes that filing a lien is a collection effort. It is an effort to tell the hospitals, Go out and do your due diligence. You have the assignment of rights. Verify or determine if coverage exists. If it does, bill the insurer, and if it does not, then proceed to the lien.

Assemblyman Pickard:

That being said, why do we not actually define that filing a lien is a step of enforcement? We do not actually say that. Are we not just leaving the question open for interpretation?

Matthew Sharp:

The intent of the language was to do exactly what you described. We are all ears about how to make that language clearer, but the intent was to say that a hospital cannot file a lien until the hospital has processed the claim with the health insurance company.

Assemblyman Pickard:

My concern is not so much about the hospitals, per se, because I try to enforce liens for clients all the time. My concern is that this could grow into something bigger.

We are ultimately talking about whether filing a lien to protect the ability to collect later is an act of enforcement. The language in A.B. 183 simply says, ". . . to assert, perfect, foreclose or otherwise enforce or attempt to enforce" An attorney would understand that assert, within a legal context, is the filing of the lien. The general public is not necessarily going to be aware that asserting a lien is broader than just the filing of a lien. My concern is that if we are trying to clarify that the filing of the lien itself is a collection action, then I think we should say that. I want to clarify the intent here.

Assemblyman Ohrenschall:

We had some talks while the bill was still in drafting about whether we wanted to define "collection effort" in this bill. We wanted to clarify that the filing of lien was indeed a collection effort. If that is the will of the Chairman and the Committee, I would certainly be open to an amendment that specifically defines collection effort.

Matthew Sharp:

We have been in discussions with the hospital industry to try to create a bill that will get us the results we are looking for and to the goal that we are trying to accomplish. We are trying to make sure that patients get the contracted rate and that their personal injury settlements are not tied up in a lien process. One of the things I neglected to say is that when a hospital lien is filed, the insurance company that settles the claim puts both the client's and the hospital's names on the check. This effectively freezes the funds for the client who may need money for lost wages, their car, or other expenses. These are patients who have a lot of financial issues at stake. That is our goal, and if we can clarify it further, we appreciate the help.

Assemblyman Pickard:

I am encouraged to hear that you have been talking to the hospitals. Maybe I am misjudging the hospitals, but are they actually opposed to this bill? Does this not clarify things for them too? I would see this clarifying language as being beneficial to both sides.

Matthew Sharp:

I will allow the hospitals to explore their own position on the bill. We have been in discussions in an attempt to get to a result that makes sense, and this has been going on for a number of sessions. I am encouraged that we have the opportunity to get there.

Assemblyman Thompson:

I want to thank my colleague, Assemblyman Ohrenschall, for bringing this bill forth, adding more teeth to the law, so to speak, and making it more clear than what it was before. As it was mentioned earlier, it seems that the current law is not being abided by, or that not everyone is uniformly adhering to it. It is important that we fix that.

Who is the ultimate enforcer of this law? We can write bills and laws all day long, but we need to know who in the medical world would enforce this? Who are the people who will watch over the hospitals to ensure that they abide by this? In my opinion, that is what is missing in this bill. The law can look beautiful as can be, but if it is not being acted upon in the correct way, we have an enforcement issue. Can you explain that to me?

Assemblyman Ohrenschall:

First of all, thank you for your kind words about the bill. I will take a stab at that, and if need be, I will defer to my colleagues. I think it is very difficult for many people who have tried to be responsible by obtaining insurance when a lien is recorded against them for the full, billed amount rather than the contracted rate they worked for through their insurance. As far as I know, the only enforcing arm of this law would be the courts. It would be the victim's responsibility as a part of their case, or if their attorney is willing, to try to litigate this. While that sounds good, it certainly increases the victim's costs, delays resolution of the matter, and delays the victim being made whole. We have heard that old saying, justice delayed is justice denied. Here, I see this inflated lien as a further impediment to getting the resolution of the case and getting the victim made whole.

Bill Bradley:

The law itself is the enforcer. Let me state it this way: the Nevada Hospital Association is not out to do harm to anybody, but when hospitals hear the message loud and clear from the Legislature about its intent, the message is then established. If the practice then continues, hospitals will suffer the consequences the law provides to people who are taken advantage of.

Assemblyman Thompson:

Assemblyman Ohrenschall said, in his opening remarks, that it is not happening. Who oversees the Nevada Hospital Association? Accountability has to start somewhere and end somewhere; it should not be the burden of the person who was injured or hurt. A good analogy to this problem is: suppose a person is falsely accused; all of a sudden, they become a felon and then they have to go through the exoneration process. That is not fair, because they were not guilty in the first place. Our situation involves a person that was injured; why do they now have to do all this legwork to take a lien off? It is just not good practice or policy, in my opinion.

Bill Bradley:

On behalf of the Nevada Justice Association, we agree with you. It is just a difference in interpretation of the statute. Once this is clarified to the satisfaction of this Committee, the process is going to move much more simply and efficiently.

Assemblyman Hansen:

It is interesting to hear a bunch of lawyers try to come up with concise answers to questions. I understand now why we only have one bill on the docket today. As a nonlawyer, I found NRS 108.590 interesting. It says, "Whenever any person receives hospitalization on account of any injury, and the injured person, or a personal representative after the person's death, claims damages from the person responsible for causing the injury, the hospital has a lien upon any sum awarded the injured person or the personal representative by judgement" We have, in statute now, the right for them to file a lien. We have a contradiction within the NRS. I cannot really fault the hospitals for filing liens because we obviously gave them that right. There are limitations as to what hospitals can do, but it concerns me that on the one hand, we are telling hospitals they cannot use liens for a collection mechanism, and on

the other hand, NRS Chapter 108 says they do have a right to file a lien. Who is at fault with that? It seems to me that the NRS is contradictory or something. I can understand why hospitals claim to have the right, because we gave it to them.

Bill Bradley:
May I respond?

Assemblyman Hansen:
Of course. That is what I throw the questions out there for.

Bill Bradley:
Nevada Revised Statutes (NRS) Chapter 108 was created in the 1950s, long before managed care contracts of insurance came about. You are right; the statutes are inconsistent and it is time to clean them up. I agree with that. The statute is antiquated. I actually believe it was created back in the 1950s to protect the few, small county hospitals that were opening that had to compete with the private hospitals.

Assemblyman Hansen:
That might be true. The statute says it was updated in 1999 which, I agree, is not a thousand years old. My question to the bill's sponsor then is, if the intent is to eliminate the ability to file these types of liens, why do we not just drop NRS 108.590?

Assemblyman Ohrenschall:
My intent is that the lien would be available, but only after an attempt to bill the insurer at the contracted rate that our constituents have worked so hard for—whether they have bought a private insurance plan, stayed at a particular job because they have insurance—we are not trying to take the right to lien away. We are saying that someone has worked very hard to have a contracted rate and to have insurance and, therefore, that is the rate at which they should be billed. If you are going to file a lien, you need to file the lien at the \$6,000 rate and not the \$50,000 rate you see in the explanation of benefits.

Matthew Sharp:
We hear you, Assemblyman Hansen. It is amazing how complicated something so simple has to become. There are legitimate reasons for the hospital to file a lien, if for no other reason than to make sure the deductible is paid. It is not that we are saying they cannot have a lien; it is the mechanism by which they assert it as well as the amount of the lien. You are right; we should bring NRS 108.590 in accordance with NRS Chapter 449 to make it more predictable for everybody. That way we would not have to continue to come back to try to solve this problem.

Assemblyman Hansen:
I am just curious because, although I am not a lawyer, it seems to me that we gave the hospitals a right and I cannot really fault them for taking advantage of what we gave them as a collection mechanism. It does seem odd to me, though. With mechanics' liens in my trade, we definitely use those as a collection mechanism. It is hard for me to see where this is not a

collection mechanism; but I can also see how hospitals, quite understandably, turn to the NRS and say, Do not get mad at us. You gave us the right.

Assemblyman Wheeler:

I just wanted to put on the record, Mr. Bradley, that things created in the 1950s are not antiquated.

Assemblywoman Krasner:

Does A. B. 183 apply to services that have already been provided to people by doctors in hospitals?

Bill Bradley:

I am glad you asked that question. That is the rub here. The hospital, if it can, will go outside the contract to try to bill. All the other providers that provide care to somebody who is at the hospital, whether it is the emergency room physicians, the radiology department, the hospital employees that come in, they all bill the health insurance, or they bill Medicare, or they bill Medicaid. That is one of the real cynicisms in the practice. The answer to your question is yes, they all bill.

Assemblywoman Krasner:

They are billing for services they provided.

Bill Bradley:

Yes. They bill the health insurance.

Assemblywoman Krasner:

Would this bill limit some of the remedies hospitals use to try to collect for services that they already provided?

Bill Bradley:

The hospital will go collect its contracted rate. In other words, if a hospital has a contract with your health insurance company, then it will go to your health insurance company, present the large bill, and be paid the contracted rate. That is what should happen. What sometimes happens is instead of that hospital bill going to the health insurance company, a lien is filed. No bill is sent to the health insurance company. Six to eight months go by, and then it is too late to present the bill to the health insurance company, so the hospital tells the patient, Here is our lien for the full amount of the bill. This is not the bill a patient would have received had the hospital sent the bill to the health insurance provider and received the contracted rate. That is what we are trying to prevent.

Assemblywoman Krasner:

Thank you.

Assemblywoman Jauregui:

Thank you, Assemblyman Ohrenschall, for bringing this bill forward. I think it is important. Hearing that explanation again and piggybacking on Assemblyman Thompson's question, what deterrent is there for hospitals not to file liens? Do they have to pay damages to the victim once they file the court claim, or do they just have to make the victim whole? What can we do to deter the hospitals from doing this? Can we award damages to the victim in attorneys' fees?

Bill Bradley:

You could. I do not think we believe that is necessary at this point. Again, we have been going back and forth, and we have a good relationship with the Nevada Hospital Association and its lobbyists. I think, frankly, the Nevada Hospital Association was caught a little bit off guard when this bill came up. We have started the process of talking, and we are getting some answers to our questions. I believe in a clear legislative intent on this issue. If a hospital, after this session, is crazy enough to file a lien and deprive hundreds of people of the contracted rate, there are causes of action that can be brought against the hospital that would result in significant damages. I think the tools are out there. I do not think it is going to be necessary.

Assemblyman Elliot T. Anderson:

I thought I would offer some context since the question has come up. In the case that the lien were to go to a third-party debt collector, that could be Fair Debt Collection Practices Act (FDCPA) action already, under federal law. Furthermore, if there is an action for collection filed offensively by someone who has a lien, then this could be used defensively under existing law. I am not sure that thinking about new actions is something we have to get into at this point.

Chairman Yeager:

Are there any other questions? [There were none.] If anyone would like to testify in support of A.B. 183, please make your way to the table here in Carson City or down in Las Vegas. [There was no one.] If anyone would like to testify in opposition to this bill, please make your way to the table.

James L. Wadhams, representing Nevada Hospital Association:

I appreciate the opportunity to be in front of this Committee for the first time this session. I am here on behalf of the Nevada Hospital Association, and no, we do not file liens. I think it is important to bring some context back to the conversation. I almost appeared in support of this bill after I heard the testimony from Assemblyman Ohrenschall, Mr. Bradley, and Mr. Sharp, because what we are looking for here is clarification.

The issue we have with this bill is timing. This is a complex area, and hospitals do not get in fights. The problem is that lawyers do not always agree with what words can mean. In fact, that is how we make our living, by not agreeing with what words mean. I share Mr. Bradley's and Mr. Sharp's suggestion—and we have been in discussions with the Justice Association trying to find some clarity. We do not fundamentally disagree with the notion;

we had a huge discussion on this in a bill two sessions ago, and by and large, I thought it was resolved. We were a bit surprised because we thought the issue was resolved, but apparently somebody has read this a little differently.

Let me give you some justification to our surprise. As a couple of your members have pointed out, it is always helpful to reference the other sections of NRS that come up in discussions of these bills. *Nevada Revised Statutes* (NRS) 108.590, which has been read, at least in part, by Assemblyman Hansen, also has another section—NRS 108.610. As this Committee may be aware, there are certain statutes of limitation. There are statutes that limit the time in which a lien can be filed in order for it to continue to be valid or to be valid at all. If you miss the lien date, you have lost that opportunity. As Mr. Bradley said, this universe of health care has become complicated in the last 10 years with the advent of managed care, preferred provider contracts, and in-network and out-of-network issues that are heavily discussed in the Assembly Committee on Commerce and Labor. I think the notion that we need to deal with is protection of the opportunity to retain that lien, and yet respect the notion that was expressed in the original language of this law that the lien is for the reasonable amount. That is a phrase directly out of NRS 108.590. The point we have tried to achieve over prior years and sessions is that, in the context of a negotiated contract with a health care provider, we, the hospital, must accept as a reasonable amount for those services the rate that was contracted. The problem can be found if you read NRS 108.610. It states that the lien must be asserted, "Before the payment of any money to the injured person or to a legal representative" There are circumstances in which that can happen very quickly. The uncertainty as to how to not lose the lien right while still getting in front of the process described by Mr. Sharp and Mr. Bradley becomes a timing issue. In the discussions we have been having with the Justice Association, the bill's sponsor, and with the indulgence of the Committee, we have had some excellent questions here. We would like to continue to work to clarify the language so that the opportunity to collect is not lost strictly through the timing of the process. I can agree with the bill's proponents that clarity is the object we are after.

Again, I suggest that this problem has not been attributed to all hospitals, and it certainly does not reflect the Nevada Hospital Association, but I think, in fairness, we represent all the hospitals, and clarity in these laws is important. I certainly do not think that any attorney advising a hospital has done anything other than read the law and say, We cannot afford to lose this right that we have by lien and still maintain the right to collect. I think some language can be adopted that will clarify this.

I also think your Committee members raised a valid point that we have to look at the context of statutory liens, generally, under NRS Chapter 108. As Assemblyman Hansen said, there are mechanics' liens and artisan liens, and we want to be careful that we do not inadvertently do anything that will make these processes more difficult. In those processes of construction and mechanical work, liens are a fairly linear process, as they do not involve multiple parties in the way that the modern system of health insurance does. We want to be careful; we want to clarify. I would rather not have this fight with Mr. Bradley and Mr. Sharp another session. We commit to work diligently with them and with any of the members you select, Chairman Yeager.

Assemblywoman Cohen:

Can you give us a general billing time line that is used by most of the hospitals? If you do not have that, can you describe this process off the top of your head or can you get that information for us?

James Wadhams:

I would prefer to get a time line. There are some moving elements in the process, and I would like to have the time line represent that. In a clear-cut accident, the auto insurance company may very well make those payments very quickly. There is the timing of the potential of the payments under the liability policy as well as the hospital's efforts to go to the health insurance company first; I believe that was the primary question you raised. There are a couple of moving elements in this, and that is why it is going to require some time to work through that. We will get an answer to that question for you.

Assemblyman Pickard:

I appreciate the response. That is kind of what I had expected. I would have been surprised if the hospitals had come out and taken a position that they should be allowed to inflate or otherwise provide a lien notice for a greater amount. I do believe this is probably an issue of clarity. As I read NRS 108.610, there is no requirement as to how much time must pass before a judgment or settlement is made. Under NRS 108.650 it says, "Any person or insurer who, after receipt of a certified copy of the notice of lien . . . , makes any payment to the injured . . . [or their representatives] . . . without paying the hospital the reasonable value of hospitalization rendered" I think this is what you were talking about. It is lengthy, but it says that hospitals have 180 days to resolve that. Are you suggesting that 180 days is not enough to perfect the lien? I am trying to figure out a way to harmonize these two issues. Is that something we should be looking at?

James Wadhams:

Thank you for the question. I quite frankly do not have NRS 108.650 in front of me. I think the language is part of the issue. In the rest of the world, the lien process in most cases typically only involves two parties. In this instance, we have a liability insurer, a health insurer, we may have other government programs; so we have more moving parts. The delicate balance is going to be tying all of this together and making it clear while not compromising anybody's rights. I appreciate the question and I am sorry I do not have a specific answer, but I think all of that has to be taken into consideration.

Assemblyman Pickard:

I appreciate that, Mr. Wadhams, and I did not mean to catch you off guard. I appreciate the fact that the hospitals are willing to seek clarity as well. I think that the harmonization of the two sections of NRS might be very helpful to avoid this continuing.

Assemblyman Elliot T. Anderson:

Can you help me understand a few things? I would like to get some clarity, if that is permissible. Why do you think that people normally file liens?

James Wadhams:

Why do people file liens?

Assemblyman Elliot T. Anderson:

Yes.

James Wadhams:

In order to ensure that they ultimately can exercise their right to be paid for the work or service that has been performed.

Assemblyman Elliot T. Anderson:

I think I agree with you on that. I am just trying to get clarity because we are talking about existing law. I am trying to figure out what everyone thinks the word collect means. Do you think, also, that if you were to put something on a credit report, that would constitute a collection effort?

James Wadhams:

I am not sure that I would consider that to be a collection effort. I think there is a whole other set of issues with what happens to appear on a credit report. I think there is a whole body of federal law that you, quite frankly, may be far more familiar with than I am in that regard. As one of your colleagues mentioned, I think the notion of liens is simply the opportunity to collect that which you are owed. It may not even be part of the collections process; it is asserting the right that that process could result in a formal enforcement of that lien right.

Assemblyman Elliot T. Anderson:

Just to be clear, Mr. Chairman, I am just looking to get some intent on the record for what this term means. What I have seen are efforts to ding up credit reports, sometimes on amounts that people are not allowed to collect. It has become a real problem for people who are recovering, for example, from issues like bankruptcy or other debts that are not allowed to be collected. Since we are all in the room talking about what the statute means, I think it would be good for us to take a look and see what the current practices are, so we can try to get people some relief. It is a problem when people are unable to move on after they have had serious events like a bankruptcy or a big injury. Since we are all in the room, I would appreciate everyone thinking about that and trying to get people back on their feet after some of these traumatic events in their lives, because it is a real problem that I have seen.

Assemblyman Watkins:

At the beginning of your testimony, I heard that hospitals do not file liens. That is not in accordance with existing law. I have to follow up with that statement because it is certainly not my experience as a practitioner. My experience is that hospitals almost always file a lien if they are aware that it is a car accident and that an attorney is likely to be retained on the case. The reason for this is because the hospital is likely to collect closer to 100 cents on the dollar for their bill versus getting the contracted rate from the health insurance company, which could vary anywhere between 10 and 40 cents on the dollar. We have, in existence,

without this bill being enacted, an incentive for the hospital to file a lien. If they get called out on it by the attorney, maybe they agree to bill at the contracted rate. If they do not get called out by the attorney—then great—they just made 60 to 90 cents on the dollar depending on what the contracted rate is. I would like to get your thoughts on that and why it is a bad idea to clean this up, as you are sitting in opposition to this bill.

James Wadhams:

Assemblyman Watkins, I apologize if my words were not clear when I originally came to the table. I said I was here on behalf of the Nevada Hospital Association, and the Hospital Association does not file liens. We would not be here if hospitals did not file liens. If I did not make that clear, I apologize. Not every hospital files liens, and not every hospital is filing liens that have caused the distress that Mr. Bradley, Mr. Sharp, and Assemblyman Ohrenschall brought up. In no way did I intend to express that. What we are trying to do—and in this regard, I totally agree with the proponents—is to work on this to make sure we have some clarity in the particular lien area where there are multiple parties and moving parts and different time frames of that obligation.

I apologize if anyone heard me say that hospitals do not file liens. The Nevada Hospital Association, as an organization, does not have any lien rights. We do not perform health care services. I apologize if that came across incorrectly.

Assemblyman Watkins:

I think you will agree with me that the situation I described does, in fact, exist. Knowing this, my real question is how does this bill fail in addressing that and fixing that? If it does fail, how do we fix that situation I described in which we create an incentive for hospitals to violate the law and file a lien, rather than bill health insurance, as they are required to do?

James Wadhams:

I hate to take issue with the question, but I think it implies circumstances that have not been presented. I do not think the intention of the law as it exists—not just as it is represented and proposed in A.B. 183—is to incentivize overreaching or overcompensation. It is simply to ensure the opportunity to recover the reasonable value of expenses. In no way do I see an incentive to do otherwise. I am not suggesting that this may not occur in the real world, but that is not the intention of the law and it is certainly not the intention of the Nevada Hospital Association to support that.

Assemblyman Hansen:

The way I read the structure of NRS 108.610, if you fail to file that lien well in advance of any payment, settlement, or judgment, you lose your lien right. On the one hand, we are sitting here chewing out the hospitals for maybe filing liens too early, but if they fail to file within the time frame required by statute, hospitals lose their lien right. Even the Nevada Justice Association said they agree hospitals should have a lien right. We are not trying to eliminate the ability of hospitals to have liens, but the problem as I see it—and what I think your testimony was referring to—is that you are trying to come up with a reasonable compromise on the time frames involved because, by statute, if you fail to file the lien,

you lose your right. Is my understanding correct that you are trying to be reasonable? You are not going to give up your lien rights because you have a legitimate right to those, like anyone else trying to collect on monies owed to them, but by statute if you fail to file the lien in advance, you lose the right. That seems to be the problem in this whole thing. The existing statute forces you to file that lien well in advance. Undoubtedly, as anyone would, you probably inflate the numbers in some cases so you can fall back if you need to. You are being accused of inflating the monies and filing liens unfairly, but in reality, if you fail to do that, you give up your lien rights. Am I following the trail here correctly?

James Wadhams:

Essentially, that is correct. We are not disputing that this does not need to be clarified. It absolutely does. I would say that inflating the bills is not the case. As the proponents mentioned, there is a difference, particularly in a managed care context, between the billed charges—the published rate for a service—versus what has been negotiated as a contract with a third-party payer. That is the in-network price and that is what we are trying to protect. I disagree that there is an incentive to inflate. The problem is the timing. It is possible in certain circumstances and probably has happened, situations where the auto insurer—the liability insurer of the person who has caused the damage—may just tender policy limits on day two or three. I do not know whether insurance companies would operate that quickly or not; it only illustrates the problem of timing. We are not in disagreement with the proponents of the bill. Let us try to find the clarity that will accommodate the different time frames that are moving in this process so the opportunity to get what is fair is not lost.

Assemblyman Hansen:

Okay. I follow you, but my colleague indicated that you are trying to collect 100 cents on every dollar and to me that sounded like they were bringing up an argument of inflated charges. You seem to be disputing that concept. I have talked to both sides on this, and it seems to me we are spending a lot of time on this and a lot of these issues should have been resolved well before this hearing, if I may be honest with you. It looks to me like somebody failed to find compromise rather than have a debate for an hour and a half in front of the Assembly Committee on Judiciary. You could have come up with the language to get these time frames straightened out. I think that is obvious, and I am sure that, at some point, Chairman Yeager will suggest that the two opposing parties get together. It does not seem to me that you are really that far apart on most of this.

Assemblywoman Miller:

Following up on what many of my colleagues have asked and alluded to, I am still having a hard time understanding the accountability factor here. I understand that you say that you represent the Nevada Hospital Association. To me, it feels like you are saying, We are the association. We are not the actual hospitals, but somewhere this is happening. Right now, in an office somewhere, there are people that are going through and putting in the liens. I need to get a handle on who is doing this and whom we need to address to stop this from happening. If you are saying that you are here to get an understanding and you want to know what you can do, who are the actual people who are doing this? Somewhere in the hospitals this is happening. Whether they are outsourcing collections or it is happening internally,

where is the root of the problem? I know the Association can take a removed position from the actual practicality of what is happening.

James Wadhams:

I apologize if I appeared to be glib in that comment. I did not intend that in any way, shape, or form. We are in discussions with the Nevada Justice Association to try to clarify the language. The principle and the policy of the bill are not in question; we are just trying to clarify the language. The reason why these words cause problems—before A.B. 183—is because lawyers advising a particular hospital may read that risk, the timing discussion that I was just having with Assemblyman Hansen, a little differently. They might say, well, the liability carrier may settle this claim very quickly so we have to file at the amount we think we are owed and resolve it later. The issue is that we have to make sure everybody's rights are protected.

I am not in any way suggesting that this bill was brought forward for a reason other than that something is actually happening. It is not happening universally, but it is happening sufficiently that the sponsor brought this bill forward. We are fully engaged in discussions with the sponsors, and Mr. Bradley, Mr. Sharp, and I have been in discussions for the last two weeks on issues that come before this Committee. We are guilty as charged; we could have talked about this sooner. We hope to resolve this and bring something back for the Committee to discuss and consider. If I have come across in any way suggesting that this is not a real circumstance, then I apologize. It is a circumstance, and we just need to make sure that the language of the law does not allow for difference of opinion. That way we can accomplish what the original goal of this law was.

Assemblywoman Miller:

I thank you for that. Can you tell me, from your position representing the Nevada Hospital Association, what steps the Association would take if this bill were to pass to make sure that this was enforced?

James Wadhams:

This currently is, and will be, a public law. What we are trying to accomplish is language that cannot be interpreted in two different ways. We want clarity, and that is what I think the Committee's questions suggest you are looking for. How do we eliminate this problem? Both the proponents and the opponents are suggesting that we clarify this language so that disputes do not occur and we do not have to come back in 2019.

Assemblywoman Miller:

My actual point was that sometimes there is a disconnect between laws that are made here in the Legislature and the people who are actually working and administering those services. How is that communicated, because the average worker is not thinking, Oh wait, the law just changed? Somewhere there has to be some kind of training or workplace expectation.

James Wadhams:

At the conclusion of every legislative session, the Nevada Hospital Association compiles a compendium of all the new laws. We also do it on the federal laws whenever they change. Right now we know that by June 6, we may have some resolution of what this body is going to do. Those laws will be put in a compendium and sent to each and every member hospital. The chief executive officers and the administrators will meet and discuss the new laws, and they will be made part of their organizational documents.

Assemblyman Fumo:

Forgive me if I was asleep at the wheel, but I did not hear a satisfactory answer to Assemblyman Elliot T. Anderson's question about filing a lien and ding someone's credit. What is the purpose for that if it is not a collection effort?

James Wadhams:

I apologize. I was confounded by that question. I am not sure of the answer, and I was not prepared to answer that. I was looking at this bill and dealing with liens and lien rights and the timing of those issues. I am unaware of a problem with credit reports, although in my answer to Assemblyman Anderson, that is an issue that we are certainly happy to talk about in regard to hospitals' or creditors' rights generally, and credit reports specifically. I have no answer other than to say that we are willing to have that conversation. It seems to be different from what I am seeing in this bill.

Assemblyman Fumo:

Others might be able to answer that better. I have done very little personal injury law in my career. What I have done is criminal defense, and what I hear government officials say all the time is, "If we made a stiff penalty on this crime, then it would deter a crime." I want to follow up to Assemblyman Thompson's question about teeth in the law. You seem to want to work with the sponsors of this bill to do something to correct it, and it does not seem like every hospital is doing the lien procedure. It seems like what is happening is they are enforcing their lien right and trying to get 100 percent from a hardworking Nevadan who has suffered an injury. It is really the Nevadan, the client, that pays—trying to get 100 percent from the patient rather than 10 percent from the hospital. Would you consider working to add teeth into this law so that if a person is victimized, there would be treble damages that the victim could go after from the hospital who acted in a rogue manner, much like they do in the criminal defense world?

James Wadhams:

I think we are certainly willing to have that discussion, but I would echo the comment of Mr. Bradley. Clarity in the lien law should be sufficient so that two lawyers cannot read it differently. It should be read the same by everybody who reads it. That should eliminate this issue. This is a contractual issue. I do not think the opportunity to bring actions for tortious conduct is undeterred or otherwise affected by this. We are certainly willing to have that discussion with the Nevada Justice Association.

Assemblyman Pickard:

I think my question was answered sufficiently, but let me say I could not agree with Mr. Wadhams and Mr. Bradley more. The point that we need to get to is clarity in the law. I certainly agree that lien rights have to be protected. Having been a contractor, and relying on that myself for many years, I would not want to weaken the ability to file and collect on a lien. I just think that clarity in the rules and the process that we are going through is critically important. We should follow the normal course of billing and trying to get those amounts that are under contract. Arguably, the reasonable amount is what you contracted for. This only applies to those with insurance, as I understand it. I appreciate the position the Nevada Hospital Association is taking and I support them entirely.

Assemblyman Elliot T. Anderson:

I am sorry, Mr. Wadhams. I did not mean to catch you off guard. Section 1 has opened the statute to the discussion about what it means to collect. I figured that since we are having a conversation about that section we could add specificity to what it means to collect. There is still the broad, overall definition of "other action to collect." The reason that I brought that up is because what I am seeing out in the world is that there are debts ending up on people's credit reports that are not allowed to be collectible under the law, and people are having a hard time moving on from traumatic financial events. That can make it difficult to get out from underneath a major injury. One school of thought says that if you have something on someone's credit report, they are going to want you to pay it off. They might be reporting it as past due, and in order to get clear credit, a person would have to satisfy that debt. Since you are going to have discussions with the bill sponsor, I hope we can think about that and figure it out, so we are not coming back here with another problem. That is why I brought that up—I am not seeking to ambush anyone or anything.

James Wadhams:

I was not suggesting that I was being ambushed. I just tried to admit that I was not prepared to discuss that subject. We will certainly have those discussions with the Nevada Justice Association and come back to the Committee to discuss credit reports and false entries. I understand the question; I am just not prepared to discuss it in the context of hospitals. Maybe that is a chamber of commerce issue: I am just not sure.

Chairman Yeager:

I just want to make sure the record is clear. My understanding of the current law is that the hospital would not have the right to file a lien if the patient has insurance which that hospital has contracted with. Is that your understanding as well?

James Wadhams:

As I read the law, I think that is generally correct. The problem is that if we do not assert the right before we lose it, we will not be able to maintain it. It is really a timing question and the clarity of the language that protects that right in circumstances of a third party paying in a different time frame. Yes, essentially that is correct.

Assemblyman Watkins:

Based off your comment, I think the way this bill reads is that you actually would have lien rights for the deductible or the copay that the insured would be responsible for, regardless of the health insurance policy; so you do not lose any rights. You get the lien right away for the amount that that insured will ultimately be responsible for at the end of the day. You can do that from day one.

James Wadhams:

I think that is correct. That is the value of the reasonable value of the service. In the context of an in-network hospital or a business process outsourcing (BPO), that is the value of the contracted right and the copayment and the deductible. The question that this bill is seeking to address—and I do not want to put words into the proponents' mouths, I think they did a very good job—is the timing of when we can file versus losing the right to collect that precise amount that you have identified, Assemblyman Watkins. That is where we need to have the clarity and some protection, and I think we can get there.

Chairman Yeager:

Thank you for your testimony, Mr. Wadhams. I think you did pretty well for your first day in the Assembly Committee on the Judiciary in the 2017 Session and I am sure we will invite you back, down the road.

Shelly Toddy, Director of Patient Accounting, University Medical Center of Southern Nevada:

I will not repeat any of the opposition testimony that has already been provided. I would like to have it on record that as A.B. 183 is currently written, it would have a negative financial impact on University Medical Center (UMC) and Clark County. Based on liens in the amount of \$5.6 million in 2016, UMC collected \$2.23 million on those liens. Over time, it would continue to be an estimated loss of about \$2 million per year, given the way that A.B. 183 is written today.

Assemblyman Pickard:

Of the \$5 million for which you filed liens, was that exclusively the amount that was contracted for or was that the full amount billed? Were the collections on the contracted amount?

Shelly Toddy:

Technically, most of our liens are for uninsured patients. That is the majority as a trauma center. When a patient does have insurance, we file a claim with the insurance company simultaneously with the lien because of the long process the insurance takes in adjudicating claims. They consider the third-party liability as a prior resource to their obligation. They will not adjudicate the claim until the third party is resolved, so we are unable to discount the lien at that time.

Assemblyman Pickard:

Would the difference between liens against uninsured versus liens against insured amounts be something you could segregate for us? I would be interested to know how that breaks down.

Shelly Toddy:

Absolutely. I am not prepared to provide it right now, but that is something we could provide.

Assemblywoman Cohen:

Can you give us the time line of when services are provided, when you file a lien, and when you send the bill to the insurance company?

Shelly Toddy:

Normally, our goal is to have a claim out to the insurance companies within five days of the patient's discharge. Unfortunately, when it comes to motor vehicle accidents, we converse with the patients to find out if they want their insurance billed. Sometimes patients do not want us to submit a claim to their health insurance company for a variety of reasons. Because of the nature of motor vehicle accidents and traumatic injuries, often we do not know who the insurance is at the time of service, so we contact those patients and collect that information as well as finding out if there is a third party involved. Our goal is five days, but we do it as soon as possible.

We must file with the insurance companies within our contracted time frames: from 60 to 180 days. When it comes to Medicare and Medicaid, there are regulations on billing for their services when third parties are involved. With Medicare, the filing of the lien starts our 120-day waiting period before they will consider a claim for conditional payment. When it comes to Medicare—I know they are excluding that from this bill—it will be 120 days before we can file a claim with Medicare.

Assemblywoman Cohen:

Can you tell me when you report to collection agencies? Is the amount reported the contracted amount?

Shelly Toddy:

We do not send claims to collections as long as there is an open insurance claim in place. If the insurance denies the claim or pays the claim, it will be reduced to the amount remaining. We amend those liens before sending anything to collections, and it is the contracted rate.

Assemblywoman Jauregui:

I want clarification. You said when a person has insurance, you file the insurance claim and the lien simultaneously?

Shelly Toddy:

That is correct.

Assemblywoman Jauregui:

Nevada Revised Statutes 449.757 says that the hospital must not proceed with any efforts to collect on any amount other than for a deductible or health insurance. How is that not a violation of that section? That is the language in the current statute.

Shelly Toddy:

I do not have the full statute in front of me so I am not able to answer that question. I will get that answer for you.

Chairman Yeager:

I do not see any other questions from the Committee. Is there anyone else who would like to testify in opposition to the bill? [There was no one.] Is there any neutral testimony in Carson City or Las Vegas? [There was none.] At this point, I will invite the sponsor, Vice-Chair Ohrenschall, and anyone who would like to approach the table with him, to make concluding remarks.

Assemblyman Ohrenschall:

I appreciate all the great questions from the Committee. Thank you for hearing A.B. 183. I would like to make a couple of brief comments and then turn it over to Mr. Sharp and Mr. Bradley to address some of the points that were brought up.

I do not think any of us have any qualms with the fact that hospitals should be paid for their services. They provide an incredibly valuable resource to our constituents. As I said in my opening remarks—and I agree with Mr. Wadhams—this problem is not universal, but it is happening. It is not happening with every hospital, and I am not even certain it is happening with the majority of hospitals, but it is happening in significant numbers with our constituents. Some of our constituents worked very hard to either buy a private policy or continue at a job so they can have health insurance. They are really the losers with this current situation where liens are filed before insurance is billed, and the lien is for the much larger billed amount, not the contracted amount that our constituents have worked so hard to have.

I am certainly willing to work with everyone on the other side. We have had some brief conversations—unfortunately they were just over the last few days—but we are willing to look at any concerns they have and try to address this. I think what is happening now is really a disservice to our constituents.

Matthew Sharp:

Thank you for your time, and we look forward to working with the Nevada Hospital Association to try to resolve this issue.

Chairman Yeager:

Thank you for your presentation this morning, and I certainly invite the parties to continue working on this. I note that this bill came to the floor on February 13, 2017, so we have had a few weeks now to work on it. I will remind people that we are going to see quite a number of bills coming at us very quickly over the next couple of months before first committee passage. Please be sure to monitor those bills and to reach out if you have concerns. I want to thank you for your presentation today, and I look forward to an update on how things are coming along.

At this point, we will go ahead and close the hearing on A.B. 183.

[A document in support of A.B. 183 was submitted by the Nevada Justice Association ([Exhibit C](#)).]

We will now open the meeting to public comment. Would anyone like to give public comment on any matter, in either Carson City or Las Vegas? [There was no one.] I will close public comment. This meeting is adjourned [at 9:28 a.m.].

RESPECTFULLY SUBMITTED:

Devon Isbell
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document titled "[A.B. 183](#): Hospital Liens and Fair Collection Practices," authored and submitted by the Nevada Justice Association.