



# HOUSE BILL 161: Protecting Properly Insured Individuals.

2023-2024 General Assembly

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<b>Committee:</b>	House Judiciary 2. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	April 19, 2023
<b>Introduced by:</b>	Rep. Stevens	<b>Prepared by:</b>	Anna Parsons
<b>Analysis of:</b>	PCS to First Edition H161-CSCK-5		Susan Sitze Staff Attorneys

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**OVERVIEW:** *The Proposed Committee Substitute (PCS) to House Bill 161 would specify evidence to be included in medical charge calculations in civil proceedings, would create additional requirements for the validity of liens under G.S. 44-49(b), and would create additional unfair claim settlement practices.*

## **Section 1 – Injured party as witness when medical charges at issue.**

**CURRENT LAW:** When the issue of medical charges arises in a civil proceeding, G.S. 8-58.1 allows an injured party to provide evidence regarding the amount paid or required to be paid in full satisfaction of the charges, if copies of the charges accompany any testimony.

This testimony then establishes a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full satisfaction of the charges. However, if the provider of medical services gives sworn testimony that the charge for that provider's services was either satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of an amount less than the amount charged, then the presumption of reasonableness of the amount charged is rebutted and a new rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the provider's services.

**BILL ANALYSIS:** Section 1 of the PCS would add language specifying that the following pieces of evidence be included when calculating the amount of the medical charge:

- If the injured party has health insurance that, if filed by the health provider, would result in a charge reduction due to a contractual adjustment taken by the health provider, and that insurance claim is filed, and no lien exists under G.S. 44-49(b), then evidence as to the amount of the charge will be the amount paid by all sources and any remaining amounts to be paid.
- If a lien under G.S. 44-49(b) has been asserted, regardless of any defenses against the lien, and the injured party has no health insurance or no health insurance claim has been filed, then evidence as to the amount of the charge that may be introduced in court is the amount of the lien plus any amount paid toward the balance of the original charge and any amount still due that is not included in the lien.
- If the injured party is covered by Medicare, Medicaid, or any health plan, and the benefit provider chooses to pay the claim, then evidence as to the amount of the charge will be the amount actually paid by the benefit provider and the amount paid by or on behalf of the injured party from any source and any amount left unpaid.

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**Section 1** of the PCS also adds that the new provisions do not change, modify, or alter the provisions of G.S. 44-50 (Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges). Additionally, the injured party does not have an affirmative duty to seek a reduction in billed charges or submission of charges to health insurance.

## **Section 2 – Liens.**

**CURRENT LAW:** Under G.S. 44-49(b), no lien upon recovery for personal injuries due to medical attention is valid unless the physician, dentist, nurse, hospital, corporation, or other person entitled to the lien meets the following requirements as a condition precedent to the creation of the lien:

- Upon request, furnishes all itemized statements, hospital records, or medical reports to the injured party's attorney without charge.
- Provides a written notice of the lien to the injured party's attorney.

**BILL ANALYSIS:** **Section 2** of the PCS would create additional requirements to G.S. 44-49(b) for a lien upon recovery for personal injuries due to medical attention to be valid:

- Upon request, the physician, dentist, nurse, hospital, corporation, or other person entitled to the lien must furnish an itemized statement and either a hospital record or medical report to the injured party's attorney without charge.
- The written notice of the lien to the injured party's attorney must include the amount of the lien claimed.
- The physician, dentist, nurse, hospital, corporation, or other person entitled to the lien must have timely submitted a claim to the injured party's health insurer or health plan within the allotted time requirement of the health insurer or health plan.

**Section 2** of the PCS would also add language to G.S. 44-49(b) requiring the validity of the lien be determined at the time funds are recovered or paid to any person in compensation for or settlement of injuries whether in litigation or otherwise. Additionally, only the person receiving funds, or their representative, would be entitled to assert defenses to a lien under this subsection.

## **Section 3 – Unfair methods of competition and unfair or deceptive acts or practices defined.**

**CURRENT LAW:** G.S. 58-63-15 describes insurance practices considered to be unfair methods of competition and deceptive, including unfair claim settlement practices. G.S. 58-63-15(11) lists 14 different practices that, if committed and performed with frequency, indicate unfair claim settlement practices are taking place.

**BILL ANALYSIS:** **Section 3** of the PCS would add the following three practices to the list of unfair claim settlement practices:

- Attempting to calculate the amount of a health care provider charge by any method other than that set forth in G.S. 8-58.1 (see Section 1).
- Attempting to calculate the amount of a health care provider charge for the purpose of determining damages in a claim by a method other than that set forth in G.S. 8-58.1.

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- Applying G.S. 8C-1, Rule 414 or G.S. 8-58.1 to calculate a health care provider charge in any matter governed by Article 45C, the Revised Uniform Arbitration Act, or not governed by the Rules of Evidence.

**EFFECTIVE DATE:** This act would be effective when it becomes law and apply to civil actions pending on or after that date.

**BACKGROUND:** Rule 414 of the North Carolina Evidence Code limits evidence offered to prove past medical expenses to the amounts actually paid to satisfy bills that have been satisfied, regardless of the source, and amounts necessary to satisfy bills that have been incurred but not yet satisfied. There is no affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.