

Approved: 3-10-93

Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:45 p.m. on March 1, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Tim Carmody - Absent

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

HB 2474 - hospital lien on personal injury awards.

Chairman O'Neal stated that the subcommittee recommended that the language in the bill be changed from "not to exceed \$5,000" to "not to exceed \$15,000" and a subsection (b) be added that would read "Pursuant to this section, the court shall fix attorney fees which shall be paid proportionately by the hospital and the patient, patient's heirs, personal representatives or next of kin in the amounts determined by the courts," and that the bill be reported favorably for passage. (Attachments #1-#5)

Representative Macy made a motion to adopt the subcommittee report. Representative Plummer seconded the motion. The motion carried.

Representative Heinemann made a motion to report the HB 2474 favorably for passage as amended. Representative Plummer seconded the motion.

Representative Adkins offered an substitute motion that would place the bill back in its original form and change the \$15,000 to \$25,000. Representative Robinett seconded the motion.

Representative Pauls asked if we adopt this motion does this remove the attorney fee provision.

Chairman O'Neal stated that it would remove the provision that was added in the subcommittee. so there would be no attorney fee provision.

Representative Rock made a motion to table HB 2474. Representative Macy seconded the motion. The motion carried.

The Committee adjourned at 4:00 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE BILL No. 2474

By Committee on Judiciary

2-16

8 AN ACT concerning hospitals; relating to liens upon personal injury
9 damage recovered by patients; amending K.S.A. 65-406 and re-
10 pealing the existing section.

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 65-406 is hereby amended to read as follows:

13 65-406. *Every hospital in the state of Kansas, which shall furnish*
14 *furnishes* emergency, medical or other service to any patient injured
15 by reason of an accident not covered by the *workmen's workers*
16 compensation act, *shall*; if such injured party *shall assert or main-*
17 *tain asserts or maintains* a claim against another for damages on
18 account of such injuries, *shall have a lien not to exceed five thou-*
19 *sand dollars (\$5,000) upon that part going or belonging to such*
20 *patient of any recovery or sum had or collected or to be collected*
21 *by such patient, or by his such patient's heirs, personal represen-*
22 *tatives or next of kin in the case of his such patient's death, whether*
23 *by judgment or by settlement or compromise to the amount of the*
24 *reasonable and necessary charges of such hospital for the treatment,*
25 *care and maintenance of such patient in such hospital up to the*
26 *date of payment of such damages: Provided, however, That this.*
27 *Such lien shall not in any way prejudice or interfere with any lien*
28 *or contract which may be made by such patient or his such patient's*
29 *heirs or personal representatives with any attorney or attorneys for*
30 *handling the claim on behalf of such patient, his such patient's heirs*
31 *or personal representatives: Provided further, That the. Such lien*
32 *herein set forth shall not be applied or considered valid against*
33 *anyone coming under the workmen's workers compensation act in*
34 *this state.*

35 Sec. 2. K.S.A. 65-406 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after
37 its publication in the statute book.
38

(a)

not to exceed \$15,000

(b) Pursuant to this section, the court shall fix attorney fees which shall be paid proportionately by the hospital and the patient, patient's heirs, personal representatives or next of kin in the amounts determined by the court.

Testimony Before House Judiciary Committee

HB 2474

February 23, 1993
Topeka, Kansas

Chairman Carmody, distinguished members of the Committee. I am Matthew Hesse, a lawyer from Wichita, Kansas representing six Kansas hospitals in the CSJ Health System of Wichita, Kansas. CSJ and its affiliate hospitals are not-for-profit corporations dedicated to serving the healthcare needs of Kansas. I am here to show support for HB 2474.

In 1939, the Kansas legislature first gave Kansas hospitals a lien upon all causes of action for damages occurring to a patient for the reasonable and necessary charges for hospital care arising from such causes of action. The original bill (HB 509) gave a lien to an amount not to exceed \$200, presumably the reasonable and necessary charges of the hospital for the treatment, care and maintenance of the patient in 1939.

In 1951, the Kansas legislature increased the amount of the hospital lien to \$700, to keep in step with rising healthcare costs and inflation.

Only six years later, in 1957, the legislature increased the hospital lien amount to \$1,500.

It wasn't until 1972 that the lien amount was again raised to the current amount of \$5,000. For twenty years now, the lien amount has remained constant while healthcare costs and inflation has skyrocketed. By today's standards, the \$5,000 limit is totally inadequate to cover the reasonable and necessary charges of a patient's care and treatment in healthcare facilities.

We support HB 2474 as it removes the \$5,000 limitation and effectuates the original intent of this law, thus, giving hospitals a lien to the extent of the reasonable and necessary charges incurred, in many cases, to save the patient's life. What was reasonable in 1972 is by no means reasonable in 1993.

Other neighboring states allow hospital liens to extent of the reasonable and necessary or customary charges:

Oklahoma - Hospitals have "a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patients, or by his heirs, personal representatives or next of kin in the care of death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient up to the date of payment of such damages." O.S. 42§43.

HOUSE JUDICIARY
Attachment #2
03-01-93

Colorado - Hospitals have a lien "for all reasonable and necessary charges for hospital care upon the net amount payable to such injured person." C.R.S. 38-27-101

Texas - Hospitals are entitled to a lien "for the amount of the charges of such hospital for such treatment, care and maintenance as may have been given to injured persons." Article 5506a§1.

New Mexico - Hospitals can assert a lien to the extent of "the reasonable, usual and necessary hospital charges for treatment, care and maintenance of the injured party in the hospital and to the date of payment." N.M.S. 48-8-1

Arkansas - Hospitals have a lien "for the value of service rendered or to be rendered." Medical Nursing and Hospital Lien Act, 18-46-104

Arizona - Hospitals are entitled to a lien "for the customary charges for hospital care and treatment of an injured person." Hospital Lien, §33-931

Delaware - Charitable hospitals have a lien "for the amount of reasonable charges of such hospital for all medical treatment, care and nursing and maintenance of such injured person while in such hospital to the extent of the full and true consideration paid or given to, or on behalf of, such injured person or his legal representative." 25 § 4301, Hospital Liens

New York - Hospitals shall have a lien "for the amount of the reasonable charges in such hospital, for the treatment, care and maintenance of such injured person at cost rates in such hospital." Article 8 §189

California - Hospitals have a lien "upon the damages in excess of \$100 recovered or to be recovered by the person to the extent of the amount of the reasonable and necessary charges of the hospital for the treatment, care and maintenance of the person in the hospital during the emergency period." CC 3045.1

St. Joseph Medical Center in Wichita has experienced significant financial losses as a result of the limitation on the lien. Most cases involve patients who receive treatment and care in the Hospital, delay payment of the hospital bill, settle with their insurance companies for large amounts, pay to the hospital the sum of \$5,000 (in most cases, only a fraction of the hospital bill) and the remaining proceeds are then split between the patient and the patient's lawyer. In some cases, the hospital is forced to file a lawsuit against the patient and we discover too late that the

patient received a substantial sum of money and purchased a new house, car or other exempt property.

What follows is only a few actual case examples of how the hospital suffers loss as a result of the current lien law:

Case 1: Patient is admitted to hospital for injuries resulting from automobile accident. A medical bill totaling \$73,671.84 is incurred. Upon discharge, the patient bypassed the Business Office and later referred patient accounts personnel to his attorney. Several months went by with patient's attorney assuring settlement would be forthcoming. Hospital received a direct payment of \$5,000. One month later, the step-father of the patient informed patient accounts staff that the patient had purchased a new pickup truck and a new mobile home and would, in all likelihood, file bankruptcy. The attorney for the patient indicated that the money had been distributed; that after checking the lien law, he felt all he was legally obligated to pay St. Joseph Medical Center was only \$5,000. The insurance settlement was \$100,000.

Case 2: Patient admitted to hospital with head injury. The patient came from hospital in Bartlesville, Oklahoma. Patient treated at KU Medical Center for six weeks, then transferred to St. Joseph Medical Center. Patient incurred medical bill of \$81,631.57. Insurance adjuster indicated an offer for \$100,000 had been offered and not accepted by patient. Attorney for patient agreed to pay \$5,000 statutory lien only. Thereafter, it was discovered the hospital in Bartlesville had filed a hospital lien in the State of Oklahoma in the amount of \$60,323.14 (in Oklahoma there is no cap on hospital lien). Under this scenario, the Kansas law worked to the detriment of a Kansas hospital as it was paid only \$5,000 while the Oklahoma hospital was paid \$60,323.14.

[Later, the patient was determined eligible for Medicaid and Medicaid paid \$51,919 on this hospital bill. The drain on the Kansas Medicaid program when liability insurance proceeds should have covered the hospitalization is rather obvious. The patient and his lawyer received \$95,000 in monies. The Hospital lost approximately \$25,000.]

Case 3: Patient admitted to Medical Center after auto accident. Incurred \$21,987 bill. Perceiving settlement due from insurance company, Hospital filed lawsuit and obtained TRO against insurance company. Patient obtained \$100,000 settlement from insurance company, \$5,000 of which was sent directly to Hospital. Attorney for

patient contacted Hospital and stated that if Hospital did not accept \$10,000 in full settlement, client/patient would be filing bankruptcy after his portion of the funds were put into exempt assets. Hospital wrote off \$6,059.21 plus interest.

Case 4: Patient admitted to Medical Center. Patient in hospital for 107 days. Patient incurs bill of \$106,385.80. Patient Accounts personnel continued to call patient's lawyer. According to patient, his attorney advised not to give Medicaid card to providers — would have to pay government back; can take "medical bankruptcy" at time of settlement and not pay any bills. On hearing this, counsel for Hospital wrote to lawyers indicating representation and requesting information. One month later, a follow-up letter from hospital counsel to patient counsel. Two weeks later, another letter from Hospital counsel to patient legal counsel regarding potential lawsuit against patient. Two weeks later, and unbeknownst to hospital counsel, patient counsel sent \$5,000 check directly to Hospital. One month later, Hospital counsel notified of \$5,000. Insurance settlements totaled \$126,177.31 of which patient's attorneys took \$43,725.77 — net recovery to patient \$82,451.54. Two months later, patient files bankruptcy. Hospital intervenes to pursue in bankruptcy proceeding. Proceeds for settlement payment channeled into exempt assets, however, Bankruptcy Trustee discovers some preferences. By virtue of its persistence, Hospital recovers approximately \$15,457.76. Hospital lost approximately \$86,000.

If HB 2474 is to serve its purpose, the hospitals must enjoy a lien to the extent of reasonable and necessary charges. All too often, patients receive double recovery in the form of "free" medical care and sizable monetary settlements from insurance companies.

We invite the legislature to take this opportunity to correct this problem and make the statutory lien equitable and one worth asserting for Kansas healthcare entities.

TESTIMONY BEFORE THE JUDICIARY COMMITTEE
FEBRUARY 23, 1993
TOPEKA, KANSAS

Chairman Carmody, members of the committee, I am
✓Roberta Johnson, Associate General Counsel, St. Francis
Regional Medical Center, Inc. in Wichita, Kansas.

I appreciate the opportunity to present testimony in support of House Bill No. 2474. Adoption of this bill would repeal the present dollar value "cap" of \$5,000 on hospital lien recoveries and bring the state of Kansas into step with a number of other jurisdictions which allow Hospital liens in the amount of the hospital's reasonable and customary charges.

I believe a brief recounting of the history of the Hospital Lien Statute, K.S.A. 65-406 and a few examples of its impact on St. Francis will illustrate the reasons I am testifying in support of this bill.

K.S.A. 65-406 was first passed in 1939 with a \$200 cap. The issue next arose in 1951 at which time the cap was raised to \$700. Just six years later, in 1957, the legislature raised the cap to \$1,500. For sixteen years the cap remained at that level until 1972 when the amount was raised to \$5,000. It has remained at this level for twenty-one (21) years during which time the cost of living and inflation have risen dramatically.

It is this current limit that adds to health care costs and results in cost shifting. Let me illustrate:

- 1) In 1990, a four-year-old child was admitted to the St. Francis Burn Unit. He had been involved in a fiery van crash which killed his mother. The bill for the child's several month stay was \$183,672.99. The child was covered by Medicaid and therefore St. Francis had a one year time limit in which to file its claim to recover. St. Francis was also aware a lawsuit had been filed regarding the accident and knew it could file a hospital lien in that case to recover the statutory \$5,000 maximum.

The lawsuit dragged on and as the one year time limit approached St. Francis was forced to weigh its options of filing for payment under Medicaid or filing the \$5,000 hospital lien in the litigation. St. Francis opted to seek payment through Medicaid and was eventually paid \$31,687.82 as full recovery on the \$183,672.99 bill. St. Francis "wrote off" the remaining \$151,985.17.

The case eventually settled for an undisclosed amount, although the St. Francis Patient Accounts department was informed it was in excess of \$1,000,000. I tried to obtain the exact amount of the settlement, but was informed by counsel for the child the insurance company had requested the amount remain confidential. The \$31,687.82 paid to St. Francis through Medicaid was reimbursed to Medicaid through the proceeds of the judgment.

If the "cap" on the lien had not existed, St. Francis would have pursued recovery under the hospital lien statute and recovered for the value of its services.

Like any other business, the hospital cannot operate if it continues to recover less than the value of its services rendered. "Losses" such as the \$151,985.17, noted above must be made up by shifting costs to other payors and patients.

- 2) Another case, albeit less dramatic than the above, also illustrates the point.

An individual was admitted to St. Francis in June, 1991. The bill totalled \$11,639.80. A lien for the statutory \$5,000 maximum was filed and recovered in the litigation matter. The matter settled for \$57,000. At the time the \$5,000 lien was paid to St. Francis, the attorney for the patient stated he would pay St. Francis only the "legal amount" required. St. Francis was forced to pursue the remaining \$6,258.79, through a judgment lien. Currently, we are receiving payments on this judgment at the rate of \$20.00 per month.

- 3) An individual was admitted to St. Francis in June, 1992. His bill totalled \$9,019.65. A lien was filed and recovered for the \$5,000 maximum in the outside litigation matter, leaving a balance due of \$4,019.65. The litigation was settled for \$27,000. St. Francis is currently incurring costs in its efforts to recover the outstanding amount due.
- 4) An individual was admitted to St. Francis in March, 1992. At time of dismissal the bill totalled \$14,966.97. We filed and recovered the \$5,000 statutory maximum under the hospital lien statute. The settlement in the litigation was for approximately \$20,000.

The above examples are only a small sample of the cases St. Francis encounters on a monthly basis. I urge the committee to calculate the dollars lost by St. Francis and other hospitals due to the current \$5,000 cap on hospital lien recovery and further to consider the added costs to

health care through cost shifting, lost services and collection actions and declare support for passage of H.B. 2474.

Thank you for your consideration of my comments.



Kansas Chiropractic Association

Lien

Every individual or association licensed or incorporated under the laws of the state of Kansas and who is under the jurisdiction of the State Board of Healing Arts, shall be entitled to a lien for the reasonable charges of care and treatment rendered to any person who has sustained injury as a result of the negligence or alleged negligence of any other person. This lien shall be upon any sum awarded the injured person or their personal representative by way of settlement, compromise, judgement, decree, award, order, or any other 3rd party payment.

Any person or insurer who, after the report of a certified copy of notice of lien, shall make full compensation to the lienholder prior to disbursement to the injured person or organization acting on behalf of the injured person. Should said lien be violated the lienholder shall have cause of action against the person and/or organization making any such payment and may be prosecuted in any county where the notice of lien has been filed. Should such action be necessary the lienholder may add in addition to the amount of said lien, the sum total of court and attorney fees needed to bring afore mentioned action to completion.

HOUSE JUDICIARY
Attachment #4
03-01-93



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
HOUSE JUDICIARY COMMITTEE
regarding
HOUSE BILL 2474
February 23, 1993

House Bill 2474 is a special interest bill which serves no public policy or general welfare interest. On behalf of injured citizens in the State of Kansas, the Kansas Trial Lawyers Association opposes the bill both in principle and in its operational mechanics.

House Bill 2474 grants to hospitals in the State of Kansas an automatic lien, or right to assert such lien, which is not granted to other litigants, doctors, health care providers or creditors in the state. No good or just cause exists for giving a hospital, which furnishes emergency, medical or other services to a patient injured by the tortious acts of another, a greater right to collection than that available against any other patient or creditor. A hospital should have no greater right to collect from a person who is injured, through no fault of his or her own, than it has against any other citizen seeking and obtaining medical care or treatment in the state who for one reason or another is unable to pay for the services provided when they are rendered.

Contrary to its predecessor, House Bill 2474 provides no trade-off provision, i.e., the grant of a lien right in exchange for a limitation on the amount of the lien assertable, previously \$5000.

The language of House Bill 2474 is ambiguous and will in fact increase litigation costs and create inequities. It does not limit the amount of the lien recovery to only the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital "for injuries caused by reason of the accident." Presumably that is the intent of the bill, but its language doesn't have that limiting effect. Other lien or subrogation statutes have such limitation, as for example, the right of subrogation for Personal Injury Protection benefits which is limited to "duplicative" coverage. See, K.S.A. 40-3113a. House Bill 2474 should limit the lien on recovery, once a hospital provides treatment to an injured citizen, only to charges for treatment caused by the negligence of a third party.

House Bill 2474, unlike its predecessor, also leaves open the time period for which the lien may be asserted. The original version of K.S.A. 65-406 limited the lien recovery to amounts

provided for care and treatment "up to the date of payment of such damages." Under the current language a hospital could presumably assert or reassert a lien against the total recovery received by an injured citizen for future medical care provided regardless of whether such damages were included in a settlement or verdict or whether the recovery was sufficient.

House Bill 2474 will require an attorney representing an injured claimant to in essence work for free and will also adversely affect the ability of the parties to a lawsuit to settle claims short of trial. Under the proposed legislation a hospital has no incentive to reduce or compromise the amount of its lien as it has no obligation to contribute one penny toward the costs of litigating the matter or the payment of attorneys' fees. No version of House Bill 2474 should be allowed to pass into law that does not include an amendment specifically mandating that such hospitals be responsible for payment of their proportionate share of such costs and attorneys' fees. Similar provisions already exist with respect to personal injury protection benefits, workers compensation and SRS or other medical assistance payments. For example, due to this same type of inequity, K.S.A. 39-719a was amended to require that when a lien or subrogation right was asserted, "the court shall affix attorney fees, which shall be paid proportionately by the secretary and the injured person...in the amounts determined by the court." Likewise, the Personal Injury Protection statute requires that "the court shall fix attorneys fees which shall be paid proportionately by the insurer or self insurer and the injured person, his or her dependents or personal representatives in the amounts determined by the court." K.S.A. 40-3113a.

Given the mandate for itemized verdicts in the State of Kansas, the amount recoverable by any hospital on such liens should also be limited to the amount actually awarded by the jury for medical care and expenses incurred to the date of the trial. any lien asserted should also be subject to reduction based on comparative fault principles for the "percentage of negligence attributable to the injured person." See. K.S.A. 39-719a.

Respectfully Submitted,

Ruth M. Benien
Vice President for Legislation
KANSAS TRIAL LAWYERS ASSOCIATION