

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 11, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Karen DiVita- Johnson - Excused  
Representative Judy Morrison - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research  
Jill Wolters, Department of Revisor of Statutes  
Sherman Parks, Department of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Brian Vazquez, Administrator for Social and Rehabilitation Services State Recovery Unit  
Matt Goddard, Heartland Community Bankers Association  
Kathy Olsen, Kansas Bankers Association  
Marianne Deagle, Special Assistant to the Assistant Secretary of Health Care Policy  
John Badger, General Counsel, Social and Rehabilitation Services

Hearings on **HB 2775 - Medical assistance; recovery of previous paid medical assistance**, were opened.

Brian Vazquez, Administrator for SRS State Recovery Unit, appeared as a proponent of the bill. He explained that the proposed legislation would increase recoveries and improve the effectiveness of the Estate Recovery Program. It would do so by imposing a lien on real property of a recipient of medical assistance for the purpose of recovering paid medical assistance. This would be imposed on primarily on those clients who have been in long-term care. ([Attachment 1](#))

Matt Goddard, Heartland Community Bankers Association, was concerned that the proposed bill allows the lien to be in effect until: the lien is satisfied, the value of the property is consumed by the lien or the recipient leaves the nursing facility, it does not discharge the lien upon foreclosure for a previous liens. They were also concerned that it does not specify the priority of liens. He proposed amendments that would take care of these concerns. ([Attachment 2](#))

Kathy Olsen, Kansas Bankers Association, appeared before the committee with the same concerns as Mr. Goddard and supported the suggested amendments. ([Attachment 3](#))

Hearings on **HB 2775** were closed.

Hearings on **HB 2774 - Participants in the sexual predator treatment program; annual examination by Secretary of SRS and the Court**, were opened.

Marianne Deagle, Special Assistant to the Assistant Secretary of Health Care Policy, explained that the proposed bill would authorize SRS to contract for transitional release if they were to determine that the person is not likely to commit acts of sexual violence. The proposed bill would simply require the county to discuss transitional release, it wouldn't force them to provide any services. ([Attachment 4](#))

Hearings on **HB 2774** were closed.

Hearings on **HB 2773 - Criminal procedure; adding state security hospital to the definition of criminal justice agency**, were opened.

John Badger, General Counsel, SRS, informed that committee that the purpose of the bill was to add State Security Hospital to the definition of a criminal justice agency for the purpose of doing security checks, which would provide complete background checks on employees. ([Attachment 5](#))

Hearings on **HB 2773** were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 11, 2002 in Room 313-S of the Capitol.

**HB 2722 - Authorizing financial organizations to provide information to Security of SRS**

Representative Loyd made the motion to amend in a provision that would provide blanket immunity to financial organizations for disclosure of information that has been requested by the Secretary of SRS. Representative Swenson seconded the motion. The motion carried.

Representative Loyd made the motion to report **HB 2722** favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

**HB 2698 - Real estate sales validation questionnaire does not apply to transfers of title from a trust without consideration**

Representative Loyd made the motion to amend the bill so two sales validation questionnaires are not necessary and only one is required. Representative Long seconded the motion. The motion carried.

Representative Loyd made the motion to report **HB 2698** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

**HB 2697 - Conversion of Chapter 61 cases to Chapter 60 cases permissive not mandatory by the courts**

Representative Howell made the motion to report **HB 2697** favorably for passage. Representative Klein seconded the motion. The motion carried.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for February 12, 2002.

**Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary**

**House Judiciary Committee  
February 11, 2002**

**Testimony Regarding House Bill 2775**

Mr. Chairman and members of the Committee, thank you for the opportunity to appear on HB 2775. My name is Brian Vazquez, Administrator of the Department's Estate Recovery Program. HB 2775 establishes lien authority for the Department in situations involving medical assistance recipients in long term care. This legislation would increase recoveries and improve the effectiveness of the Estate Recovery Program.

As background, the Estate Recovery Program was initially authorized by the Legislature in 1992 and has since become a federally mandated process. The program allows the agency to recover Medicaid expenses properly paid on behalf of a Medicaid recipient from his or her estate if the recipient was either 55 years of age or older or in a long term care arrangement. It provides a means of giving back a portion of the expenses paid; expenses which make up the greatest proportion of the Medicaid program. Most recoveries are from probate actions and family agreements. Per federal and state law, no recovery action is taken if there is a surviving spouse or a minor or disabled child. Recoveries in FY 2001 exceeded \$3.7 million in Kansas and over \$20 million since the program's inception. Through December 2001, the Unit has recovered \$2.4 million dollars for current fiscal year. Using the funding ratios, net monies recovered are returned to the federal and state coffers. Approximately 40% of the recoveries are returned to Kansas. In FY 2001, the State received approximately \$1.47 million.

Over the past years, the Department has noted other states using medical assistance liens as a way to increase both the effectiveness of and the recoveries for their estate recovery programs. Similarly, the agency has also noted an increase in joint tenancies of convenience and homestead actions on behalf of children of the medical assistance recipient as a way to avoid the State's claim in probate actions. In light of current budget realities, we felt it particularly critical to pursue the authority for imposition of liens as a means of recovery for the State and its taxpayers.

This is one of three bills the Department is pursuing this year regarding its Estate Recovery program and which as a total are expected to increase collections by an additional \$125,000 for the next fiscal year and perhaps \$200,000-\$300,000 in out years. These numbers have been shared with the Governor's Office and have been used in constructing the agency's budget.

This proposal would impose a lien on the real property of a recipient of medical assistance for the purpose of recovering previously paid medical assistance. This proposal would be part of the estate recovery process. This lien would be imposed primarily on medical assistance clients who have been in long-term care. This proposal would use a 1 year residency in a medical facility as a threshold for examination of cases. During the first year, staff would conduct extensive outreach to familiarize workers, families, attorneys and advocacy groups with the parameters of the federal law involving liens. Federal law allows liens to be placed on real estate owned by medical assistance consumers who have entered long-term care. Further, no lien can be imposed when any of the following reside in the consumer's residence: recipient's spouse, recipient's child under the age of 21, recipient's child who is blind or disabled or a sibling with an equitable interest and who resided in the house for 1 year before the recipient's admission to a medical facility. Once the state has determined the propriety for a lien, the state would provide notice to the consumer and opportunity for a fair hearing. At the fair hearing, the issue, as required by federal law, would be whether the recipient can reasonably be expected to return home from the medical institution. Once a lien is allowed, the state would make the recovery when the property is sold.

Lien authority currently exists in about 20 states including Missouri, Oklahoma, Iowa and Colorado. In a survey of states with estate recovery programs conducted in 1997, the State of North Carolina found that lien authority was more common among the top 10 collection states than in the bottom 10 states. Of those 10 states, Minnesota, Oregon, Wisconsin, Iowa and North Dakota use both liens and probate recovery methods. Within our area, Missouri, Iowa and Colorado, also, use both methods.

As you can imagine, the thought of liens conjures negative emotions for property owners. Even though there appears to be financial benefits for the state from this legislation, the agency is concerned over the impact on recipients and their families. To be frank, there were similar concerns when estate recovery was started in 1992. However, by encouraging outreach and communication and using cooperation and compromise, the present program has been successful. We will need to follow the same course. Our goal is to be fair to those individuals and families impacted by the estate recovery process while still allowing for enhanced collections in an accurate and equitable manner. This bill would allow us to meet this goal. I ask for your support of this new measure to help us in further improving our efforts.



To: House Committee on Judiciary

From: Matt Goddard

Date: February 11, 2002

Re: HB 2775

The Heartland Community Bankers Association appreciates the opportunity to share its concerns regarding **House Bill 2775** with the House Judiciary Committee.

The Heartland Community Bankers Association represents thrifts in Kansas, Colorado, Nebraska and Oklahoma. Our members specialize in residential mortgage lending. In 2000, Kansas thrifts made more than \$1.7 billion in residential mortgage loans. For the first nine months of 2001, Kansas savings associations made more than \$1.7 billion in residential mortgage loans.

House Bill 2775 authorizes the secretary of the Department of Social and Rehabilitation Services, or the secretary's designee, to file and enforce liens on the real property of certain aid recipients under certain circumstances. Our concern with HB 2775 is that the bill does not reflect long-standing case law and common law governing mortgages and liens.

Most Kansans lack the financial wherewithal to purchase a home without assistance from a mortgage lender. Lenders are able to make such loans because the home, i.e. real property, being purchased serves as the collateral for the loan. The lender establishes this security by filing a mortgage with the register of deeds in the county where the real property is located. Filing the mortgage before any other mortgages or liens grants priority status to a purchase money mortgage. Any subsequent liens are considered to be junior or inferior liens.

In the event of default, proceeds from the foreclosure sale are used to pay off the debt to the priority lien holder. Any remaining proceeds are then distributed to other lien holders, based on the order in which their liens were filed. Each lien holder is fully paid before funds go to satisfy a subsequent lien. There is no guarantee all of the lien holders will be fully paid. All liens, regardless of whether or not they are satisfied, are discharged when the foreclosure process is completed.

Kansas law requires liens to be filed with the register of deeds in the county where real property is located so potential lenders know their standing when making a credit decision. Under existing case law and common law, a party cannot move ahead of previously filed liens in order to establish priority. To allow lien holders to "jump ahead" would jeopardize the security that enables lenders to make mortgage loans. This would in turn diminish the value of mortgage loans from Kansas when they are sold elsewhere on the secondary market.

The liens authorized in HB 2775 are not classified as junior liens by the bill. While we are confident that a court would find any liens filed by SRS to be junior to those previously recorded, we would prefer to see this affirmed in statute. HCBA fails to see a rationale for intentionally leaving a statute ambiguous and in need of interpretation by the courts.

The other major concern HCBA has with HB 2775 is that liens filed by the secretary remain in effect until one of three things happen: the lien is satisfied, the value of the property is consumed by the lien or the recipient leaves the nursing or medical facility. The bill does not discharge the lien upon foreclosure for a previous lien.

No other lien transcends the foreclosure process like this. Allowing the lien to remain in effect after foreclosure would make the prior lien holder, through a diminished property value at auction, or the subsequent homebuyer responsible for satisfying the recipient's debt to SRS. The SRS lien would effectively allow the Department to recoup the dollars it paid to the recipient at the expense of other parties not related to that recipient.

HCBA does take a position on the broad issue of SRS filing and enforcing liens against the real property of recipients of medical assistance. Should this Committee find that this is a prudent public policy, HCBA would respectfully request the Committee adopt the attached amendatory language that addresses the concerns outlined in my testimony.

Thank you for your consideration of our concerns with House Bill 2775.

enclosure

1 only under this subsection and no other shall be distributed pursuant to  
 2 subsection (d) of K.S.A. 39-756, and amendments thereto, except that  
 3 any amounts designated as medical support shall be retained by the sec-  
 4 retary for repayment of the unreimbursed portion of assistance. Amounts  
 5 collected pursuant to the assignment of rights to payment for medical  
 6 care from a third party shall also be retained by the secretary for repay-  
 7 ment of the unreimbursed portion of assistance.

8 (2) The amount of any medical assistance paid after June 30, 1992,  
 9 under the provisions of subsection (e) is (A) a claim against the property  
 10 or any interest therein belonging to and a part of the estate of any de-  
 11 ceased recipient or, if there is no estate, the estate of the surviving spouse,  
 12 if any, shall be charged for such medical assistance paid to either or both,  
 13 and (B) a claim against any funds of such recipient or spouse in any  
 14 account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-  
 15 5829, and amendments thereto. There shall be no recovery of medical  
 16 assistance correctly paid to or on behalf of an individual under subsection  
 17 (e) except after the death of the surviving spouse of the individual, if any,  
 18 and only at a time when the individual has no surviving child who is under  
 19 21 years of age or is blind or permanently and totally disabled. Transfers  
 20 of real or personal property by recipients of medical assistance without  
 21 adequate consideration are voidable and may be set aside. Except where  
 22 there is a surviving spouse, or a surviving child who is under 21 years of  
 23 age or is blind or permanently and totally disabled, the amount of any  
 24 medical assistance paid under subsection (e) is a claim against the estate  
 25 in any guardianship or conservatorship proceeding. The monetary value  
 26 of any benefits received by the recipient of such medical assistance under  
 27 long-term care insurance, as defined by K.S.A. 40-2227, and amendments  
 28 thereto, shall be a credit against the amount of the claim provided for  
 29 such medical assistance under this subsection (g). The secretary is au-  
 30 thorized to enforce each claim provided for under this subsection (g).  
 31 The secretary shall not be required to pursue every claim, but is granted  
 32 discretion to determine which claims to pursue. All moneys received by  
 33 the secretary from claims under this subsection (g) shall be deposited in  
 34 the social welfare fund. The secretary may adopt rules and regulations  
 35 for the implementation and administration of the medical assistance re-  
 36 covery program under this subsection (g).

37 (3) *The secretary of social and rehabilitation services or the secre-*  
 38 *tary's designee is authorized to file and enforce a lien against the real*  
 39 *property of a recipient of medical assistance in certain situations. This*  
 40 *lien is for payments of medical assistance made by the department of social*  
 41 *rehabilitation services to the recipient who is an inpatient in a nursing*  
 42 *home or other medical institution. Such lien may be filed only after notice*  
 43 *and an opportunity for a hearing has been given. Such lien may be en-*

, subject to all prior liens of record in the office of the register of deeds of the  
 county where the real property is located.

1 forced only upon competent medical testimony that the recipient cannot  
 2 reasonably be expected to be discharged and returned home. A one-year  
 3 period of compensated inpatient care at a nursing home, nursing homes  
 4 or other medical institution shall constitute a determination by the de-  
 5 partment of social and rehabilitation services that the recipient cannot  
 6 reasonably be expected to be discharged and returned home. To return  
 7 home means the recipient leaves the nursing or medical facility and resides  
 8 in the home on which the lien has been placed for a period of at least 90  
 9 days without being readmitted as an inpatient to a nursing or medical  
 10 facility. The amount of the lien shall be for the amount of assistance paid  
 11 by the department of social and rehabilitation services after the expiration  
 12 of one year from the date the recipient became eligible for compensated  
 13 inpatient care at a nursing home, nursing homes or other medical insti-  
 14 tution until the time of the filing of the lien and for any amount paid  
 15 thereafter for such medical assistance to the recipient.

16 (4) The lien filed by the secretary or the secretary's designee for med-  
 17 ical assistance correctly received may be enforced before or after the death  
 18 of the recipient. However, it may be enforced only:

- 19 (A) After the death of the surviving spouse of the recipient;
- 20 (B) when there is no child of the recipient, natural or adopted, who  
 21 is 20 years of age or less residing in the home;
- 22 (C) when there is no adult child of the recipient, natural or adopted,  
 23 who is blind or disabled residing in the home; or
- 24 (D) when no brother or sister of the recipient is lawfully residing in  
 25 the home, who has resided there for at least one year immediately before  
 26 the date of the recipient's admission to the nursing or medical facility,  
 27 and has resided there on a continuous basis since that time.

28 (5) The lien remains on the property even after a transfer of the title  
 29 by conveyance, sale, succession, inheritance or will unless one of the fol-  
 30 lowing events occur:

- 31 (A) The lien is satisfied. The recipient, the heirs, personal represen-  
 32 tative or assigns of the recipient may discharge such lien at any time by  
 33 paying the amount of the lien to the secretary or the secretary's designee;
- 34 ~~(B) the value of the real property is consumed by the lien, at which~~  
 35 ~~time the secretary or the secretary's designee may force the sale for the~~  
 36 ~~real property to satisfy the lien; or~~
- 37 ~~(C) after a lien is filed against the real property, it will be dissolved~~  
 38 ~~if the recipient leaves the nursing or medical facility and resides in the~~  
 39 ~~property to which the lien is attached for a period of more than 90 days~~  
 40 ~~without being readmitted as an inpatient to a nursing or medical facility,~~  
 41 ~~though there may have been no reasonable expectation that this~~  
 42 ~~event occur. If the recipient is readmitted to a nursing or medical facility~~  
 43 ~~during this period, and does return home after being released, another~~

- (B) the lien is terminated by foreclosure of prior lien of record;
- (C)
- (D)





Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary

House Judiciary Committee, 313-S  
February 11, 2002 at 3:30 p.m.

House Bill 2774

Chairperson O'Neal and members of the committee, thank you for the opportunity to appear today to discuss House Bill 2774. My name is Marianne Deagle; I am an attorney who serves as the Special Assistant to the Assistant Secretary of Health Care Policy at the Department of Social and Rehabilitation Services.

HB 2774 amends K.S.A. 59-29a01 in three ways as described below:

**Transfer of Persons with Deteriorating Physical Health**

The bill would provide SRS the ability to move extremely ill persons admitted to the Sexual Predator Treatment Program (SPTP) at Larned State Hospital (LSH) into the transitional release phase of treatment if the person is not likely to commit predatory acts of sexual violence. The bill addresses the problem SRS faces when extremely ill persons in the SPTP are unable to benefit from treatment due to illness. Despite their inability to benefit from treatment, they remain in the program at LSH until they are transferred to a hospital. The bill would allow placement of these persons into transitional release in order to place them in supervised settings more appropriate to their health needs.

Specifically, the bill adds "deterioration of the person's physical health" as a circumstance change to be considered by the Secretary in determining whether to authorize a person committed to the program to petition the court for transitional release or to subsequently recommend conditional release. Currently, the Secretary can only consider whether there has been a change in the person's mental abnormality or personality disorder such that the person is not likely to commit predatory acts if placed on transitional or conditional release. This amendment would allow the Secretary to also assess whether the person's deteriorating physical health makes them not likely to commit such acts. Likewise, this bill would allow the court to consider deteriorating physical health in determining whether a person is safe to be placed in transitional or conditional release.

Since 1994, five persons in the SPTP have died while at LSH. In at least two of those cases, the individuals died after suffering long bouts with cancer and heart disease. For several months prior to their death, while still admitted to the SPTP and living at LSH, they were wheelchair bound and unable to participate in treatment because they were too ill. When their illnesses progressed, they were transferred to nearby hospitals. These individuals incurred large medical bills which were paid for entirely with state funds. HB 2774 would allow these individuals to be moved to transitional release, and to then be placed in nursing homes or hospices and eventually medical hospitals, the cost of which could be borne by Medicare or Medicaid.

**Securing Transitional Services in Communities**

The bill would also authorize the Secretary to contract for transitional release services. In addition, it would require the board of county commissioners for the county in which the person was committed for treatment to assist the Secretary of SRS, to secure transitional release services in that community, if requested by the Secretary. Pursuant to K.S.A. 59-29a01, transitional release means any halfway house, work release or other placement designed to assist the person's adjustment and reintegration into the community once released from commitment. Finding appropriate transition services for persons ready for transitional release has been a significant challenge.

**Use of a Multidisciplinary Team to Assess Readiness for Transitional Release**

Lastly, the bill would allow the Secretary of SRS to appoint a multidisciplinary team of professionals to review a recommendation from the SPTP's program director that a person is ready for transitional release. The review team may include individuals representing the Attorney General, the Secretary of Corrections, the Kansas Parole Board and other professionals. The team would recommend to the Secretary of SRS whether the person is ready for transitional release. The bill would also allow such a team to be convened when conditional release is considered.

Thank you for the opportunity to testify today; I would be happy to answer any questions you may have.

**Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary**

House Judiciary Committee, 313-S  
February 11, 2002 at 3:30 p.m.

**House Bill 2773**

Chairperson O'Neal and members of the committee, thank you for the opportunity to appear today to discuss House Bill 2773. My name is John Badger; I am General Counsel for the Department of Social and Rehabilitation Services. This proposal is a part of the Department's legislative package.

House Bill 2773 amends K.S.A. 22-4701 to add the State Security Hospital (SSH) to the definition of criminal justice agency. The purpose of this change is to provide the State Security Hospital with direct access to the Kansas Bureau of Investigation's criminal history record information in order to properly treat patients, make fully informed recommendations to the district courts about patients, and ensure that the SSH is fully informed about potential SSH employees prior to employing them.

The State Security Hospital is a maximum security hospital that serves the statewide needs of the Department of Corrections (DOC) and the Judicial System. The SSH serves criminal forensic patients who are committed from the district courts or transferred from the DOC. The SSH also provides care and treatment to non-forensic patients whose severe behavior problems have caused them to be transferred from Larned State Hospital and other mental health facilities to the Security Behavior Ward at SSH. Patients are cared for and treated until they are returned to the courts for further legal disposition when relevant clinical and legal criteria are met. Other patients are transferred back to the DOC when care and treatment are completed.

Currently, the SSH does not have access to complete criminal history information about the persons it treats or the persons it hires. To properly treat patients, make fully informed recommendations to the courts about the patients it serves, and ensure that the persons it employs do not, themselves, have criminal backgrounds, the SSH would benefit greatly by gaining direct access to the KBI's criminal history information database.

House Bill 2773 amends K.S.A. 22-4701 to add the SSH to the definition of criminal justice agency which will allow the SSH to gain direct access to this information. Thank you.