

**HB**

**306**

9-LS0913\G ✓  
Ford  
4/25/95

CS FOR HOUSE BILL NO. 306( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE TOOHEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a lien for services provided by a hospital, nurse, or  
2 physician."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 34.35.450(a) is amended to read:

5 (a) An operator of a hospital in the state, [OR] a licensed special nurse in a  
6 hospital in the state, or a physician who furnishes service to a person who has a  
7 traumatic injury has a lien upon any sum awarded to the injured person or the personal  
8 representative of the injured person by judgment or obtained by a settlement or  
9 compromise to the extent of the amount due the hospital, [OR] nurse, or physician for  
10 the reasonable value of the service furnished before the date of judgment, settlement,  
11 or compromise, together with costs and reasonable attorney fees that the court allows,  
12 incurred in the enforcement of the lien. AS 34.35.450 - 34.35.480 do not apply to a  
13 claim, right of action, or money accruing under AS 23.30 (Workers' Compensation  
14 Act).

1 \* Sec. 2. AS 34.35.455 is amended to read:

2 Sec. 34.35.455. LIMITATION ON EXTENT OF LIEN. Except as otherwise  
3 provided, a lien under AS 34.35.450 - 34.35.480 may not be allowed for  
4 hospitalization or the services of a physician or licensed special nurse furnished after  
5 a settlement is made by or on behalf of the person causing the injury unless the  
6 settlement is made within 20 days from the date of the injury. A lien is not allowed  
7 for necessary attorney fees, costs, and expenses incurred by the injured person in  
8 securing a settlement, compromise, or judgment.

9 \* Sec. 3. AS 34.35.460 is amended to read:

10 Sec. 34.35.460. NOTICE OF LIEN. To perfect the lien described in  
11 AS 34.35.450 - 34.35.480, the hospital or the owner or operator of the hospital, or the  
12 physician or licensed special nurse, shall, not later than ~~90~~ [20] days after the date of  
13 injury, or in no event later than ~~90~~ [15] days after the discharge of the injured person  
14 from the hospital or the provision of the physician's services, file a notice of lien  
15 substantially in the form prescribed in AS 34.35.465, containing a general description  
16 of the services rendered and a [AN ITEMIZED] statement of the amount claimed,  
17 with the recording ~~officer~~ <sup>office</sup> of the recording district or borough in which the injury  
18 occurred, and shall, after the ~~90-day~~ [20-DAY] period, before the date of judgment,  
19 settlement, or compromise, serve a [CERTIFIED] copy of the notice of lien by  
20 registered mail, at the last known address, upon the person alleged to be responsible  
21 for causing the injury and from whom damages are claimed, and upon the insurance  
22 carrier that has insured against the liability, if the insurance carrier is known.

23 \* Sec. 4. AS 34.35.465 is amended to read:

24 Sec. 34.35.465. FORM OF NOTICE. The form of notice required by  
25 AS 34.35.450 - 34.35.480 shall be substantially as follows:

26 NOTICE is hereby given that \_\_\_\_\_ has rendered services for  
27 hospitalization, physician services, or special nurses' services for \_\_\_\_\_,  
28 a person who was injured on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the  
29 state, and the \_\_\_\_\_ (claimant) hereby claims a lien upon any  
30 money due or owing or any claim for compensation, damages, contribution, settlement,  
31 or judgment from \_\_\_\_\_ alleged to have caused the

*new to draft*

*new to draft*

*new to draft*

1 injuries and any other person liable for the injury or obligated to compensate the  
 2 injured person on account of the injuries; the hospitalization, physician services. [(  
 3 or special nurses' services )] were [WAS] rendered to the injured person between the  
 4 \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_:

5 General Description of Services Rendered and  
 6 Statement of Amount Due  
 7 [(ITEMIZED STATEMENT)]

*new to Draft*

*new Draft*

8 \_\_\_\_\_  
 9 and that 90 [15] days have not elapsed since that time; that the claimant's demands for  
 10 care and service is in the sum of \$ \_\_\_\_\_ and that no part of the demands has  
 11 been paid, except \$ \_\_\_\_\_, and that there is now due and owing and remaining  
 12 unpaid thereof, after deducting all credits and offsets, the sum of \$ \_\_\_\_\_, in which  
 13 amount lien is hereby claimed.

14 United States of America

15 State of Alaska ss.

16 \_\_\_\_\_ Judicial District

17 I, \_\_\_\_\_, being first duly sworn on oath say: That  
 18 I am \_\_\_\_\_ named in the foregoing claim of lien; that I have  
 19 read the same and know the contents thereof and believe the same to be true.

20 \_\_\_\_\_

21 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 22 19\_\_\_\_.

23 \_\_\_\_\_

24 Notary Public for Alaska

25 \* Sec. 5. AS 34.35.470 is amended to read:

26 Sec. 34.35.470. LIEN DOCKET. Each recording officer shall maintain a  
 27 hospital, physician, and nurses' lien docket in which, upon filing of a notice of lien,  
 28 the officer shall enter the name of the injured person, the approximate date of the  
 29 injury, the name and address of the hospital, physician, or nurse filing the notice, and  
 30 the amount claimed. The recorder shall make an index in the name of the injured  
 31 person. Notwithstanding any other provision of AS 34.35.450 - 34.35.480, the

*Should be repealed*

*inserted in AS 40.17.040*

New Text Underlined [DELETED TEXT BRACKETED]

1 docketing of the lien is sufficient notice to a tortfeasor or the tortfeasor's insurer.

2 \* Sec. 6. AS 34.35.475 is amended to read:

3 Sec. 34.35.475. SETTLEMENT AFTER NOTICE. (a) A person or insurer  
4 is liable to a hospital, physician, or nurse, in the amount that the hospital, physician,  
5 or nurse is entitled to receive, for 180 days after the date of a payment to the injured  
6 person, the heirs of the injured person, personal representatives, or the attorney of  
7 them, when the person or insurer

8 (1) receives a [THE CERTIFIED] copy of notice of lien, or the lien is  
9 recorded as provided in AS 34.35.460 and 34.35.465;

10 (2) makes the payment after receipt of notice or the recording of the  
11 lien as compensation for the injury suffered; and

12 (3) does not pay the hospital, physician, or the licensed special nurse  
13 for the reasonable value of the services rendered to the injured person and claimed in  
14 the notice of lien, or so much of the value of the services as can be satisfied out of a  
15 judgment, settlement, or compromise, after paying the attorney fees, costs, and  
16 expenses incurred in connection with it.

17 (b) The hospital, physician, or nurse has a cause of action, during the 180  
18 days, against the person or insurer.

19 \* Sec. 7. AS 34.35 is amended by adding a new section to read:

20 Sec. 34.35.482. DEFINITION. In AS 34.35.450 - 34.35.482, "physician"  
21 means a person licensed as a chiropractor under AS 08.20 or a person licensed as a  
22 doctor of medicine under AS 08.64.

*New  
to Draft*

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
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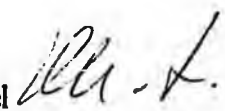
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

April 26, 1995

**SUBJECT:** Sectional Summary of HB 306( ). (Work Order No. 9LS0913\G)

**TO:** Representative Cynthia Toohey  
Attn: Marveen

**FROM:** Michael F. Ford   
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Adds physician's to an existing provision of law creating a lien against any sum awarded to an injured person by judgment or settlement. The lien is equal to the reasonable value of the services provided by the physician.

**Section 2.** Provides that the physician's lien does not apply to services provided after settlement with the person who caused the injury, unless the settlement is made within 20 days from the date of injury.

**Section 3.** Requires that notice of the lien be filed with the recorders office, in order to perfect the lien. Requires that notice be filed not later than 90 days after injury, discharge from the hospital, or provision of the physician's services. Requires the notice contain a general description of the services rendered.

**Section 4.** Adds physician services to the statutory notice form established under AS 34.35.465 - 34.35.480.

**Section 5.** Adds physicians to those entities that are required to be included in the recorders lien docket.

**Section 6.** Adds physicians as a profession that receives the protection of AS 34.35.475. This provision makes a person or insurer liable for payments made to an injured person, when the

Representative Cynthia Toohey

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person or insurer has received notice of a physician's lien, or the lien is recorded, the payment is made after notice of the lien is given, and the lien is unsatisfied. Deletes a requirement that a certified copy of the lien be provided.

**Section 7.** Adds a definition of "physician".

MFF:glc

95-304.glc



# Yukon-Kuskokwim Health Corporation

*Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion*

## VIA FAX TRANSMISSION

April 21, 1995

Memorandum

To: Harlan Knudson

From: Frank Williams

Subject: Lien Law

Enclosed is a copy of the Hospital Lien Law from Texas. I found that it worked very well in the cases where it was applicable.

This is forwarded to you for information only.

## CHAPTER 55. HOSPITAL LIEN

### Section

- 55.001. Definitions.
- 55.002. Lien.
- 55.003. Property to Which Lien Attaches.
- 55.004. Amount of Lien.
- 55.005. Securing Lien.
- 55.006. Discharge of Lien.
- 55.007. Validity of Release.
- 55.008. Hospital Records.

### Law Review Commentaries

Hospital lien. 20 Baylor L.Rev. 365 (1968).

### Library References

Hospitals 5.  
WESTLAW Topic No. 204.  
C.J.S. Hospitals §§ 11. 13 to 15.

### § 55.001. Definitions

In this chapter:

- (1) "Hospital" means a person or institution maintaining a facility that provides hospital services in this state.
- (2) "Person" does not include a county, common, or independent school district.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

### Revisor's Note

"Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes the following entities listed in the source law definition: association, individual, corporation, firm, agent, servant, employee, municipal corporation, public corporation, and quasi-public corporation.

### Historical and Statutory Notes

#### Prior Laws:

Acts 1937, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.  
Vernon's Ann.Civ.St. art. 5506a, §§ 1, 4.

### Notes of Decisions

#### Purpose of law 1

#### 1. Purpose of law

Purpose of Vernon's Ann.Civ.St. art. 5506a (repealed; now §§ 55.001 to 55.008) was to

induce hospitals to receive patient, injured by negligence of others, by giving hospital lien on the claims, suit or settlement of the patient against the negligent third party. *Baylor University Medical Center v. Travelers Ins. Co.* (Civ. App.1979) 587 S.W.2d 501, rel. n.r.s.

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LIENS AND EXEMPT PROPERTY  
Title 5

§ 55.002. Lien

(a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

Historical and Statutory Notes

Prior Laws:

Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.  
Vernon's Ann.Civ.St. art. 5506a, § 1.

Notes of Decisions

- In general 1
- Judgment 3
- Subsequent admissions 2

1. In general

Hospital lien filed by hospital which had treated individual defendant for injuries sustained in automobile accident applied only to services rendered on account of injuries received in accident. Republic Ins. Co. v. Shottwell (Civ.App.1966) 407 S.W.2d 864, ref. n.r.e.

Injured party's attorney could not force a quantum meruit claim against hospital, thereby reducing amount otherwise recoverable by virtue of hospital lien, and could not recover attorney fees from sum recovered in settlement with tort-feasor's insurer and allocated to payment of hospital lien, notwithstanding that attorney's efforts in bringing about settlement, proceeds of which were used to discharge lien, were beneficial to hospital, where benefits were only incidental and did not relate to efforts made on hospital's behalf by attorney. Bashara v. Baptist Memorial Hosp. System (Sup.1985) 685 S.W.2d 307.

2. Subsequent admissions

Seventy-two-hour requirement for initial admission of patient under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter)

concerned initial hospital admission and not subsequent admissions for treatment of injuries received in same accident; thus, hospital was entitled to liens for second, third and fourth admissions of patient where initial admission occurred within 72 hours of accident in which injuries were sustained. Baylor University Medical Center v. Travelers Ins. Co. (Civ.App. 1979) 587 S.W.2d 501, ref. n.r.e.

Where first hospital admission was within 72 hours of accident and all subsequent admissions were necessary due to treatment of injuries sustained in such accident, payment of hospital charges was secured by hospital's liens for services under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). Baylor University Medical Center v. Travelers Ins. Co. (Civ. App.1979) 587 S.W.2d 501, ref. n.r.e.

3. Judgment

Court's overruling of motion of manufacturers, sellers, and servicers of anesthesia gas machine to reform judgment against them to provide for hospital lien was proper in products liability and medical malpractice action; hospital, which had been defendant in action until instructed verdict was entered in its favor, made no claim for lien, and lien's absence did not affect validity of judgment against other defendants. Ohio Medical Products, Inc. v. Suber (App. 14 Dist.1988) 758 S.W.2d 870.

§ 55.003. Property to Which Lien Attaches

(a) The lien attaches to:

(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled

## HOSPITAL LIEN

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Note 2

to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital; and

(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital.

(b) The lien does not attach to:

(1) a claim under the workers' compensation law of this state,<sup>1</sup> the Federal Employees Liability Act,<sup>2</sup> or the Federal Longshoremen's or Harbor Workers' Compensation Act;<sup>3</sup>

(2) a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services; or

(3) the proceeds of an insurance policy in favor of the injured individual or the injured individual's beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

<sup>1</sup> V.T.C.A., Labor Code § 401.001 et seq.

<sup>2</sup> 45 U.S.C.A. § 51 et seq.

<sup>3</sup> 33 U.S.C.A. § 901 et seq.

#### Revisor's Note

(1) "Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes corporation, association, and firm which was referred to in the source law.

(2) The citations of the two federal compensation acts have been changed to the correct popular names of the acts.

#### Historical and Statutory Notes

##### Prior Laws:

Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.

Acts 1981, 67th Leg., p. 953, ch. 359, § 1.

Vernon's Ann.Civ.St. art. 5506a, §§ 1 to 3, 4c.

#### Notes of Decisions

In general 1  
Instructed verdict 3  
Venue 2

##### 1. In general

Hospital was entitled to security interest in settlement proceeds received by debtor in personal injury action to secure its reasonable and necessary claim based upon hospital lien provided under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). In re Estate of Sholian (Bkrcty.1984) 40 B.R. 608.

Hospital, which had rendered treatment to individual defendant for injuries sustained in

automobile accident, and which had filed hospital lien as required by this article was entitled to lien on any and all rights or actions, suits, claims or demands of individual defendant against owner and driver of other automobile involved, and such lien extended to proceeds of settlement made between insurers of other automobile and individual defendant. Republic Ins. Co. v. Shotwell (Civ.App.1966) 407 S.W.2d 864, *ref. n.r.e.*

##### 2. Venue

Hospital which knew that insurer could not pay hospital bills without consent of patient's

**§ 55.003**

**Note 2**

father unless hospital filed its lien but failed to file such lien did not exercise ordinary care to protect insurer and did not prove a cause of action and overruling insurer's plea of privilege to be sued in county of its residence was reversible error. *Trinity Universal Ins. Co. v. Plainview Hospital and Clinic Foundation* (Civ.App. 1965) 385 S.W.2d 732.

**3. Instructed verdict**

Defendant liability insurers, in suit by hospital to recover amount of hospital bill incurred by one defendant as result of treatment for injuries sustained in automobile accident, were not entitled to instructed verdict on theory that there was no showing that individual defendant had any claim against insurers for their alleged negligence, in view of fact that action was not against insurers to recover because of their negligence but to recover on ground that, after filing of hospital lien, insurers paid money to

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individual defendant in settlement of her claim against them without hospital bills having been paid. *Republic Ins. Co. v. Shotwell* (Civ.App. 1966) 407 S.W.2d 864, ref. n.r.e.

Defendant automobile liability insurers, in suit by hospital to recover amount of hospital bill incurred by individual defendant as result of treatment for injuries sustained in automobile accident, were not entitled to instructed verdict on theory that there was no showing of negligence, proximate cause or liability on part of defendant's insured or his driver-wife, in view of fact that defendant insurers had paid to individual defendant amount in settlement of her claim against insured and his wife and presumably would not have done so without determining question of their liability. *Republic Ins. Co. v. Shotwell* (Civ.App. 1966) 407 S.W.2d 864, ref. n.r.e.

**§ 55.004. Amount of Lien**

(a) The lien is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization, except that the lien does not cover:

- (1) charges for operating costs that exceed the cost limits established under Section 405.460, 42 Code of Federal Regulations; or
- (2) charges for other services that exceed a reasonable and regular rate for the services.

(b) The lien is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual.

Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.

**Historical and Statutory Notes**

**Prior Laws:**

- Acts 1933, 43rd Leg., p. 182, ch. 85.
- Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

- Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.
- Acts 1981, 67th Leg., p. 953, ch. 359, § 1.
- Vernon's Ann.Civ.St. art. 5506a, §§ 1, 3.

**Notes of Decisions**

- Admissibility of evidence 7
- Burden of proof 5
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- Interest 10
- Judicial notice 6
- Pleadings 4
- Reasonable and regular rate 1, 2
  - In general 1
  - Indigents 2
- Sufficiency of evidence 8

**Summary Judgment 9**

1. Reasonable and regular rate—In general Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter), providing lien for reasonable and "regular charges" for hospital services, used quoted phrase as meaning charges usually and customarily made. *Garner v. City of Houston* (Civ.App. 1959) 323 S.W.2d 659.

Hospital is entitled to statutory lien for services only for reasonable charges customarily

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made for such services. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

For purpose of Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter), showing of "reasonable and regular rate" required only showing that patient's charges did not exceed the comparable rates for the same services to other patients in the same hospital. *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

### 2. — Indigent, reasonable and regular rate

Hospital, maintained jointly by city and county as a charity hospital, would not be entitled to statutory lien for services furnished a patient in such financial condition that usually and customarily no charge would be made for such services, even though charges were to be paid by liability insurer out of proceeds of settlement of patient's cause of action against insured for negligence. *Garner v. City of Houston (Civ. App.1959) 323 S.W.2d 659.*

### 3. Classification of patients

The policy of city-county hospital in classifying indigent person receiving treatment for injury resulting from automobile accident as pay patient, while classifying indigent person receiving treatment for illness not necessitating emergency treatment as charity patient, is not harsh and unreasonable and does not constitute such discrimination as will bar hospital from asserting lien on pay patient's cause of action for personal injuries. *City of Houston v. Bullard (Civ.App.1962) 354 S.W.2d 224.*

### 4. Pleadings

In suit to cancel debt and statutory lien for hospital services on ground that charges for such services were exorbitant and that hospital did not regularly or customarily make any charge for services to patients in plaintiff's financial condition, plaintiff would be entitled to cancellation of so much of debt as was in excess of reasonable charges for such services, notwithstanding specific prayer for cancellation of entire debt and lien. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

### 5. Burden of proof

Hospital which treated patient's injuries, then attempted to obtain lien on patient's cause of action against allegedly negligent third party, had burden of proving that its charge was not more than a reasonable and regular rate for services billed to patient. *Dallas County Hosp. Dist. v. Perrin (App. 5 Dist.1985) 694 S.W.2d 257, ref. n.r.e.*

### 6. Judicial notice

In suit to cancel debt and statutory lien for hospital services, trial court could not take judi-

cial notice of the reasonableness of charges for such services. *Garner v. City of Houston (Civ. App.1959) 323 S.W.2d 659.*

### 7. Admissibility of evidence

Qualification to give opinion as to reasonable and regular rates for hospital charges is not necessarily limited to witnesses with medical training. *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

### 8. Sufficiency of evidence

Trial court's finding that city-county hospital claiming lien on patient's cause of action for personal injuries had charged patient an unreasonable rate which was not the rate ordinarily charged to person in patient's indigent circumstances must be set aside as contrary to undisputed testimony that patient, having been injured in automobile accident, was admitted, in accordance with usual hospital practice, for emergency treatment as pay patient subject to usual charges which would be written off if there were no insurance for payment of such charges. *City of Houston v. Bullard (Civ.App. 1962) 354 S.W.2d 224.*

Testimony by hospital administrator and physician as to experience with hospital rates was sufficient to permit trial court to deem them qualified to express opinion of hospital's rates to patient as being reasonable and regular rates contemplated by Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

Hospital was not entitled to lien on patient's cause of action against allegedly negligent party absent evidence that amounts charged patient were regular and customary charges for like or similar services. *Dallas County Hosp. Dist. v. Perrin (App. 5 Dist.1985) 694 S.W.2d 257, ref. n.r.e.*

### 9. Summary judgment

In suit against hospital operators to cancel debt and statutory lien for hospital care, genuine issues of fact raised by pleadings as to whether hospital charges were reasonable and whether hospital regularly and customarily made any charge for services to patients in plaintiff's financial condition precluded summary judgment for defendants. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

### 10. Interest

Hospital intervenor with lien on settlement proceeds was not entitled to prejudgment interest. *Hermann Hosp. v. Vardenian (App. 1 Dist. 1989) 775 S.W.2d 866.*

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**§ 55.005. Securing Lien**

(a) To secure the lien, a hospital must file written notice of the lien with the county clerk of the county in which the injury occurred. The notice must be filed before money is paid to an entitled person because of the injury.

(b) The notice must contain:

- (1) the injured individual's name and address;
- (2) the date of the accident;
- (3) the name and location of the hospital; and
- (4) the name of the person alleged to be liable for damages arising from the injury, if known.

(c) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital and shall index the record in the name of the injured individual.

Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.

**Revisor's Note**

(1) "Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes a firm or corporation to which the source law referred.

(2) The source law requirement that the county clerk keep this record in a well-bound book provided for that purpose has been repealed by V.A.C.S. Article 1941(a), which authorizes microfilm recordkeeping.

(3) The fee provision of the source law was repealed by V.A.C.S. Article 3930, which sets fees collected by county clerks.

**Historical and Statutory Notes**

<b>Prior Laws:</b>	Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.
Acts 1933, 43rd Leg., p. 182, ch. 85.	Acts 1981, 67th Leg., p. 953, ch. 359, § 1.
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.	Vernon's Ann.Civ.St. art. 5506a, §§ 3, 4.

**Notes of Decisions**

<b>Actions and proceedings</b> 1	cause of action independent of patient's obligation to pay the bill, and the hospital's cause of action accrued only when judgment or settlement proceeds were actually paid, rather than when the patient became obligated to pay the bill. <i>Baylor University Medical Center v. Borders</i> (Civ.App.1979) 581 S.W.2d 731, <i>rel. n.r.e.</i>
<b>1. Actions and proceedings</b>	
Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter) established a separate	

**§ 55.006. Discharge of Lien**

(a) To discharge the lien, the hospital authorities or the person in charge of the finances of the hospital must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

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(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

(c) The filing of the certificate and recording of the memorandum discharge the lien.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

**Revisor's Note**

The source law method of recording the certificate is provided by V.A.C.S. Article 1941(a), and the source law fee provision has been repealed by V.A.C.S. Article 3930. See the revisor's note under Section 55.005.

**Historical and Statutory Notes**

**Prior Laws:**  
Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.  
Vernon's Ann.Civ.St. art. 5506a, § 4b.

**§ 55.007. Validity of Release**

(a) A release of a cause of action or judgment to which the lien may attach is not valid unless:

(1) the hospital's charges were paid in full before the execution and delivery of the release;

(2) the hospital's charges were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or

(3) the hospital is a party to the release.

(b) A judgment to which the lien has attached remains in effect until the hospital's charges are paid in full or to the extent set out in the judgment.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

**Historical and Statutory Notes**

**Prior Laws:**  
Acts 1933, 43rd Leg., p. 182, ch. 85.  
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.  
Acts 1981, 67th Leg., p. 953, ch. 359, § 1.  
Vernon's Ann.Civ.St. art. 5506a, § 3.

**§ 55.008. Hospital Records**

(a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

(b) The hospital may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

**§ 55.008**

**LIENS AND EXEMPT PROPERTY**  
Title 5

**Historical and Statutory Notes**

**Prior Laws:**

Acts 1933, 43rd Leg., p. 182, ch. 85.  
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1979, 66th Leg., p. 1080, ch. 509, § 1.  
Vernon's Ann.Civ.St. art. 5506a, § 4a.



OFFICIAL BUSINESS

# Alaska State Legislature

House of Representatives

REPRESENTATIVE  
CYNTHIA TOOHEY  
DISTRICT 13

STATE CAPITOL ROOM 104  
JUNEAU, ALASKA 99801-1182  
(907) 485-4919

716 WEST 4TH AVENUE, SUITE 330  
ANCHORAGE, ALASKA 99501-2173  
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## SPONSOR STATEMENT

House Bill 306 "An Act relating to a lien for services provided by a physician"

Current Alaska Statute allows a hospital or nurse who gives medical care to a patient for a traumatic injury to place a lien on any sum awarded to the injured person or the personal representative of the injured person by judgment or obtained by a settlement or compromise to the extent of the amount due the hospital or nurse. However, physicians in Alaska do not have the same statutory right. House Bill 306 would amend existing statute to include physicians.

A physician, as well as a hospital or nurse, gives medical care for a traumatic injury. If the patient later receives monies through judgment, settlement or compromise to cover medical costs, the patient sometimes uses the monies for other purposes and the hospital, nurse, and physician remain unpaid. This bill will enable physicians to also use the lien process to help assure payment for services they have rendered for traumatic injuries.

The proposed committee substitute also makes changes to update the lien law which has been in place since territorial days. Three changes are proposed. They include an extension of time in which to file the lien, a general description of services rendered instead of an itemized statement, and deletion of the requirement that a copy of the notice of lien which is sent by registered mail to the responsible party and insurance carrier be a "certified" copy.

There is a zero fiscal note from the Department of Natural Resources. Your support would be appreciated.

# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB306

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: "An Act relating to a loan for services provided by a physician." BRU: Management and Administration  
 Component: Recorder's Office  
 Sponsor: Representative Toohy  
 Requestor: \_\_\_\_\_ Component Serial No. 802

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

**POSITIONS**

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:**

(Attach a separate page if necessary)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Nico Bus, Acting Director Phone: 465-2406  
 Division: Support Services Date: 25-Apr-95  
 Approved by Commissioner: *Nico Bus* Date: 4-26-95  
 Agency: Natural Resources

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MEMORANDUM

TO: HARLAN KNUDSON

FROM: PETER J. ASCHENBRENNER, ESQ.  
ASCHENBRENNER LAW OFFICES

DATE: April 11, 1995

RE: PROPOSED AMENDMENTS TO AS 34.35.450-480

---

AS 34.35.450-475 were adopted at Statehood and have never been amended. In 1975 AS 34.35.480 was adopted which provided for an action foreclosing liens and recovery of certain court costs. Generally AS 34.35.450-480 provides a mechanism whereby a hospital or nurse can file a lien and obtain the following protections:

A. The hospital has a lien for the "reasonable value of the [hospital] service" ... " upon any sum awarded to the injured person ... or obtained by settlement or compromise" plus "costs and reasonable attorneys fees that the court allows ..." . AS 34.35.450. As a legal matter, a hospital acting diligently has the right to participate as a lienholder in any personal injury action and to be paid from the settlement proceeds. AS 34.35.450 (a).

B. The hospital has a lien on first party insurance coverage whether or not an assignment of benefits is signed. AS 34.35.450 (b). Notice of the lien filing should be given to the carrier if known.

C. Most importantly, the hospital has a direct action against a personal injury plaintiff or the defendant's insurance carrier for failure to satisfy a perfected lien *after* settlement if the hospital sues within 180 days after date of payment. AS 34.35.375.

These liens must be filed in an extremely short time frame: the lien "window" period is only 15 days after discharge of the patient from the hospital. This makes a prompt lien filing after traumatic accidents difficult. The hospital's or nurse's situation is made worse by the regulations of the Department of Health and Social Services: For example, hospitals are allowed only 15 days to prepare a discharge summary. 7 AAC 12.780 (e) ["inpatient medical record to be "completed within 15 days of discharge"]. Furthermore, the "medical chart" must state the source of repayment. 7 AAC 12.770 (c)(1)(M). The hospital is put in the position of keeping the chart up-to-date in the case of a potential lien case *and* preparing the necessary discharge summary within the same time frame.

Basically, hospital staff must screen for patients victimized by "traumatic injury" (other

Memorandum Re Amendments to AS 34.35.450-480  
April 11, 1995  
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than industrial accidents) and then identify the place of injury (for recording purposes) and file the lien in 15 days. Because AS 34.35.450-480 protects licensed special nurses, they will also be required to do this research.

Turning to the specific problems which involve the effect of the recording acts, AS 40.17, on AS 34.35.450-480.

To set the stage: it is very important that hospitals and nurses, as creditors, get their lien filings right. The Supreme Court has noted that "a mechanic's lien claim or notice cannot be materially amended or reformed, even in equity, after the expiration of the time prescribed by statute for the filing of the claim." See *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.* 563 P.2d 258 (Alaska 1977) quoting *Sullens & Hoss, Inc. v. Farvour*, 117 F.Supp. 535, 538, 14 Alaska 492 (D. Alaska 1954). The court also noted that: "Courts do not permit amendment where the lien is fatally defective, as where it is defective in substance and not in form, or where, for some reason, the amendment sought would be in effect the filing of a new claim. Nor will amendment be allowed after the time for filing so as to affect the rights of a bona fide purchaser or encumbrancer, or intervening rights of other third parties." (*Id.*)

In *HAMS I, supra*, the party signing the lien stated that he was authorized to sign the lien on behalf of the corporation but didn't state that he believed the contents of the lien to be true. A foreclosure judgment in favor of the lien claimant for over \$45,000 was reversed by the Supreme Court because the "purported ... liens ... are void and of no legal effect due to the omission of verifications of the respective lien claims ..." (at 264)

The bottom line is that a notary block *outside the body of the lien claim* was in error. But the courts wouldn't allow the creditor to amend this offending notary block even after the creditor had won a lien judgment! The hyper-technical reasoning of the decision touched off a fire-storm of protest; the Supreme Court had to issue a highly unusual second decision grandfathering in all of the acknowledged (and unverified) liens filed before the date of *HAMS I. H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.* 566 P.2d 1012 (Alaska 1977).

We now approach the technical amendments:

- Present law calls for the lien to be filed "in the recording district or borough in which the injury occurred... ." AS 34.35.460.

The reference to "borough" should be deleted. Boroughs are units of local government, not recording districts. The two are not co-terminous. The boundaries of boroughs are approved by the Local Boundary Commission; the boundaries of recording districts are established by the DNR under authority of AS 44.37.025. Boroughs aren't referred to in AS 40.17.

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● The filing of the lien in the recording district in which the accident site is located should be re-examined. Some accidents will be easy to place; a car crash at 36th & C Street is easy to identify on the maps at the recorder's office on the 11th floor of the Frontier Building.

Official maps, however, will not give any guidance to a hospital or nurse attempting to locate the recording district in which an off-shore accident occurred. Lines dividing the state into recording districts, for example, are not extended into the territorial waters of the United States; victims of a JAL turbulence accident over the North Pacific were brought to Anchorage in a 1982 incident. Did the hospital lose its lien rights if it was unable to protract on Coast Guard charts the exact location of the 747's sudden dive, with reference to the nearest recording district?

There are other, less unusual, examples in which the exact site of the incident, be it a drowning or shooting, a plane or boat accident, are not necessarily available to the hospital without a concerted effort. Health care professionals should not be pestering the EMTs at the emergency room (or at the helipad) with queries about the exact location of the injury, unless it is really relevant to the victim's treatment.

Why have recording districts for these lien filings in the first place?

Under current law you can run the index under grantor(victim) or grantee(hospital) provided that you select the proper one of Alaska's 34 recording districts. An insurance carrier (having insured either the tortfeasor or the victim) must now diligently search the grantor/grantee index in the recorders' office (having first located what it believed to be the site of the accident). It has no obligation to search the recording district index in the place the hospital is located, unless that is also where the accident occurred.

However, there is no need to have accident-based choices for filing the lien, followed by accident-based lien searches. The requirement that the recording be in the district in which the accident occurred arises from a misguided adherence to the "cause and effect" logic which assumes that the parties, insurers and health care providers, involved in an accident should file and search documents according to the site where the accident was "caused".

Finally, a more general comment: UCC filings are afforded Central Filing status for perfection of "general intangibles" and other similar interests. There is no central "file" for documents listed under AS 40.17.110 (b)(1)-(60). However, the list of what is recordable under this code provision is quite lengthy and includes many types of documents which have nothing to do with real estate, including servicemen's records, for example.

DNR has the authority to establish such a central index system. Indeed, AS 40.17.040 calls for "an index system for recorded documents"; the only statutory direction as to the structure of this database is that it be structured so that the public "may find documents by

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names of grantors and grantees". *Id.* "Other means for locating ... documents" are merely options to be considered by DNR. There is no statutory requirement that "place of injury" trigger 34 indices for searching hospitals/nurses and victims.

AS 44.37.025 (a) provides that:

The Department of Natural Resources shall adopt regulations establishing, modifying, or discontinuing recording districts or precincts and prescribing the records to be maintained and the instruments to be recorded, consistent with AS 40.17. A regulation may not impose a restriction on document recording unless the restriction is required by statute or furthers a legitimate administrative need of the recorder; a "legitimate administrative need" includes ensuring the legibility of the documents and identifying the parties, the capacity of each party, and the affected property.

Nevertheless, it appears from AS 40.17.035 (2)(C) that the recorder may reject a document which does not state a recording district. Thus, at present, hospital and nurses lien claimants are required to guess as best they can which would be the legally correct site for lien recording. It is a dangerous tactic for the lienor to state "unknown" as the place of injury and file its lien in the recording district in which it does business since such a lien would not be properly recorded as required by current law. Of course, it is the language of AS 34.35.475 (a)(1) which requires the claimant to play recording district "roulette". That code provision gives constructive notice effect to only those liens recorded in the recording district which is eventually determined to be the place of the accident.

A close reading of AS 40.17 discloses that only "conveyances" (defined in AS 40.17.900 (3)) must be recorded in the recording district "in which the land affected by the conveyance is located". AS 40.17.020. Furthermore, AS 40.17.070 (b) specifically provides for a "daily log and index for recorded documents" which is to be kept in the "central recording office"; since each public office operated by DNR can provide access to the central filing, there is no need for a limited reading of AS 40.17.010 (a)(1) which literally requires that, under current law, hospital and nurse lienors guess as to the recording district in which to record. The present statutory scheme, seemingly dictated by AS 34.35.450-480, with multiple recording districts and multiple indices for these liens, is hopelessly out of date and, as I have argued, is not required by a reading of AS 40.17.

(While we are on the recording acts, AS 40.17.080 (a) states that the recording of a document imparts "constructive notice" to "subsequent purchasers, etc." (that is, parties to real estate transactions). It may be time to consider adding a phrase so that constructive notice *also* has the effect "otherwise prescribed by law" to cover the many situations in which code

Memorandum Re Amendments to AS 34.35.450-480

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provisions outside the recording acts define the parties affected by constructive notice.)

Other technical amendments follow from these points.

- As we discussed on the phone, the recorder's office is not keeping lien docket as required by AS 34.35.470. This calls for both hospital and victim indices. I suggest that this code provision be repealed in its entirety. At present any party wishing to find a lien claimant, once he has determined which of the recording district grantor-grantee indexes to search, need only run the grantor index. Furthermore, since the victim will appear as the grantor, a party having the name of the victim and the place of injury can determine the identity and existence of any lien claimant.

- AS 34.35.465 now requires the lienor to state the site of the accident ("at ..."); in the event that central filing for these liens is created, this would become unnecessary.

- AS 34.35.460 and AS 34.35.475 (1) provide for service of a *certified* copy of the lien notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison, a notice of right to lien -- an announcement that a contractor or materialman may have lien rights -- need not be certified. AS 34.35.064 simply provides that the claimant of an NRL "give a notice of right to lien" to the owner/lender.

If there has been no abuse of NRL's (such as NRL's prepared and served by mail, but not recorded) since their inception, it is hard to believe that tortfeasors and victims will be barraged with hospital and nurses' liens which are not recorded. Certification creates a trap for the lienor and provides no additional protection for the tortfeasor/insurer. Even if hospitals and nurses "paper" the state by mailing out copies of unrecorded lien claims, these documents also have the binding effect provided under AS 34.35.475 (a)(1).

As an aside, in a series of decisions, the Supreme Court has addressed the precise form of verification for lien filings. *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 563 P.2d 258 (Alaska 1977); *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 566 P.2d 1012 (Alaska 1977); *Brooks v. R & M Consultants, Inc.*, 613 P.2d 268 (Alaska 1980); *Anchorage Sand & Gravel Company, Inc. v. Woolridge*, 619 P.2d 1014 (Alaska 1980). Since the statutory form is in compliance with *HAMS I*, I have not changed the verification.

*Brooks v. R & M Consultants, Inc.*, *supra*, holds that a corporate officer must show his authority to act for the corporation as a lien claimant. The exact form of lien set forth in the AS 34.35.465 could be used, word for word, by a nurse, but would require some "tinkering" to get it right for a hospital. Such corporate lien claimants should be confident that the "substantially as follows" introduction of §465 will protect their lien efforts by triggering AS

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34.35.020 which provides that:

Substantial compliance with the law relating to the contents of the lien notice is considered sufficient, if the notice satisfactorily shows the name of the claimant, the amount of his demand, the time of his employment, the property sought to be charged with the lien sufficient for identification and the name of the owner or reputed owner of the property.

There is no reason why the exact wording of nurses' and hospitals' liens couldn't *both* be spelled out in the code. As I said, with the *Brooks* case, there is a "substantial compliance" safety net for an incorrectly stated authority to sign; fine tuning the authority to sign is really the only creative effort that the hospital needs to apply to generating the lien.

● The present statutory form of lien requires an "itemized statement" of the charges but does not define what would qualify for such a statement. I have recommended that the language be changed to require a "general description of the services rendered". This conforms the nurses and hospital lien to the NRL which requires a "general description of the labor, materials, services or equipment provided or to be provided." AS 34.35.064 (a)(5).

Attaching a hospital billing, as Providence Hospital did (Inst. No. 86-24180, Anch. Rec. Dist.) in one case, is actually less informative than stating in a few words what treatment was rendered; the billings are not particularly legible, are multi-paged, and don't necessarily shed light on who "Michael Brown" was. This lien filing argues for repeal of accident-site filings: Providence Hospital filed a statement in the Anchorage Recording District with a filing that the place of injury was "unknown" (as was the day and month of injury). I have included a copy of the lien and the first page of the hospital billing.

I believe the Providence Hospital/Brown lien filing points up the practical problem with the overtechnical (and grossly out-of-date) approach of AS 34.35.450-480. By requiring information which is not readily obtainable (place of accident) and by appearing to require filing of the hospital billing (instead of a general description of the services rendered), *less* information was filed of record, rather than more.

There are two other points which touch this issue:

First, filing of hospital billings may be contrasted with a case in which a lawyer, whose client has prevailed in a suit, is required to file an "itemized billing" in support of his Civil Rule 82 fee application. *Hayes v. Xerox*, 718 P.2d 929, 939 (Alaska 1986)[accurate records of the hours expended and a brief description of the services reflected by those hours should be submitted on fee motions]. However, even a fleeting consideration of this comparison shows that there is little tangible result gained when the public record contains a professional billing on a matter *which is not yet in dispute*. Yes, the judge is proper arbiter of how much of the

Memorandum Re Amendments to AS 34.35.450-480

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legal effort of a prevailing party should be passed to the loser after the termination of the litigation in which the legal effort is expended. But requiring this level of documentation on the public record as a condition of filing a lien requires an effort which is more appropriate to litigation or negotiation than perfection of rights through the recorder's office.

Second, recording hospital billings as a matter of compliance should be discouraged because there are obvious privacy considerations at stake: the patient's entire course of treatment is laid out, permanently, in the public record.

AS 18.20.085 (a) provides for hospital record retention: "Unless specified otherwise by the department a hospital shall retain and preserve records that relate directly to the care and treatment of a patient for a period of seven years following the discharge of the patient." The Department of Health and Social Services has fulfilled its mandate to "define the types of records and the information required to be included in the records retained and preserved under [AS 18.20.085 (a)]" by defining patient confidentiality rights so that a "patient or nursing facility resident has rights that include ... [the right] to confidentiality of the patient's or resident's medical records and treatment." 7 AAC 12.890 (a)(7).

DHSS has not defined what a "billing record" or "itemized statement" is; but it is clear that much of the information in the typical itemized billing (such as Michael Brown's) is also information that "[e]ach in-patient medical record must include[...]" under 7 AAC 12.770 and might be considered protected. In other words, as a matter of policy, if a billing record contains information (like name, physician's name, date of discharge, etc.) which is also information that appears in the patient's medical chart, then to that extent perhaps the billing record should be afforded the same privacy status as the chart.

I suggest that there is little need to resolve this issue as a matter of hospital record retention/privacy legislation/regulation because it is so obvious that these professional billings do not belong in the hard copy filings of a public record database maintained for perfection purposes.

(By comparison, the confidentiality rights of patients of licensed special nurses under 7 AAC 12 are unclear; for example, a "physician's general medical practice" is excluded. 7 AAC 12.350. Presumably, there is no regulatory coverage on this issue for nurses and other individual health care practitioners. Literally, 7 AAC may not stop special nurses from publicly distributing the medical charts of their patients via the recorder's office.)

Back to the big picture:

A modest solution would be to amend the code to provide for a field by which hospital and nurses' liens would be indexed/recorded by the place in which the services were rendered. This solution would protect the rights of all parties by guiding them to a recording district which

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is more readily accessible than the site of the accident. A bolder solution would eliminate the place of accident as a field for indexing. Simply create a central filing "file" for specific types of documents, including hospital and nurses' liens: this would fulfill the mandate of AS 40.17.040. The fields for searches would be the name of the claimant and the name of the victim.

In general, there is an opportunity for review of hospital and nurses' liens and the serious impediments to proper utilization of these liens by the health care professionals involved.

Draft legislation follows.

AN ACT

Relating to recording of hospital and nurses' liens; relating to the time for filing of such liens; and providing for an effective date.

Section 1. AS 34.35.460 is amended to read:

AS 34.35.460. Notice of Lien. To perfect the lien described in AS 34.35.40 -- 34.35.480, the hospital or the owner or operator of the hospital, or the licensed special nurse, shall, not later than 90 [15] days after the date of injury, or in no event later than 90 [15] days after the discharge of the injured person from the hospital, file a notice of lien substantially in the form prescribed in AS 34.35.465, containing a general description of the services rendered and a statement [an itemized statement] of the amount claimed, with a [the] recording officer [of the recording district or borough in which the injury occurred], and shall, after the 90 [20]-day period, before the date of judgment, settlement, or compromise, serve a [certified] copy of the notice of lien by registered mail, at the last known address, upon the person alleged to be responsible for causing the injury and from whom damages are claimed, and upon the insurance carrier that has insured against the liability, if the insurance carrier is known.

Sec. 2. AS 34.35.465 is amended to read:

AS 34.35.465. Form of notice. The form of notice required by AS 34.35.450 -  
- 34.35.480 shall be substantially as follows:

NOTICE is hereby give that ..... has rendered services for hospitalization, or  
special nurses' services for ....., a person who was injured on the ... day of .... [at .....]  
in the state, and the .....(claimant) hereby claims a lien upon any money due or owing  
or any claim for compensation, damages, contribution, settlement, or judgment from  
..... alleged to have caused the injuries and any other person liable for the injury or  
obligated to compensate the injured person on account of the injuries; the hospitalization (or  
special nurses' services) was rendered to the injured person between the .... day of .... and  
..... at .... :

**(GENERAL DESCRIPTION OF SERVICES RENDERED  
AND STATEMENT OF AMOUNT DUE)**

[(ITEMIZED STATEMENT)]

..... and that 90 [15] days have not elapsed since that time;  
that the claimant's demands for care and service is in the sum of \$..... and that no part of the  
demands has been paid, except \$....., and that there is now due and owing and remaining  
unpaid thereof, after deducting all credits and offsets, the sum of \$....., in which amount lien  
is hereby claimed.

[United States of America]  
State of Alaska ss.  
.....Judicial District

I, ..... being first duly sworn on oath say: That I am ..... named in the  
foregoing claim of lien; that I have read the same and know the contents thereof and believe the  
same to be true.

Subscribed and sworn to before me this .... day of ....., 19.....

.....  
Notary Public for Alaska

Sec. 3. AS 34.35.475 is amended to read:

AS 34.35.475. Settlement after notice. (a) A person or insurer is liable to a hospital or nurse, in the amount that the hospital or nurse is entitled to receive, for 180 days after the date of a payment to the injured person, the heirs of the injured person, personal representatives, or the attorney of them, when the person or insurer

(1) receives a [the certified] copy of notice of lien, or the lien is recorded as provided in AS 34.35.460 and 34.35.465;

(2) makes the payment after receipt of notice or the recording of the lien as compensation for the injury suffered; and

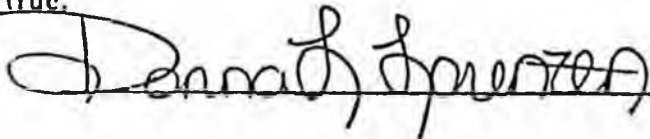
(3) does not pay the hospital or the licensed special nurse for the reasonable value of the services rendered to the injured person and claimed in the notice of lien, or so much of the value of the services as can be satisfied out of a judgment, settlement, or compromise, after paying the attorney fees, costs, and expenses incurred in connection with it.

(b) The hospital or nurse has a cause of action, during the 180 days, against the person or insurer.

NOTICE is hereby given that Providence Hospital has rendered services for hospitalization for Michael Brown who was injured on the unknown day of unknown at unknown in the state and the Providence Hospital (Claimant) hereby claims a lien upon any money due or owing or any claim for compensation, damages, contribution, settlement or judgment from unknown alleged to have caused the injuries and any other person liable for the injury or obligated to compensate the injured person on account of the injury. The hospitalization was rendered to the injured person between the 3/17/86 day of 3/26/86, and that 15 days have not elapsed since that time; that the claimants demands for care and service is in the sum of \$ 16,411.08 and that no part of the demands has been paid, except \$ none, and that there is now due and owing and remaining unpaid thereof, after deducting all credits and offsets, the sum of \$ 16,411.08, in which amount lien is hereby claimed. Per attached copies.

United States of America  
State of Alaska  
Third Judicial District  
(Precinct or Borough) } ss.

I, Donna L Lorenzen being first duly sworn on oath That I am Patient Acct. Rep. named in the foregoing claim of lien: that I have read the same and know the contents thereof and believe the same to be true.



Subscribed and sworn to before me this 9 day of April 1986.

Kon P. Smith  
Notary Public for Alaska  
My Commission expires June 29, 1986



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FN/CM
REC. DIST.
DATE <u>4/17</u> 19 <u>86</u>
TIME <u>1:44</u> PM
Recorded by <u>Providence Hospital</u>

86-24180

15-

# PROVIDENCE HOSPITAL

3300 PROVIDENCE DRIVE - P.O. BOX 6604  
ANCHORAGE, ALASKA 99502  
PHONE: (907) 562-2211



# SISTERS OF PROVIDENCE

SERVING IN THE WEST SINCE 1856

OCT 28 1 13 PM '87  
RECEIVED  
ADDRESS  
Providence Hosp.

12

State of Alaska  
District Records Office  
1001 West 4th Avenue  
Anchorage, Alaska 99501

Clark of the Court:

Providence Hospital requests that you release  
our lien against MICHAEL BROWN  
as of 10/14/87

Your Number is 86-24180

Sincerely,

*Beverly Schwegler*

Credit Dept.  
564-9651

Subscribed and sworn to before me this 14th day of  
OCTOBER, 19 87

*Arnette M. Zwickel*  
Notary Public for Alaska  
MY COMMISSION EXPIRES APRIL 23, 1990



Return to: Providence Hospital  
Box 19-6604  
Anchorage, AK. 99519-6604

1-12 (7/83)

# ASCHENBRENNER LAW OFFICES, INC.

P. O. Box 112908 • 615 E. 82nd Avenue, Suite 102 • Anchorage, AK 99511-2908  
Phone (907) 344-1500 • Fax (907) 344-1522

April 11, 1995

RECEIVED  
APR 14 1995  
AK  
NURSING HOSPITAL &  
NURSING HOME ASSOC.

Harlan Knudson  
Executive Director  
Alaska Hospital and Nursing Home Association  
319 Seward St  
Juneau, AK 99801

Re: Deficiencies in Alaska's Hospital and Nurses' Lien Laws

Dear Mr. Knudson:

It was a pleasure speaking with on the phone today.

I am taking the liberty of enclosing a memorandum addressing the desirability of amending AS 34.35.450-480, Alaska's hospital and nurses' lien laws. My proposal is enclosed and has been prepared at the request of Recovery Management, Inc.

As explained in the Memorandum, the Department of Natural Resources will be considering technical amendments to Alaska's recording and lien laws, according to Sharon Young, the State Recorder. It does not appear that these housekeeping amendments will be ready for submission this session. The Department has no draft legislation of its own on the "housekeeping" topics that Ms. Young expects to be addressed; there is no one in the Department of Law or the Governor's office who is aware of any specific proposals that the Department wants to see on the agenda this year.

Here are the main features of the proposed legislation:

- Hospital liens must now be filed in an extremely short time frame: The lien "window" period is only 15 days after discharge of the patient from the hospital. AS 34.35.460. This makes a prompt lien filing after traumatic accidents difficult. The proposal expands the filing period to 90 days.
- Present law calls for the lien to be filed "in the recording district or borough in which the injury occurred..." AS 34.35.460. The proposal calls for central filing of liens.
- AS 34.35.460 and AS 34.35.475 (1) requires service of a *certified* copy of the lien

Mr. Harlan Knudson  
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notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison, a notice of right to lien (NRL) -- an announcement that a construction contractor or materialman may have lien rights -- need not be certified. AS 34.35.064 simply provides that the claimant of an NRL "give a notice of right to lien" to the owner/lender.

● The present statutory form of lien requires an "itemized statement" of the charges but does not define what would qualify for such a statement. The proposal recommends that the language be changed to require a "general description of the services rendered". This conforms the nurses and hospital lien to the NRL which requires a "general description of the labor, materials, services or equipment provided or to be provided." AS 34.35.064 (a)(5). In addition, it renders unnecessary the questionable practice of filing in the public record the itemized billing statement.

My office is pursuing amendments to the lien laws on behalf of Recovery Management which represents, in turn, Petersburg Medical Center, Seward General Hospital and Cordova Community Hospital. Recovery Management is a licensed and bonded collection agency with offices in Anchorage and Fairbanks. My office is providing these materials free of obligation. Recovery Management is interested in addressing impediments to recovery of bad debt by hospitals and health care professionals, generally.

If there are any other questions, please call.

Sincerely yours,  
ASCHENBRENNER LAW OFFICES, INC.



Peter J. Aschenbrenner

PJA:taf