



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92-153

The Honorable Carol H. Sader
State Representative, 22nd District
8612 Linden Drive
Prairie Village, Kansas 66207

Re: State Departments; Public Officers and Employees --
Kansas Tort Claims Act -- Tort Claims Fund for
Payment of Claims and Defense Expenses; Charitable
Health Care Providers

Synopsis: The general rule for payment of compromises,
settlements and final judgments from the Kansas
tort claims fund is that to the extent that payment
cannot be made from insurance coverage obtained
therefore, payment is made from the fund. An
exception to that general rule is made for payment
of compromises, settlements and final judgments
arising from specified types of claims made against
charitable health care providers. Accordingly, the
Kansas tort claims fund is responsible as a "first
payor" for a compromise, settlement or final
judgment whether or not such charitable health care
provider has other insurance coverage. Cited
herein: K.S.A. 75-6101; K.S.A. 1991 Supp. 65-226;
75-6117.

* * *

Dear Representative Sader:

As chairperson for the joint committee on health care
decisions for the 1990's, you ask our opinion regarding

exposure of the Kansas tort claims fund in relation to charitable health care providers. Specifically, you ask:

"Under the language of K.S.A. 1991 Supp. 75-6117, is the Tort Claims Fund responsible as a 'first payor' for a judgment, compromise or settlement against a 'health care provider' covered under the language of 75-6117 whether or not such health care provider has 'insurance coverage obtained' to cover such a claim under the Kansas Health Care Provider Availability Act or other source or would the Tort Claims Fund be liable for such a judgment, compromise or settlement only to the extent that payment cannot be made from liability insurance coverage obtained by such health care provider under the provisions of the Health Care Provider Insurance Availability Act or other source?"

K.S.A. 1991 Supp. 75-6117 establishes in the state treasury the tort claims fund to be used for paying "(1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights law of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims."

Your question pertains to the following language found in subsection (b) of K.S.A. 1991 Supp. 75-6117:

"Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto to a medically indigent person or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or

failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired." (Emphasis added)

Thus the general rule for payment of compromises, settlements and final judgments from the tort claims fund is that "to the extent that payment cannot be made from insurance coverage obtained therefor," payment is made from the fund. An exception to that general rule is made for payment of compromises, settlements and final judgments arising from specified types of claims made against charitable health care providers. Accordingly, in answer to your question, the Kansas tort claims fund is responsible as a "first payor" for a compromise, settlement or final judgment against a charitable health care provider whether or not such charitable health care provider has other insurance coverage.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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