

ENROLLED HOUSE
BILL NO. 2501

By: Anthony of the House

and

Cain of the Senate

An Act relating to public health and safety and poor persons; amending 56 O.S. 1991, Sections 200, 200a and 200b, which relate to powers and duties of the Department of Human Services, the Oklahoma Health Care Authority and the Oklahoma Medicaid Program Integrity Act; providing for transferring and clarifying the powers of the Oklahoma Health Care Authority relating to collection of certain debts for services; updating language; clarifying language; amending Section 2, Chapter 161, O.S.L. 1995 (56 O.S. Supp. 1995, Section 504.1), which relates to the Medicaid Drug Utilization Review Board; authorizing the Board to advise and make recommendations to the Oklahoma Health Care Authority relating to rules for drug utilization programs; requiring promulgation of rules; amending Section 5, Chapter 347, O.S.L. 1992, as last amended by Section 2, Chapter 350, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-119), which relates to the Division of Health Care Information; adding to list of agencies having access to certain health care information; providing for recodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 56 O.S. 1991, Section 200, is amended to read as follows:

Section 200. A. 1. The payment of medical expenses by the ~~Department of Human Services~~ Oklahoma Health Care Authority for or on behalf of or the receipt of medical assistance by a person who has been injured, or who has suffered a disease, as a result of the negligence or act of another person creates a debt to the ~~Department Authority~~, subject to recovery by legal action pursuant to this section.

2. The payment of medical expenses by the ~~Department of Human Services~~ Authority for or on behalf of a person who has been injured or who has suffered a disease, and either has a claim or may have a claim against an insurer, to the extent recoverable, creates a debt to the ~~Department~~ Authority whether or not such person asserts or maintains a claim against an insurer.

B. The ~~Department of Human Services~~ Authority shall provide notice to all recipients of medical assistance at the time of application for such assistance of their obligation to report any claim or action, and of any judgment, settlement or compromise arising from ~~such~~ the claim or action, for injury or illness for

which the ~~Department~~ Authority makes payments for medical assistance.

C. The recipient of medical assistance from the ~~Department of Human Services~~ Authority for an injury or disease who asserts a claim or maintains an action against another on account of ~~such the~~ injury or disease, or ~~such the~~ recipient's legal representative, shall notify the ~~Department of Human Services~~ Authority of ~~such the~~ claim or action and of any judgment, settlement or compromise arising from ~~such the~~ claim or action prior to ~~said the~~ final judgment, settlement or compromise.

D. If ~~such the~~ injured or diseased person asserts or maintains a claim against ~~such other another~~ person or tortfeasor on account of ~~such the~~ injury or disease, the ~~Department~~ Authority:

1. Shall have a lien upon payment of ~~such the~~ medical assistance to the extent of the amount so paid upon that part going or belonging to ~~such the~~ injured or diseased person of any recovery or sum had or collected or to be collected by ~~such the~~ injured or diseased person, or by ~~his the~~ heirs, personal representative or next of kin in case of ~~his the~~ death of the person, whether by judgment or by settlement or compromise; ~~provided, however, that this.~~ The lien authorized by this subsection shall:

- a. be inferior to any lien or claim of any attorney or attorneys for handling the claim on behalf of ~~such the~~ injured or diseased person, ~~his the~~ heirs or personal representatives. ~~The lien authorized by this section shall~~ representative,
- b. not be applied or considered valid against any temporary or permanent disability award of the claimant due under the Workers' Compensation Act in this state. ~~Provided, the lien of the Department authorized pursuant to this subsection shall~~ except as otherwise provided by Section 200a of this title, and
- c. be applied and considered valid as against any insurer adjudged responsible for medical expenses under the Workers' Compensation Act; and

2. May take ~~such any~~ other legal action necessary to recover the amount so paid or to be paid to ~~such the~~ injured or diseased person or to ~~his the~~ heirs, personal representative or next of kin in case of ~~his the~~ death of the person.

E. 1. To effectuate the lien authorized pursuant to this section, the ~~Department of Human Services~~ Authority shall file a written notice containing a statement of the amount claimed, the name and address of the injured or diseased person, and the name of the person, firm or corporation alleged to be liable to the injured or ~~the~~ diseased person for damages in the office of the clerk of the district court for the County of Oklahoma, State of Oklahoma, prior to the full payment of any monies to ~~such the~~ injured or diseased person or ~~his to the~~ heirs or personal representatives representative of such person as damages or compensation for ~~such the~~ injury or disease.

2. The ~~Department~~ Authority shall also send by certified mail, return receipt requested, postage prepaid, a copy of ~~such the~~ notice with a statement of the date of filing thereof to:

- a. the recipient of the medical assistance~~;~~;
- b. any person, firm or corporation alleged to be liable to the injured or diseased person for damages so sustained~~;~~;
- c. any insurer which may be ultimately liable, if the name and address shall be known~~;~~; and

d. any attorney for the injured or diseased person, provided the ~~Department~~ Authority has notice of the name of ~~such~~ the attorney.

3. The ~~Department~~ Authority shall have the right to file a written notice of its lien in any action commenced by ~~such~~ the injured or diseased person.

F. The ~~Department~~ Authority, to secure and enforce ~~such~~ the right of recovery or reimbursement on behalf of the injured or diseased person, may initiate and prosecute any action or proceeding against ~~such~~ any other person or tortfeasor who may be liable to the injured or diseased person, if the injured or diseased person has not initiated any legal proceedings against ~~such~~ the other person or tortfeasor.

G. Any person or insurer that has been notified by the ~~Department~~ Authority of a claim of lien authorized by this section and who, directly or indirectly, pays to the recipient any money as a settlement or compromise of the recipient's claim arising out of the injury shall be liable to the ~~Department of Human Services~~ Authority for the money value of the medical assistance rendered by the ~~Department~~ Authority in an amount not in excess of the amount to which the recipient was entitled to recover from the tortfeasor or insurer because of the injury.

H. As used in this section:

1. "Medical expenses" includes the cost of hospital, medical, surgical and dental services, care and treatment, rehabilitation, and prostheses and medical appliances, and nursing and funeral services;

2. "Person" includes, in addition to an individual, the guardian of an individual, and the administrator or executor of the estate of an individual, and a corporation; and

3. "Insurer" means any insurance company that administers accident and health policies or plans or that administers any other type insurance policy containing medical provisions, and any nonprofit hospital service and indemnity and medical service and indemnity corporation, actually engaged in business in the state, regardless of where the insurance contract is written, or plan is administered or where such corporation is incorporated.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 200a, is amended to read as follows:

Section 200a. A. Whenever the ~~Department of Human Services~~ Oklahoma Health Care Authority pays for medical services or renders medical services, for or on behalf of a person who has been injured or suffered an illness or disease, the right of the provider of ~~such~~ the services to reimbursement ~~will~~ shall be automatically assigned to the ~~Department of Human Services~~ Oklahoma Health Care Authority, upon notice to the insurer or other party obligated as a matter of law or agreement to reimburse ~~such~~ the provider on behalf of the patient; ~~furthermore, upon.~~

B. Upon the assignment, the ~~Department of Human Services~~ Authority, for purposes of the claim for reimbursement, becomes a provider of medical services. ~~Provided further and notwithstanding the provisions of Section 200 of this title, the~~

C. The assignment of the right to reimbursement shall be applied and considered valid against any employer or insurer under the Workers' Compensation Act in this state.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 200b, is amended to read as follows:

Section 200b. A. Pursuant to the provisions of this section, the ~~Department of Human Services~~ Oklahoma Health Care Authority is authorized to file and enforce a lien against the homestead of a

recipient for payments of medical assistance made by the ~~Department Authority~~ to the recipient who is an inpatient of a nursing home if the ~~Department Authority~~, upon competent medical testimony, determines ~~such~~ the recipient cannot reasonably be expected to be discharged and returned home. A one-year period of compensated inpatient care at a nursing home or nursing homes shall constitute a determination by the ~~Department Authority~~ that the recipient cannot reasonably be expected to be discharged and returned home.

B. Upon certification for Title XIX of the federal Social Security Act payments for nursing home care, the ~~Department Authority~~ shall provide written notice to the recipient that:

1. A one-year period of compensated inpatient care at a nursing home or nursing homes shall constitute a determination by the ~~Department Authority~~ that the recipient cannot reasonably be expected to be discharged and returned home;

2. A lien will be filed against ~~his~~ the homestead of the recipient pursuant to the provisions of this section and that the amount of the lien shall be for the amount of assistance paid by the ~~Department Authority~~ after the expiration of one (1) year from the date the recipient became eligible for compensated inpatient care at a nursing home or nursing homes until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient; and

3. The recipient is entitled to a hearing with the ~~Department of Human Services Authority~~ prior to the filing of the lien pursuant to this section.

The notice shall ~~also~~ contain an explanation of the lien and the effect the lien will have on the ownership of the homestead of the recipient and any other person residing in the homestead. The notice shall be signed by the recipient or ~~his~~ the legal guardian of the recipient acknowledging that the recipient or ~~his~~ the legal guardian of the recipient understands the notice and the effect that the payment of medical assistance on ~~his~~ the recipient's behalf will have upon the homestead of the recipient.

C. The lien filed pursuant to subsection E of this section shall be for the amount of assistance paid beginning one (1) year after the recipient has received inpatient care from a nursing home or nursing homes and has received payment of medical assistance by the ~~Department Authority~~ until the time of the filing of the lien and for any amount paid thereafter for ~~such~~ the medical assistance to the recipient.

D. The ~~Department Authority~~ shall not file a lien on the homestead of the recipient pursuant to subsection E of this section while the homestead is the lawful residence of:

1. The surviving spouse of the recipient;
2. A child related to the recipient by blood or marriage who is twenty (20) years of age or less;
3. An adult child related to the recipient by blood or marriage who is incapacitated as defined by the ~~Department Authority~~; or
4. A brother or sister of the recipient who has an equity interest in the home and who was residing in the home for at least one (1) year immediately preceding the date the recipient was admitted to the nursing home and has resided there on a continuous basis since that time.

E. No lien for payment of medical assistance pursuant to this section shall be effective unless:

1. The ~~Department Authority~~ has provided notice to the recipient of the intent to file a lien against the homestead of the recipient and of the opportunity for a hearing on the matter; and

2. After the notice specified in paragraph 1 of this subsection has been given, a lien is filed for record against the legal description of the homestead in the office of the county clerk of the county in which the homestead of the recipient is located. The lien shall contain the following information:

- a. the name and address of the place of residence of the recipient, ~~and~~
- b. the amount of the assistance paid at the time of the filing of the lien and the amount which is expected to accumulate on a monthly basis, ~~and~~
- c. the date the recipient began receiving compensated inpatient care at a nursing home or nursing homes, ~~and~~
- d. the legal description of the real property against which the lien will be recorded, and
- e. such other information as the ~~Department~~ Authority requires.

F. 1. After the lien has been filed pursuant to subsection E of this section, the ~~Department of Human Services~~ Authority may enforce a lien only:

- a. after the death of the surviving spouse of the recipient;
- b. when there is no child related to the recipient by blood or marriage who is twenty (20) years of age or less residing in the homestead;
- c. when there is no adult child related to the recipient by blood or marriage who is incapacitated as defined by the ~~Department~~ Authority residing in the homestead; and
- d. when no brother or sister of the recipient is residing in the homestead, who has resided there for at least one (1) year immediately before the date of the recipient's admission to the facility or institution, and has resided there on a continuous basis since that time.

2. A lien filed pursuant to subsection E of this section shall remain on ~~said~~ the homestead:

- a. until the lien is satisfied; ~~or,~~
- b. until the value of the homestead is consumed by the lien, at which time the ~~Department~~ Authority may force the sale of the ~~said~~ homestead to satisfy the lien; ~~or~~
- c. after transfer of title of the real property by conveyance, sale, succession, inheritance, or will.

3. The lien filed pursuant to subsection E of this section may be enforceable by the ~~Department~~ Authority before or after the death of the recipient.

4. The lien created by this section shall be treated as a mortgage and shall be released in accordance with the provisions as set forth in Section 15 of Title 46 of the Oklahoma Statutes.

5. The lien shall not sever a joint tenancy nor affect the right of survivorship. The lien shall be enforceable only to the extent of the ownership of the person receiving assistance as it existed at the time the recipient began receiving assistance.

G. The recipient, ~~his~~ the heirs, personal representative, or assigns of the recipient may discharge said lien at any time by paying the amount of the lien to the ~~Department~~ Authority.

H. At the end of the one (1) year limitation, the ~~Department~~ Authority shall exclude from consideration as a resource the value of the homestead of the recipient.

I. The payment of medical assistance on behalf of the recipient by the ~~Department~~ Authority and the signing of the notice pursuant to subsection B of this section shall constitute a waiver of the homestead rights of the recipient for the purposes of this section and Section 3 of Article XII of the Oklahoma Constitution.

J. 1. Pursuant to the provisions of this subsection, if the homestead is sold to enforce the lien authorized pursuant to the provisions of this section, an amount up to Six Thousand Dollars (\$6,000.00) from the proceeds of the sale of the homestead, less the value of any prepaid burial or insurance policies or designated accounts for funeral expenses already owned by the recipient, shall be set aside in an irrevocable trust fund to be used for the funeral expenses of the recipient.

2. Payment of ~~such~~ the funeral expenses from the proceeds of the sale of the homestead shall be made as follows:

a. If the proceeds exceed the amount of the lien, the payment of funeral expenses shall be first satisfied from any amount in excess of the lien amount. After the excess is exhausted, the remainder of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.

b. If the proceeds from the sale of the homestead do not exceed the amount of the lien, the payment of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.

K. As used in this section:

"Nursing home" means any home, establishment, or institution which offers or provides on a regular basis twenty-four-hour medical services, skilled nursing care, necessary special dietary service, and personal care and supervision to three or more of its residents who are not related to the owner or administrator of the facility.

L. If any ~~provisions~~ provision of this section shall be in conflict with any applicable federal statutes, ~~rules~~ and regulations, the federal statutes, ~~rules~~ and regulations shall prevail and be controlling until such time as the federal ~~statute,~~ rules ~~statutes~~ and regulations shall be revised to conform to this ~~act~~ section.

SECTION 4. AMENDATORY Section 2, Chapter 161, O.S.L. 1995 (56 O.S. Supp. 1995, Section 504.1), is amended to read as follows:

Section 504.1 A. There is hereby created within the Oklahoma Health Care Authority the Medicaid Drug Utilization Review (DUR) Board, which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the direction of the Authority.

B. The DUR Board shall consist of ten (10) members appointed by the ~~chief executive officer~~ administrator of the Authority as follows:

1. Four physicians, licensed and actively engaged in the practice of medicine or osteopathic medicine in this state, of which:

- a. three shall be physicians chosen from a list of not less than six names submitted by the Oklahoma State Medical Association, and
- b. one shall be a physician chosen from a list of not less than two names submitted by the Oklahoma Osteopathic Association;

2. Four licensed pharmacists actively engaged in the practice of pharmacy, chosen from a list of not less than six names submitted by the Oklahoma Pharmaceutical Association;

3. One person representing the lay community, who shall not be a physician or a pharmacist, but shall be a health care professional with recognized knowledge and expertise in at least one of the following:

- a. clinically appropriate prescribing of covered outpatient drugs,
- b. clinically appropriate dispensing and monitoring of covered outpatient drugs,
- c. drug use review, evaluation and intervention, and
- d. medical quality assurance; and

4. One person representing the pharmaceutical industry who is a resident of the State of Oklahoma, chosen from a list of not less than two names submitted by the Pharmaceutical Research and Manufacturers of America.

C. Members shall serve terms of three (3) years, except that one physician, one pharmacist and the lay representative shall each be initially appointed for two-year terms in order to stagger the terms. In making the appointments, the ~~chief executive officer~~ administrator shall provide, to the extent possible, for geographic balance in the representation on the DUR Board. Members may be reappointed for a period not to exceed three three-year terms and one partial term. Vacancies on the Board shall be filled for the balance of the unexpired term from new lists submitted by the entity originally submitting the list for the position vacated.

D. The Board shall elect from among its members a chair and a vice-chair who shall serve one-year terms, provided they may succeed themselves.

E. The proceedings of all meetings of the Board shall comply with the provisions of the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes~~, and shall be subject to the provisions of ~~Articles~~ Article I and II of the Administrative Procedures Act.

F. The DUR Board may advise and make recommendations to the Authority regarding existing, proposed and emergency rules governing retrospective and prospective drug utilization programs. The Oklahoma Health Care Authority Board shall promulgate rules pursuant to the provisions of Article I of the Administrative Procedures Act for implementation of the provisions of this section.

SECTION 5. AMENDATORY Section 5, Chapter 347, O.S.L. 1992, as last amended by Section 2, Chapter 350, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-119), is amended to read as follows:

Section 1-119. A. 1. The Division of Health Care Information shall, with the advice of the Health Care Information Advisory Committee and in accordance with the rules of the State Board of Health or successor rules of the Oklahoma Health Care Authority Board, collect health care information from information providers.

2. The information to be collected about information providers may include, but shall not be limited to:

- a. financial information including, but not limited to, consumption of resources to provide services, reimbursement, costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of service, wage and salary data,
- b. service information including, but not limited to, occupancy, capacity, and special and ancillary services,

- c. physician profiles in the aggregate by clinical specialties and nursing services,
- d. discharge data including, but not limited to, completed discharge data sets or comparable information for each patient discharged from the facility after the effective date of this act, and
- e. ambulatory care data including, but not limited to, provider-specific and encounter data.

3. The Division shall establish a phase-in schedule for the collection of health care data. The phase-in schedule shall provide that prior to January 1, 1994, only data currently collected shall be required to be submitted to the Division. Thereafter, in the collection of health care data, the Division shall whenever possible utilize existing health data resources and avoid duplication in the collection of health care data.

4. Except as provided by Section 1-120 of this title and as otherwise authorized by the provisions of the Oklahoma Health Care Information System Act, the provisions of the Oklahoma Health Care Information System Act shall not be construed to lessen or reduce the responsibility of the information provider with ~~regards~~ regard to:

- a. the accuracy of the data or information submitted,
- b. liability for release of the data or information to the Division, data processor or as otherwise authorized by this section, or
- c. the preservation of confidentiality of such data or information until submitted to the Division.

B. Upon the request of the Oklahoma Health Care Authority or the Division of Health Care Information, every state agency, board or commission shall provide the Division of Health Care Information with the health care data and other health care information requested at no charge to the Authority or the Division. Except as otherwise provided by the Health Care Information System Act for the purpose of statistical and similar reports, information which is required by state or federal law to be confidential shall not be transferred to any entity by the Division unless a separate written agreement for such transfer has been executed with the state agency, board or commission providing the information to the Division.

C. The University of Oklahoma College of Public Health, the Department of Human Services ~~and~~, the Department of Mental Health and Substance Abuse Services and the State Department of Health are hereby authorized to have access to the health care information system established pursuant to the Oklahoma Health Care Information System Act, ~~Section 1-115 et seq. of this title,~~ in accordance with a mutual interagency agreement between the ~~State Department of Health or the~~ Oklahoma Health Care Authority and each specified entity on an individual basis.

SECTION 6. RECODIFICATION 56 O.S. 1991, Sections 200, 200a and 200b, as amended by Sections 1, 2 and 3 of this act, shall be recodified as Sections 5051.1, 5051.2 and 5051.3 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 7. RECODIFICATION Section 2, Chapter 161, O.S.L. 1995 (56 O.S. Supp. 1995, Section 504.1), as amended by Section 4 of this act, shall be recodified as Section 5030.1 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 8. This act shall become effective November 1, 1996.

Passed the House of Representatives the 21st day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 21st day of May, 1996.

President of the Senate