STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 537 By: Kerr

AS INTRODUCED

An Act relating to state government; allowing recovery from tortfeasors of amounts paid for medical expenses of injured and diseased persons; amending 63 O.S. 1991, Section 5051.2, as amended by Section 2, Chapter 221, O.S.L. 1996, and as renumbered by Section 6, Chapter 221, O.S.L. 1996 (63 O.S. Supp. 2000, Section 5051.2), which relates to reimbursement for medical services; granting certain assignment rights to the Department of Rehabilitation Services; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 166.9 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. 1. The payment of medical expenses by the State Department of Rehabilitation Services 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, subject to recovery by legal action pursuant to this section.

2. The payment of medical expenses by the Department 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 whether or not such person asserts or maintains a claim against an insurer.

B. The Department 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 any judgment, settlement or compromise arising from the claim or action, for injury or illness for which the Department makes payments for medical assistance.

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

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

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

a. be inferior to any lien or claim of any attorney for handling the claim on behalf of the injured or diseased person, the heirs or personal 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 except as otherwise provided by Section 5051.2 of Title 63 of the Oklahoma Statutes, 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 any other legal action necessary to recover the amount so paid or to be paid to the injured or diseased person or to the heirs, personal representative or next of kin in case of the death of the person.

E. 1. To effectuate the lien authorized pursuant to this section, the Department 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 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 the injured or diseased person or to the heirs or personal representative of such person as damages or compensation for the injury or disease.

2. The Department shall also send by certified mail, return receipt requested, postage prepaid, a copy of 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 has notice of the name of the attorney.

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

F. The Department, to secure and enforce the right of recovery or reimbursement on behalf of the injured or diseased person, may initiate and prosecute any action or proceeding against 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 the other person or tortfeasor.

G. Any person or insurer that has been notified by the Department 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 for the money value of the medical assistance rendered by the Department 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 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 63 O.S. 1991, Section 5051.2, as amended by Section 2, Chapter 221, O.S.L. 1996, and as renumbered by Section 6, Chapter 221, O.S.L. 1996 (63 O.S. Supp. 2000, Section 5051.2), is amended to read as follows:

Section 5051.2 A. Whenever the Oklahoma Health Care Authority ~~pays~~ <u>or State Department of Rehabilitation Services pay</u> for medical

services or ~~renders~~ render 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 the services to reimbursement shall be automatically assigned to the Oklahoma Health Care Authority or State Department of Rehabilitation Services, upon notice to the insurer or other party obligated as a matter of law or agreement to reimburse the provider on behalf of the patient.

B. Upon the assignment, the Authority or the Department, for purposes of the claim for reimbursement, becomes a provider of medical services.

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. This act shall become effective November 1, 2001.

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