

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 251

By: Daniels of the Senate

and

O'Donnell of the House

COMMITTEE SUBSTITUTE

An Act relating to medical expense recovery; amending 63 O.S. 2011, Section 5051.1, which relates to recovery from tortfeasors of amounts paid for medical expenses; requiring Oklahoma Health Care Authority to use third parties to handle certain processes related to specified medical expense recovery; requiring Oklahoma Department of Insurance to make certain selection; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.1, is amended to read as follows:

Section 5051.1 A. 1. The payment of medical expenses by the 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

1 person creates a debt to the Authority, subject to recovery by legal  
2 action pursuant to this section. Damages for medical costs are  
3 considered a priority over all other damages and should be paid by  
4 the tortfeasor prior to other damages being allocated or paid.

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

11 B. The Authority shall provide notice to all recipients of  
12 medical assistance at the time of application for such assistance of  
13 their obligation to report any claim or action, and any judgment,  
14 settlement or compromise arising from the claim or action, for  
15 injury or illness for which the Authority makes payments for medical  
16 assistance.

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

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

4 1. Shall have a lien upon payment of the medical assistance to  
5 the extent of the amount so paid upon that part going or belonging  
6 to the injured or diseased person of any recovery or sum had or  
7 collected or to be collected by the injured or diseased person up to  
8 the amount of the damages for the total medical expenses, or by the  
9 heirs, personal representative or next of kin in case of the death  
10 of the person, whether by judgment or by settlement or compromise.

11 The lien authorized by this subsection shall:

- 12 a. be inferior only to a lien or claim of the attorney or  
13 attorneys handling the claim on behalf of the injured  
14 or diseased person, the heirs or personal  
15 representative,
- 16 b. not be applied or considered valid against any  
17 temporary or permanent disability award of the  
18 claimant due under the Workers' Compensation Act,
- 19 c. be applied and considered valid as against any insurer  
20 adjudged responsible for medical expenses under the  
21 Workers' Compensation Act, and
- 22 d. be applied and considered valid as to the entire  
23 settlement, after the claim of the attorney or  
24 attorneys for fees and costs, unless a more limited

1 allocation of damages to medical expenses is shown by  
2 clear and convincing evidence;

3 2. May take any other legal action necessary to recover the  
4 amount so paid or to be paid to the injured or diseased person or to  
5 the heirs, personal representative or next of kin in case of the  
6 death of the person; and

7 3. Shall have the right to file a written notice of its lien in  
8 any action commenced by the injured or diseased person.

9 E. The Authority, to secure and enforce the right of recovery  
10 or reimbursement on behalf of the injured or diseased person, may  
11 initiate and prosecute any action or proceeding against any other  
12 person or tortfeasor who may be liable to the injured or diseased  
13 person, if the injured or diseased person has not initiated any  
14 legal proceedings against the other person or tortfeasor.

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

23 G. A Medicaid special needs trust for the purposes of  
24 establishing or maintaining Medicaid eligibility shall not be

1 approved until such time as the Authority has been made whole and  
2 paid in full for all paid medical claims which are associated with  
3 the action.

4 H. A Medicaid recipient must notify the Authority prior to a  
5 compromise or settlement against a third party in which the  
6 Authority has provided or has become obligated to provide medical  
7 assistance.

8 I. In order to enforce its rights and interests as set forth in  
9 this section, the Authority shall use outside third parties to  
10 handle all administrative and legal processes directly related to  
11 medical expense recovery pursuant to this section. Outside third  
12 parties shall be private entities and shall be selected by the  
13 Oklahoma Department of Insurance pursuant to a Request for Proposal.

14 J. As used in this section:

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

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

22 3. "Insurer" means any insurance company that administers  
23 accident and health policies or plans or that administers any other  
24 type insurance policy containing medical provisions, and any

1 nonprofit hospital service and indemnity and medical service and  
2 indemnity corporation, actually engaged in business in the state,  
3 regardless of where the insurance contract is written, or plan is  
4 administered or where such corporation is incorporated.

5 SECTION 2. This act shall become effective November 1, 2019.

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