

1 ENGROSSED SENATE
2 BILL NO. 251

By: Daniels of the Senate

3 and

4 O'Donnell of the House

5
6 An Act relating to medical expense recovery; amending
7 63 O.S. 2011, Section 5051.1, which relates to
8 recovery from tortfeasors of amounts paid for medical
9 expenses; requiring Oklahoma Health Care Authority to
10 use third party to handle certain processes related
11 to specified medical expense recovery; requiring
12 Office of Management and Enterprise Services to make
13 certain selection; and providing an effective date.

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

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

17 Section 5051.1. A. 1. The payment of medical expenses by the
18 Oklahoma Health Care Authority for or on behalf of or the receipt of
19 medical assistance by a person who has been injured or who has
20 suffered a disease as a result of the negligence or act of another
21 person creates a debt to the Authority, subject to recovery by legal
22 action pursuant to this section. Damages for medical costs are
23 considered a priority over all other damages and should be paid by
24 the tortfeasor prior to other damages being allocated or paid.

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

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

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

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

23 1. Shall have a lien upon payment of the medical assistance to
24 the extent of the amount so paid upon that part going or belonging

1 to the injured or diseased person of any recovery or sum had or
2 collected or to be collected by the injured or diseased person up to
3 the amount of the damages for the total medical expenses, or by the
4 heirs, personal representative or next of kin in case of the death
5 of the person, whether by judgment or by settlement or compromise.

6 The lien authorized by this subsection shall:

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

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

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

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

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

19 G. A Medicaid special needs trust for the purposes of
20 establishing or maintaining Medicaid eligibility shall not be
21 approved until such time as the Authority has been made whole and
22 paid in full for all paid medical claims which are associated with
23 the action.

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

5 I. In order to enforce its rights and interests as set forth in
6 this section, the Authority shall use an outside third party to
7 handle all administrative and legal processes directly related to
8 medical expense recovery pursuant to this section. The outside
9 third party shall be a private entity and shall be selected by the
10 Office of Management and Enterprise Services pursuant to a Request
11 for Proposal.

12 J. As used in this section:

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

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

20 3. "Insurer" means any insurance company that administers
21 accident and health policies or plans or that administers any other
22 type insurance policy containing medical provisions, and any
23 nonprofit hospital service and indemnity and medical service and
24 indemnity corporation, actually engaged in business in the state,

1 regardless of where the insurance contract is written, or plan is
2 administered or where such corporation is incorporated.

3 SECTION 2. This act shall become effective November 1, 2019.
4 Passed the Senate the 12th day of March, 2019.

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7 Presiding Officer of the Senate

8 Passed the House of Representatives the ____ day of _____,
9 2019.

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12 Presiding Officer of the House
13 of Representatives

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