

An Act

ENROLLED SENATE
BILL NO. 251

By: Daniels of the Senate

and

O'Donnell of the House

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.

SUBJECT: Medical expense recovery

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

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

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

C. The recipient of medical assistance from the Authority 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 Authority 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 Authority:

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 up to the amount of the damages for the total medical expenses, 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 only to a lien or claim of the attorney or attorneys 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,

- c. be applied and considered valid as against any insurer adjudged responsible for medical expenses under the Workers' Compensation Act, and
- d. be applied and considered valid as to the entire settlement, after the claim of the attorney or attorneys for fees and costs, unless a more limited allocation of damages to medical expenses is shown by clear and convincing evidence;

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; and

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

E. The Authority, 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.

F. Any person or insurer that has been notified by the 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 Authority for the money value of the medical assistance rendered by the 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.

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

H. A Medicaid recipient must notify the Authority prior to a compromise or settlement against a third party in which the

Authority has provided or has become obligated to provide medical assistance.

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

J. 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. This act shall become effective November 1, 2019.

Passed the Senate the 7th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____