

1 **SENATE FLOOR VERSION**

2 February 20, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 251

By: Daniels of the Senate

and

O'Donnell of the House

5  
6  
7  
8 **[ medical expense recovery - recovery from**  
9 **tortfeasors of amounts paid for medical expenses -**  
10 **Oklahoma Health Care Authority - Oklahoma Department**  
11 **of Insurance - effective date ]**

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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 Oklahoma Department of Insurance pursuant to a Request for Proposal.

11 J. As used in this section:

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

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

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

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 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
5 February 20, 2019 - DO PASS AS AMENDED  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24