

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1791

6 By: Osburn

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending
9 63 O.S. 2021, Section 5051.1, which relates to
10 recovery from tortfeasors of amounts paid for medical
11 expenses of injured and diseased persons; clarifying
12 the priority of medical costs over all other damages;
13 prioritizing certain liens; allowing negotiation on
14 certain liens; providing the method for determining
15 the amount to be recovered against a party that
16 received payment; providing the method for
17 determining the amount to be recovered against a
18 third-party payer; providing the method for
19 determining the amount to be recovered when a payment
20 is made by a payor that is less than the judgment or
21 settlement amount; providing the method for
22 determining the amount to be recovered when a payor's
23 payment equals or exceeds the judgment or settlement
24 amount; providing the method for determining the
amount to be recovered when a payor incurs
procurement costs because of opposition to its
recovery; providing a recovery worksheet; providing
the method to determine the amount to be recovered
from a beneficiary; providing the method to determine
the amount to be refunded; and providing an effective
date.

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

1 SECTION 1. AMENDATORY 63 O.S. 2021, Section 5051.1, is
2 amended to read as follows:

3 Section 5051.1 A. 1. The payment of medical expenses by the
4 Oklahoma Health Care Authority for or on behalf of or the receipt of
5 medical assistance by a person who has been injured, passed away, or
6 who has suffered a disease as a result of the negligence or act of
7 another person creates a debt to the Authority, subject to recovery
8 by legal action pursuant to this section. Damages for medical costs
9 are considered a priority over all other damages and ~~should~~ shall be
10 paid by the tortfeasor prior to all other damages being allocated or
11 paid.

12 2. The payment of medical expenses by the Authority for or on
13 behalf of a person who has been injured or who has suffered a
14 disease, and either has a claim or may have a claim against an
15 insurer, to the extent recoverable, creates a debt to the Authority
16 whether or not such person asserts or maintains a claim against an
17 insurer-:

- 18 a. such claim or possible claim cannot be assigned by the
19 person receiving medical care to any provider, and
20 b. no provider may require assignment of subrogation
21 rights against any possible liable third party as a
22 condition for providing medical care.

23 B. The Authority shall provide notice to all recipients of
24 medical assistance at the time of application for such assistance of

1 their obligation to report any claim or action, and any judgment,
2 settlement or compromise arising from the claim or action, for
3 injury or illness for which the Authority makes payments for medical
4 assistance.

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

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

15 1. Shall have a lien upon payment of the medical assistance to
16 the extent of the total amount so paid upon that part going or
17 belonging to the injured or diseased person of any recovery or sum
18 had or collected or to be collected by the injured or diseased
19 person up to the amount of the damages for the total medical
20 expenses, or by the heirs, personal representative or next of kin in
21 case of the death of the person, whether by judgment or by
22 settlement or compromise. The lien authorized by this subsection
23 shall:

24

- 1 a. have priority over all other liens except any lien by
2 CMS/Medicare and be inferior only to a lien or claim
3 of the attorney or attorneys handling the claim on
4 behalf of the injured or diseased person, the heirs or
5 personal representative,
- 6 b. not be applied or considered valid against any
7 temporary or permanent disability award of the
8 claimant due under the Workers' Compensation Act,
- 9 c. be applied and considered valid as against any insurer
10 adjudged responsible for medical expenses under the
11 Workers' Compensation Act, and
- 12 d. be applied and considered valid as to the entire
13 settlement, after the claim of the attorney or
14 attorneys for fees and costs, unless a more limited
15 allocation of damages to medical expenses is shown by
16 clear and convincing evidence;

17 2. A lien reduction pursuant to Section 994.2 of Title 12 of
18 the Oklahoma Statutes may be negotiated further by the Authority
19 provided that the injured person, the personal representative, or
20 attorney has made a good-faith effort to negotiate a reduction;

21 ~~2.~~ 3. May take any other legal action necessary to recover the
22 amount so paid or to be paid to the injured or diseased person or to
23 the heirs, personal representative or next of kin in case of the
24 death of the person; and

1 ~~3.~~ 4. Shall have the right to file a written notice of its lien
2 in any action commenced by the injured or diseased person.

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

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

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

22 H. A Medicaid recipient must notify the Authority prior to a
23 compromise or settlement against a third party in which the
24

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

3 I. As used in this section:

4 1. "Medical expenses" includes the cost of hospital, medical,
5 surgical and dental services, care and treatment, rehabilitation,
6 and prostheses and medical appliances, and nursing and funeral
7 services;

8 2. "Person" includes, in addition to an individual, the
9 guardian of an individual, and the administrator or executor of the
10 estate of an individual, and a corporation; and

11 3. "Insurer" means any insurance company that administers
12 accident and health policies or plans or that administers any other
13 type insurance policy containing medical provisions, and any
14 nonprofit hospital service and indemnity and medical service and
15 indemnity corporation, actually engaged in business in the state,
16 regardless of where the insurance contract is written, or plan is
17 administered or where such corporation is incorporated.

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 994.3 of Title 12, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Recovery against the party that received payment.

22 1. General rule. Any payor of money benefits with recovery or
23 reimbursement rights by contract or statute reduces its recovery to
24

1 take account of the cost of procuring the judgment or settlement
2 from a third party, as provided in this section, if:

3 a. procurement costs are incurred because the claim is
4 disputed, and

5 b. those costs are borne by the party against which the
6 payor seeks to recover.

7 2. Special rule. If a payor must file suit because the party
8 that received payment opposes the payor's recovery, the recovery
9 amount is as set forth in subsection E of this section.

10 B. Recovery against the third-party payer. If the payor seeks
11 recovery from the third-party payer, the recovery amount will be no
12 greater than the amount determined under subsection C, D or E of
13 this section.

14 C. Payments made by a payor that are less than the judgment or
15 settlement amount. If a payor's payments are less than the judgment
16 or settlement amount, the recovery is computed as follows:

17 1. Determine the ratio of the procurement costs to the total
18 judgment or settlement payment;

19 2. Apply the ratio to the person or entity's payment. The
20 product is the payor's share of procurement costs; and

21 3. Subtract the payor's share of procurement costs from his or
22 her claimed payments. The remainder is the payor's recovery amount.

23 D. A payor's payments that equals or exceeds the judgment or
24 settlement amount. If payor's payments equal or exceed the judgment

1 or settlement amount, the recovery amount is the total judgment or
2 settlement payment minus the total procurement costs.

3 E. The payor incurs procurement costs because of opposition to
4 its recovery. If the payor must bring suit against the party that
5 received payment because that party opposes the recovery, the
6 recovery amount is the lower of the following:

- 7 1. The person or entity's payment; or
- 8 2. The total judgment or settlement amount, minus the party's
9 total procurement cost.

10 F. Recovery worksheet. The amount to be recovered from the
11 beneficiary is the amount payor paid, less a proportionate share of
12 the costs of procuring the judgment or settlement. The amount to be
13 refunded is determined as follows:

14 If the payor's payment is less than the amount of judgment or
15 settlement:

- 16 1. Determine the ratio of the payments to the total amount of
17 the judgment or settlement;
- 18 2. Apply this ratio to the costs of procuring the judgment or
19 settlement, including attorney fees; and
- 20 3. Subtract the payor's share of procurement costs from their
21 payments. The remainder is the amount of reimbursement to be
22 refunded to the payor seeking recovery of payments.

23 Step 1:

24 \$ _____ / \$ _____ = _____

1 Payor's Payment Judgment/Settlement Ratio
 2 Carry out 6 digits
 3 Step 2:
 4 _____ X \$ _____ = _____
 5 Ratio from Step 1 Procurement Costs Payor's Share of
 6 Carry out 6 digits Procurement Cost
 7 Step 3:
 8 \$ _____ - \$ _____ = _____
 9 Payor's Payment Payor's Share of Refund to Payor
 10 Procurement Costs

11 G. If the payor's payments equal or exceed the amount of the
 12 judgment or settlement, subtract the total procurement costs from
 13 the judgment or settlement. The remainder is the amount of
 14 reimbursement to be refunded to the payor. The beneficiary will not
 15 be required to refund more than the liability insurance payment
 16 minus the procurement costs.

17 \$ _____ - \$ _____ = \$ _____
 18 Judgment/Settlement Procurement Costs Refund

19 SECTION 3. This act shall become effective November 1, 2023.

21 59-1-7943 GRS 03/02/23