

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1791

By: Osburn of the House

and

**Rosino** of the Senate

7  
8  
9                                   COMMITTEE SUBSTITUTE

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

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

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

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

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

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

24

1 B. The Authority shall provide notice to all recipients of  
2 medical assistance at the time of application for such assistance of  
3 their obligation to report any claim or action, and any judgment,  
4 settlement or compromise arising from the claim or action, for  
5 injury or illness for which the Authority makes payments for medical  
6 assistance.

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

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

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

24

1 settlement or compromise. The lien authorized by this subsection  
2 shall:

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

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

23 ~~2.~~ 3. May take any other legal action necessary to recover the  
24 amount so paid or to be paid to the injured or diseased person or to

1 the heirs, personal representative or next of kin in case of the  
2 death of the person; and

3 ~~3.~~ 4. Shall have the right to file a written notice of its lien  
4 in 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.

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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. As used in this section:

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

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

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

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

23 A. Recovery against the party that received payment.  
24

1           1. General rule. Any payor of money benefits with recovery or  
2 reimbursement rights by contract or statute reduces its recovery to  
3 take account of the cost of procuring the judgment or settlement  
4 from a third party, as provided in this section, if:

5           a. procurement costs are incurred because the claim is  
6           disputed, and

7           b. those costs are borne by the party against which the  
8           payor seeks to recover.

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

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

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

19           1. Determine the ratio of the procurement costs to the total  
20 judgment or settlement payment;

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

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

1 D. A payor's payments that equals or exceeds the judgment or  
2 settlement amount. If payor's payments equal or exceed the judgment  
3 or settlement amount, the recovery amount is the total judgment or  
4 settlement payment minus the total procurement costs.

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

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

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

16 If the payor's payment is less than the amount of judgment or  
17 settlement:

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



1 Step 1:  
 2 \$ \_\_\_\_\_ / \$ \_\_\_\_\_ = \_\_\_\_\_  
 3 Payor's Payment Judgment/Settlement Ratio  
 4 Carry out 6 digits

5 Step 2:  
 6 \_\_\_\_\_ X \$ \_\_\_\_\_ = \_\_\_\_\_  
 7 Ratio from Step 1 Procurement Costs Payor's Share of  
 8 Carry out 6 digits Procurement Cost

9 Step 3:  
 10 \$ \_\_\_\_\_ - \$ \_\_\_\_\_ = \_\_\_\_\_  
 11 Payor's Payment Payor's Share of Refund to Payor  
 12 Procurement Costs

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

19 \$ \_\_\_\_\_ - \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
 20 Judgment/Settlement Procurement Costs Refund

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

22  
 23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
 24 03/06/2023 - DO PASS, As Amended and Coauthored.