

1 **SENATE FLOOR VERSION**

2 April 11, 2023

3 ENGROSSED HOUSE  
4 BILL NO. 1791

By: Osburn of the House

and

Rosino of the Senate

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7  
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:

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

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

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

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

21 B. The Authority shall provide notice to all recipients of  
22 medical assistance at the time of application for such assistance of  
23 their obligation to report any claim or action, and any judgment,  
24 settlement or compromise arising from the claim or action, for

1 injury or illness for which the Authority makes payments for medical  
2 assistance.

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

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

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

22 a. have priority over all other liens except any lien by  
23 CMS/Medicare and be inferior only to a lien or claim  
24 of the attorney or attorneys handling the claim on

1           behalf of the injured or diseased person, the heirs or  
2           personal representative,

3           b.   not be applied or considered valid against any  
4           temporary or permanent disability award of the  
5           claimant due under the Workers' Compensation Act,

6           c.   be applied and considered valid as against any insurer  
7           adjudged responsible for medical expenses under the  
8           Workers' Compensation Act, and

9           d.   be applied and considered valid as to the entire  
10          settlement, after the claim of the attorney or  
11          attorneys for fees and costs, unless a more limited  
12          allocation of damages to medical expenses is shown by  
13          clear and convincing evidence;

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

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

22          ~~3.~~ 4.   Shall have the right to file a written notice of its lien  
23 in any action commenced by the injured or diseased person.

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

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

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

20 H. A Medicaid recipient must notify the Authority prior to a  
21 compromise or settlement against a third party in which the  
22 Authority has provided or has become obligated to provide medical  
23 assistance.

24 I. As used in this section:

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

5 2. "Person" includes, in addition to an individual, the  
6 guardian of an individual, and the administrator or executor of the  
7 estate of an individual, and a corporation; and

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

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

18 A. Recovery against the party that received payment.

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

23 a. procurement costs are incurred because the claim is  
24 disputed, and

1           b.    those costs are borne by the party against which the  
2                    payor seeks to recover.

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

6           B.   Recovery against the third-party payer.  If the payor seeks  
7 recovery from the third-party payer, the recovery amount will be no  
8 greater than the amount determined under subsection C, D or E of  
9 this section.

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

13           1.   Determine the ratio of the procurement costs to the total  
14 judgment or settlement payment;

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

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

19          D.   A payor's payments that equals or exceeds the judgment or  
20 settlement amount.  If payor's payments equal or exceed the judgment  
21 or settlement amount, the recovery amount is the total judgment or  
22 settlement payment minus the total procurement costs.

23          E.   The payor incurs procurement costs because of opposition to  
24 its recovery.  If the payor must bring suit against the party that

1 received payment because that party opposes the recovery, the  
2 recovery amount is the lower of the following:

- 3 1. The person or entity's payment; or
- 4 2. The total judgment or settlement amount, minus the party's  
5 total procurement cost.

6 F. Recovery worksheet. The amount to be recovered from the  
7 beneficiary is the amount payor paid, less a proportionate share of  
8 the costs of procuring the judgment or settlement. The amount to be  
9 refunded is determined as follows:

10 If the payor's payment is less than the amount of judgment or  
11 settlement:

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

19 Step 1:

20 \$ \_\_\_\_\_ / \$ \_\_\_\_\_ = \_\_\_\_\_

21 Payor's Payment                  Judgment/Settlement                  Ratio

22 Carry out 6 digits

23 Step 2:

24 \_\_\_\_\_ X \$ \_\_\_\_\_ = \_\_\_\_\_



1 Ratio from Step 1 Procurement Costs Payor's Share of  
 2 Carry out 6 digits Procurement Cost  
 3 Step 3:  
 4 \$ \_\_\_\_\_ - \$ \_\_\_\_\_ = \_\_\_\_\_  
 5 Payor's Payment Payor's Share of Refund to Payor  
 6 Procurement Costs

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

13 \$ \_\_\_\_\_ - \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
 14 Judgment/Settlement Procurement Costs Refund

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
 17 April 11, 2023 - DO PASS

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