

SB 322

FILED

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WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009



ENROLLED

Senate Bill No. 322

(BY SENATORS OLIVERIO AND CHAFIN)

[Passed April 11, 2009; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 322

(BY SENATORS OLIVERIO AND CHAFIN)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to exempting the first \$25,000 of the death benefit of a life insurance policy from assignment by Medicaid recipients to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Assignment of rights; right of subrogation by Department of Health and Human Resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

- 1 (a) Submission of an application to the Department of
- 2 Health and Human Resources for medical assistance is, as
- 3 a matter of law, an assignment of the right of the appli-

4 cant or legal representative thereof to recovery from
5 personal insurance or other sources, including, but not
6 limited to, liable third parties, to the extent of the cost of
7 medical services paid for by the Medicaid program. This
8 assignment of rights does not extend to Medicare benefits:
9 *Provided*, That the first \$25,000 of the death benefit of a
10 life insurance policy is exempt from assignment under the
11 provisions of this section.

12 At the time the application is made, the department
13 shall include a statement along with such application that
14 explains that the applicant has assigned all such rights
15 and the legal implications of making such assignment as
16 provided in this section.

17 If medical assistance is paid or will be paid to a pro-
18 vider of medical care on behalf of a recipient of medical
19 assistance because of any sickness, injury, disease or
20 disability, and another person is legally liable for such
21 expense, either pursuant to contract, negligence or other-
22 wise, the Department of Health and Human Resources
23 shall have a right to recover full reimbursement from any
24 award or settlement for such medical assistance from such
25 other person or from the recipient of such assistance if he
26 or she has been reimbursed by the other person. The
27 department shall be legally assigned the rights of the
28 recipient against the person so liable, but only to the
29 extent of the reasonable value of the medical assistance
30 paid and attributable to the sickness, injury, disease or
31 disability for which the recipient has received damages.
32 When an action or claim is brought by a medical assis-
33 tance recipient or by someone on his or her behalf against
34 a third party who may be liable for the injury, disease,
35 disability or death of a medical assistance recipient, any
36 settlement, judgment or award obtained is subject to the
37 claim of the Department of Health and Human Resources
38 for reimbursement of an amount sufficient to reimburse
39 the department the full amount of benefits paid on behalf

40 of the recipient under the medical assistance program for
41 the injury, disease, disability or death of the medical
42 assistance recipient. The claim of the Department of
43 Health and Human Resources assigned by such recipient
44 shall not exceed the amount of medical expenses for the
45 injury, disease, disability or death of the recipient paid by
46 the department on behalf of the recipient. The right of
47 subrogation created in this section includes all portions of
48 the cause of action, by either settlement, compromise,
49 judgment or award, notwithstanding any settlement
50 allocation or apportionment that purports to dispose of
51 portions of the cause of action not subject to the
52 subrogation. Any settlement, compromise, judgment or
53 award that excludes or limits the cost of medical services
54 or care shall not preclude the Department of Health and
55 Human Resources from enforcing its rights under this
56 section. The secretary may compromise, settle and execute
57 a release of any such claim, in whole or in part.

58 (b) Nothing in this section shall be construed so as to
59 prevent the recipient of medical assistance from maintain-
60 ing an action for injuries received by him or her against
61 any other person and from including therein, as part of the
62 compensatory damages sought to be recovered, the amount
63 or amounts of his or her medical expenses, even though
64 such person received medical assistance in the payment of
65 such medical expenses, in whole or in part.

66 If the action be tried by a jury, the jury shall not be
67 informed as to the interest of the Department of Health
68 and Human Resources, if any, and such fact shall not be
69 disclosed to the jury at any time. The trial judge shall,
70 upon the entry of judgment on the verdict, direct that an
71 amount equal to the amount of medical assistance given be
72 withheld and paid over to the Department of Health and
73 Human Resources. Irrespective of whether the case be
74 terminated by judgment or by settlement without trial,
75 from the amount required to be paid to the Department of

76 Health and Human Resources there shall be deducted the
77 attorney fees attributable to such amount in accordance
78 with and in proportion to the fee arrangement made
79 between the recipient and his or her attorney of record so
80 that the department shall bear the pro rata portion of such
81 attorney fees. Nothing in this section shall preclude any
82 person who has received medical assistance from settling
83 any cause of action which he or she may have against
84 another person and delivering to the Department of Health
85 and Human Resources, from the proceeds of such settle-
86 ment, the sums received by him or her from the depart-
87 ment or paid by the department for his or her medical
88 assistance. If such other person is aware of or has been
89 informed of the interest of the Department of Health and
90 Human Resources in the matter, it shall be the duty of the
91 person to whose benefit the release inures to withhold so
92 much of the settlement as may be necessary to reimburse
93 the department to the extent of its interest in the settle-
94 ment. No judgment, award of or settlement in any action
95 or claim by a medical assistance recipient to recover
96 damages for injuries, disease or disability, in which the
97 Department of Health and Human Resources has interest,
98 shall be satisfied without first giving the department
99 notice and reasonable opportunity to establish its interest.
100 The department shall have sixty days from receipt of such
101 written notice to advise the recipient or his or her repre-
102 sentative in writing of the department's desire to establish
103 its interest through the assignment. If no such written
104 intent is received within the sixty-day period, then the
105 recipient may proceed and in the event of full recovery
106 forward to the department the portion of the recovery
107 proceeds less the department's share of attorney's fees and
108 costs expended in the matter. In the event of less than full
109 recovery the recipient and the department shall agree as to
110 the amount to be paid to the department for its claim. If
111 there is no recovery, the department shall under no
112 circumstances be liable for any costs or attorney's fees

113 expended in the matter. If, after being notified in writing
114 of a subrogation claim and possible liability of the recipi-
115 ent, guardian, attorney or personal representative for
116 failure to subrogate the department, a recipient, his or her
117 guardian, attorney or personal representative disposes of
118 the funds representing the judgment, settlement or award,
119 without the written approval of the department, that
120 person shall be liable to the department for any amount
121 that, as a result of the disposition of the funds, is not
122 recoverable by the department. In the event that a
123 controversy arises concerning the subrogation claims by
124 the department, an attorney shall interplead, pursuant to
125 rule twenty-two of the Rules of Civil Procedure, the
126 portion of the recipient's settlement that will satisfy the
127 department exclusive of attorney's fees and costs regard-
128 less of any contractual arrangement between the client
129 and the attorney.

130 (c) Nothing contained herein shall authorize the De-
131 partment of Health and Human Resources to institute a
132 class action or multiple plaintiff action against any
133 manufacturer, distributor or vendor of any product to
134 recover medical care expenditures paid for by the
135 Medicaid program.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

.....
Chairman Senate Committee

[Handwritten Signature]

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]

.....
Clerk of the Senate

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.....
Clerk of the House of Delegates

[Handwritten Signature]

.....
President of the Senate

[Handwritten Signature]

.....
Speaker House of Delegates

The within is approved this the 8th

Day of May....., 2009.

[Handwritten Signature]

.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:15am