# An Act

ENROLLED HOUSE
BILL NO. 1791

By: Osburn of the House

and

Rosino of the Senate

An Act relating to public health and safety; amending 63 O.S. 2021, Section 5051.1, which relates to recovery from tortfeasors of amounts paid for medical expenses of injured and diseased persons; clarifying the priority of medical costs over all other damages; prioritizing certain liens; allowing negotiation on certain liens; providing the method for determining the amount to be recovered against a party that received payment; providing the method for determining the amount to be recovered against a third-party payer; providing the method for determining the amount to be recovered when a payment is made by a payor that is less than the judgment or settlement amount; providing the method for 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.

SUBJECT: Public health and safety

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:

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

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

a. such claim or possible claim cannot be assigned by the person receiving medical care to any provider, and

b. no provider may require assignment of subrogation rights against any possible liable third party as a condition for providing medical care.

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

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

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

1. Shall have a lien upon payment of the medical assistance to the extent of the total amount so paid upon that part going or

belonging to the injured or diseased person of any recovery or sum had or collected or to be collected by the injured or diseased person up to the amount of the damages for the total medical expenses, or by the heirs, personal representative or next of kin in case of the death of the person, whether by judgment or by settlement or compromise. The lien authorized by this subsection shall:

a. have priority over all other liens except any lien by CMS/Medicare and be inferior only to a lien or claim of the attorney or attorneys handling the claim on behalf of the injured or diseased person, the heirs or personal representative,

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

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

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

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

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

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

E. The Authority, to secure and enforce the right of recovery or reimbursement on behalf of the injured or diseased person, may initiate and prosecute any action or proceeding against any other person or tortfeasor who may be liable to the injured or diseased

person, if the injured or diseased person has not initiated any legal proceedings against the other person or tortfeasor.

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

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

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

I. As used in this section:

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

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

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

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

A. Recovery against the party that received payment.

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

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

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

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

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

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

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

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

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

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

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

1. The person or entity's payment; or

2. The total judgment or settlement amount, minus the party's total procurement cost.

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

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

1. Determine the ratio of the payments to the total amount of the judgment or settlement;

2. Apply this ratio to the costs of procuring the judgment or settlement, including attorney fees; and

3. Subtract the payor's share of procurement costs from their payments. The remainder is the amount of reimbursement to be refunded to the payor seeking recovery of payments.

Step 1:

$_____ / $_____ = _____

Payor's Payment  Judgment/Settlement  Ratio

Carry out 6 digits

Step 2:

_____ X $_____ = _____

Ratio from Step 1  Procurement Costs  Payor's Share of

Carry out 6 digits  Procurement Cost

Step 3:

$_____ - $_____ = _____

Payor's Payment  Payor's Share of  Refund to Payor

Procurement Costs

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

$_____ - $_____ = $_____

Judgment/Settlement  Procurement Costs  Refund

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

Passed the House of Representatives the 20th day of March, 2023.

Presiding Officer of the House of Representatives

Passed the Senate the 25th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th day of April, 20 23, at 2:36 o'clock p. M.

By: [signature]

Approved by the Governor of the State of Oklahoma this 2nd day of May, 20 23, at 11:42 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 2nd day of May, 20 23, at 1:19 o'clock p M.

By: [signature]