

SENATE FILE NO. SF0063

Medicaid benefit recovery.

Sponsored by: Senator(s) Decaria and Representative(s)
Nicholas

A BILL

for

1 AN ACT relating to Medicaid benefit recovery; specifying
2 the applicability of the Medicaid program and the benefit
3 recovery program to applicants for Medicaid services;
4 amending notice requirements for potential recovery under
5 third party lawsuits; amending lien provisions for Medicaid
6 benefit recovery as specified; conforming a provision;
7 repealing conflicting provisions; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 2-7-717, 42-4-201(a) and (b),
13 42-4-202(d)(iii) and (iv), 42-4-203(a)(intro),
14 42-4-207(c)(intro), (d)(intro), (e), (g) and (h) are
15 amended to read:

16

1 **2-7-717. Action precluded until claim rejected;**
2 **exception.**

3

4 No holder of any claim against an estate shall maintain any
5 action thereon unless the claim is first rejected in whole
6 or in part by the personal representative and the rejection
7 filed with the clerk, except an action may be brought by
8 any holder of a mortgage or lien, including liens under
9 W.S. 42-4-207, to enforce the same against the property of
10 the estate subject thereto where all recourse against the
11 other property of the estate is expressly waived in the
12 complaint or no claim for deficiency is made in proceedings
13 for foreclosure by advertisement and sale under W.S.
14 34-4-101 through 34-4-113.

15

16 **42-4-201. Action against third party; notice;**
17 **subrogation.**

18

19 (a) If a person who is or becomes an applicant or
20 recipient ~~covered by~~ for medical assistance under this
21 chapter receives an injury under circumstances creating a
22 legal liability in some third party, the applicant or
23 recipient shall not be deprived of any medical assistance
24 for which he is entitled under this chapter. He may also

1 pursue his remedy at law against the third party. If the
2 applicant or recipient recovers from the third party in any
3 manner, including judgment, compromise, settlement or
4 release, the state is entitled to be reimbursed for all
5 payments made, or to be made, on behalf of the applicant or
6 recipient under this chapter.

7
8 (b) The department shall be served by certified mail,
9 return receipt requested, with a copy of the complaint
10 ~~filed~~ within seven (7) days of its filing in any suit
11 initiated pursuant to subsection (a) of this section. Any
12 attorney who knowingly fails to serve the complaint on the
13 department shall be reported to the state board of
14 professional responsibility for the Wyoming state bar. The
15 department shall be notified in writing by certified mail
16 return receipt requested of any judgment, compromise,
17 settlement or release entered into by ~~a~~ any person who has
18 been an applicant for or recipient of medical assistance
19 under this chapter after the date of injury. If there is a
20 settlement, compromise or release entered into by the
21 parties the attorney general representing the director
22 shall be made a party in all negotiations for settlement,
23 compromise or release. The department, for purposes of
24 facilitating compromise and settlement, may in a proper

1 case authorize acceptance by the state of less than the
2 state's claim for reimbursement under this section for all
3 current and future assistance under this chapter. Any
4 reimbursement right created pursuant to this article shall
5 remain in effect until the state is paid the amount
6 authorized under this section. In addition the person
7 paying the settlement remains liable to the state's
8 reimbursement right unless the state through the attorney
9 general signs the release prior to payment of an agreed
10 settlement.

11

12 **42-4-202. Third party liability; authority;**
13 **enforcement; notice; costs.**

14

15 (d) The department shall be given notice of monetary
16 claims against a person, firm or corporation that may be
17 liable to pay part or all of the cost of medical care when
18 the department has paid or become liable for the cost of
19 that care. Notice shall be given as follows:

20

21 (iii) An attorney representing an applicant for
22 or a recipient of medical assistance in a claim upon which
23 the department may ~~be entitled to a lien~~ have a
24 reimbursement right under this ~~section~~ chapter shall notify

1 the department of its potential ~~lien~~—claim for
2 reimbursement before filing a claim, commencing an action,
3 or negotiating a settlement. Any attorney who knowingly
4 fails to notify the department of any settlement or
5 knowingly fails to ensure the state is reimbursed, to the
6 extent of ~~the lien~~—its reimbursement right, from the
7 proceeds of any settlement or judgment under this section
8 shall be reported to the state board of professional
9 responsibility for the Wyoming state bar. In such
10 circumstances, the department shall have a claim for relief
11 against the attorney for the amount of the ~~lien~~
12 reimbursement right under this ~~section~~—chapter;

13

14 (iv) Insurers shall not disburse any settlement
15 payment for a personal injury claim made to a recipient of
16 medical assistance under this act until seven (7) days
17 after the department has received written notice from the
18 insurer of the proposed settlement or judgment and failed
19 to provide a written objection to the insurer. Failure to
20 provide notice under this paragraph shall commence the
21 tolling of any applicable statute of limitations.

22

23 **42-4-203. Settlement between recipient and tortfeasor**
24 **or insurer; lien not discharged; exceptions.**

1

2 (a) No settlement made by and between the applicant
3 or recipient and the tortfeasor or insurer shall discharge
4 the right to reimbursement created pursuant to this
5 article, against any money due or owing by such tortfeasor
6 or insurer to the applicant or recipient or relieve the
7 tortfeasor or insurer from liability by reason of the right
8 to reimbursement unless the settlement also provides for
9 the payment and discharge of the right to reimbursement ~~or~~
10 ~~unless~~ and the attorney general has signed a written
11 release ~~or waiver of the right to reimbursement, signed by~~
12 ~~the department:~~ as provided by W.S. 42-4-201(b).

13

14 **42-4-207. Recovery of incorrect payments; recovery of**
15 **correct payments; liens.**

16

17 (c) The department may file a pre-death lien upon
18 real property of an individual for medical assistance
19 correctly paid under this chapter to an individual:

20

21 (d) No lien may be imposed under subsection (c) ~~or~~
22 ~~(h)~~ of this section on an individual's home if any of the
23 following persons are lawfully residing in the home:

24

1 (e) ~~Any~~ No lien imposed ~~with respect to an individual~~
2 ~~pursuant to~~ under subsection (c) of this section shall
3 ~~dissolve upon that individual's discharge from the medical~~
4 ~~institution and return home.~~ be subject to recovery if any
5 of the following persons are lawfully residing in the home
6 on a continuous basis since the date of the individual's
7 admission to the facility or institution:

8
9 (i) A sibling of the individual who was residing
10 in the individual's home for a period of at least one (1)
11 year immediately before the date of the individual's
12 admission to the facility or institution;

13
14 (ii) A child of the individual who was residing
15 in the individual's home for a period of at least two (2)
16 years immediately before the date of the individual's
17 admission to the facility or institution, and who
18 establishes by a preponderance of the evidence that he
19 provided care to such individual which permitted the
20 individual to reside at home rather than in a facility or
21 institution.

22
23 (g) Upon sale of the property on which a lien has
24 been imposed pursuant to subsection (c) or (h) of this

1 section, the department shall seek recovery of the amount
2 stated in its lien. Transfers of real or personal property
3 on or after the look-back dates defined in 42 U.S.C. §
4 1396p by recipients of medical assistance under this
5 chapter, or their spouses, without adequate consideration
6 are voidable and may be set aside by an action in district
7 court.

8
9 (h) The department may file a lien ~~upon the~~ against
10 the property of any estate, as defined in W.S. 42-4-206(g),
11 of a deceased recipient for the amount of medical
12 assistance provided while the recipient was fifty-five (55)
13 years of age or older or while the recipient was an
14 inpatient in a nursing facility, intermediate care facility
15 for the mentally retarded or other medical institution. The
16 department shall perfect this lien by filing a notice in
17 the county in which the real property exists. The
18 department may file an amended lien prior to the entry of
19 the final order closing the estate.

20
21 **Section 2.** W.S. 42-4-201(d), 42-4-203(a)(i) and (ii)
22 and 42-4-206(e) are repealed.

23

1 **Section 3.** This act is effective July 1, 2002.

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(END)