

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 provisions;
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), and by creating a new
15 subsection (f) and by amending and renumbering (f) through
16 (h) as (g) through (j) are amended to read:

1

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

4

5 No holder of any claim against an estate shall maintain any
6 action thereon unless the claim is first rejected in whole
7 or in part by the personal representative and the rejection
8 filed with the clerk, except an action may be brought by
9 any holder of a mortgage or lien, including liens under
10 W.S. 42-4-207, to enforce the same against the property of
11 the estate subject thereto where all recourse against the
12 other property of the estate is expressly waived in the
13 complaint or no claim for deficiency is made in proceedings
14 for foreclosure by advertisement and sale under W.S.
15 34-4-101 through 34-4-113.

16

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

19

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

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

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

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

12

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

15

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

21

22 (iii) An attorney representing an applicant for
23 or a recipient of medical assistance in a claim upon which
24 the department may ~~be entitled to a lien~~ have a

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

15

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

24

1 **42-4-203. Settlement between recipient and tortfeasor**
2 **or insurer; lien not discharged; exceptions.**

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

15
16 **42-4-207. Recovery of incorrect payments; recovery of**
17 **correct payments; liens.**

18
19 (c) The department may file a pre-death lien upon
20 real property of an individual for medical assistance
21 correctly paid under this chapter to an individual:
22

1 (d) No lien may be imposed under subsection (c) ~~or~~
2 ~~(h)~~ of this section on an individual's home if any of the
3 following persons are lawfully residing in the home:
4

5 (e) ~~Any~~ No lien imposed ~~with respect to an individual~~
6 ~~pursuant to~~ under subsection (c) of this section shall
7 ~~dissolve upon that individual's discharge from the medical~~
8 ~~institution and return home.~~ be subject to recovery if any
9 of the following persons are lawfully residing in the home
10 on a continuous basis since the date of the individual's
11 admission to the facility or institution:
12

13 (i) A sibling of the individual who was residing
14 in the individual's home for a period of at least one (1)
15 year immediately before the date of the individual's
16 admission to the facility or institution;
17

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

1 individual to reside at home rather than in a facility or
2 institution.

3

4 (f) Any lien imposed with respect to an individual
5 pursuant to subsection (c) of this section shall dissolve
6 upon that individual's discharge from the medical
7 institution and return home.

8

9 ~~(f)~~ (g) Nothing in this section shall require an
10 applicant for medical assistance under this chapter to
11 enter into agreement for a lien upon his real and personal
12 property for the payment of medical assistance on his
13 behalf.

14

15 ~~(g)~~ (h) Upon sale of the property on which a lien has
16 been imposed pursuant to subsection (c) or (j) of this
17 section, the department shall seek recovery of the amount
18 stated in its lien. Transfers of real or personal property
19 on or after the look-back dates defined in 42 U.S.C. §
20 1396p by recipients of medical assistance under this
21 chapter, or their spouses, without adequate consideration
22 are voidable and may be set aside by an action in district
23 court.

24

1 ~~(h)~~(j) The department may file a lien ~~upon the~~
2 against the property of any estate, as defined in W.S.
3 ~~42-4-206(g)~~42-4-206(h), of a deceased recipient for the
4 amount of medical assistance provided while the recipient
5 was fifty-five (55) years of age or older or while the
6 recipient was an inpatient in a nursing facility,
7 intermediate care facility for the mentally retarded or
8 other medical institution. The department shall perfect
9 this lien by filing a notice in the county in which the
10 real property exists. The department may file an amended
11 lien prior to the entry of the final order closing the
12 estate.

13

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

16

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

18

19

(END)