

ENROLLED ACT NO. 22, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING  
2002 SPECIAL SESSION

AN ACT relating to Medicaid benefit recovery; specifying the applicability of the Medicaid program and the benefit recovery program to applicants for Medicaid services; amending notice requirements for potential recovery under third party lawsuits; amending lien provisions for Medicaid benefit recovery as specified; conforming provisions; repealing conflicting provisions; and providing for an effective date.

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

**Section 1.** W.S. 2-7-717, 42-4-201(a) and (b), 42-4-202(d)(iii) and (iv), 42-4-203(a)(intro), 42-4-207(c)(intro), (d)(intro), (e), and by creating a new subsection (f) and by amending and renumbering (f) through (h) as (g) through (j) are amended to read:

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

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

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

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(a) If a person who is or becomes an applicant or recipient covered by for medical assistance under this chapter receives an injury under circumstances creating a legal liability in some third party, the applicant or recipient shall not be deprived of any medical assistance for which he is entitled under this chapter. He may also pursue his remedy at law against the third party. If the applicant or recipient recovers from the third party in any manner, including judgment, compromise, settlement or release, the state is entitled to be reimbursed for all payments made, or to be made, on behalf of the applicant or recipient under this chapter.

(b) The department shall be served by certified mail, return receipt requested, with a copy of the complaint filed within seven (7) days of its filing in any suit initiated pursuant to subsection (a) of this section. Any attorney who knowingly fails to serve the complaint on the department shall be reported to the state board of professional responsibility for the Wyoming state bar. The department shall be notified in writing by certified mail return receipt requested of any judgment, compromise, settlement or release entered into by a any person who has been an applicant for or recipient of medical assistance under this chapter after the date of injury. If there is a settlement, compromise or release entered into by the parties the attorney general representing the director shall be made a party in all negotiations for settlement, compromise or release. The department, for purposes of facilitating compromise and settlement, may in a proper case authorize acceptance by the state of less than the state's claim for reimbursement under this section for all current and future assistance under this chapter. Any reimbursement right created pursuant to this article shall remain in effect until the state is paid the amount authorized under this section. In addition the person

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paying the settlement remains liable to the state's reimbursement right unless the state through the attorney general signs the release prior to payment of an agreed settlement.

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

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

(iii) An attorney representing an applicant for or a recipient of medical assistance in a claim upon which the department may ~~be entitled to a lien~~ have a reimbursement right under this ~~section~~ chapter shall notify the department of its potential ~~lien~~ claim for reimbursement before filing a claim, commencing an action, or negotiating a settlement. Any attorney who ~~knowingly~~ fails to notify the department of any settlement or ~~knowingly~~ fails to ensure the state is reimbursed, to the extent of ~~the lien~~ its reimbursement right, from the proceeds of any settlement or judgment under this section shall be reported to the state board of professional responsibility for the Wyoming state bar. ~~In such circumstances, If the attorney knowingly failed to report and insure reimbursement to the state,~~ the department shall have a claim for relief against the attorney for the amount of the ~~lien~~ reimbursement right under this ~~section~~ chapter;

(iv) Insurers shall not disburse any settlement payment for a personal injury claim made to a recipient of medical assistance under this act until seven (7) working days after the department has received written notice from

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the insurer of the proposed settlement or judgment and failed to provide a written objection to the insurer. Failure to provide notice under this paragraph shall commence the tolling of any applicable statute of limitations.

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

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

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

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

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

(e) ~~Any~~ No lien imposed ~~with respect to an individual pursuant to~~ under subsection (c) of this section shall ~~dissolve upon that individual's discharge from the medical institution and return home.~~ be subject to recovery if any

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of the following persons are lawfully residing in the home on a continuous basis since the date of the individual's admission to the facility or institution:

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

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

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

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

~~(g)~~ (h) Upon sale of the property on which a lien has been imposed pursuant to subsection (c) or (j) of this section, the department shall seek recovery of the amount stated in its lien. Transfers of real or personal property on or after the look-back dates defined in 42 U.S.C. § 1396p by recipients of medical assistance under this chapter, or their spouses, without adequate consideration

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are voidable and may be set aside by an action in district court.

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

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk