

CHAPTER 172

HUMAN SERVICES - SOCIAL SERVICES

HOUSE BILL 99-1238

BY REPRESENTATIVES McElhany, McKay, and Scott;
also SENATORS Owen, Evans, and Powers.

AN ACT

CONCERNING APPLICATION OF THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE TO CASES BROUGHT UNDER THE "COLORADO MEDICAL ASSISTANCE ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 26-4-403 (3) and (4), Colorado Revised Statutes, are amended to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments - liens. (3) If medical assistance is furnished to or on behalf of a recipient pursuant to the provisions of this article for which a third party is liable, the state department has an enforceable right against such third party for the amount of such medical assistance, including the lien right specified in subsection (4) of this section. Whenever the recipient has brought or may bring an action in court to determine the liability of the third party, the state department, without any other name, title, or authority to enforce the state department's right, may enter into appropriate agreements and assignments of rights with the recipient and the recipient's attorney, if any. Any such agreement shall be filed with the court in which such an action is pending. The attorney named in such an agreement upon designation as a special assistant attorney general by the attorney general shall have the right to prove both the recipient's claim and the state department's claim. The state department, without any other name, title, or authority, may take any necessary action to determine the existence and amount of the state department's claims under this section, whether such claims are founded on judgment, contract, lien, or otherwise, and take any other action ~~which~~ THAT is appropriate to recover from such third parties. To enforce such right, the attorney general, pursuant to section 24-31-101, C.R.S., on behalf of the state department may institute and prosecute, or intervene of right in legal proceedings against the third party having legal liability, either in the name of the state department or in the name of the recipient or his OR HER assignee, guardian,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

personal representative, estate, or survivors. When the state department intervenes in legal proceedings against the third party, it shall not be liable for any portion of the attorney fees or costs of the recipient. ~~The contributory negligence of the recipient shall not be imputed to the state department.~~

(4) (a) When the state department has furnished medical assistance to or on behalf of a recipient pursuant to the provisions of this article for which a third party is liable, the state department shall have an automatic statutory lien for all such medical assistance. The state department's lien shall be against the amount of the judgment, award, or settlement in a suit or claim against such third party and shall be payable after deducting from the judgment, award, or settlement for the recipient's attorney fees and reasonable litigation costs incurred in the preparation and prosecution of the action or claim.

(b) No judgment, award, or settlement in any action or claim by a recipient to recover damages for injuries, where the state department has a lien, shall be satisfied without first satisfying the state department's lien. Failure by any party to the judgment, award, or settlement to comply with this section shall make each such party liable for the full amount of medical assistance furnished to or on behalf of the recipient for the injuries ~~which~~ THAT are the subject of the judgment, award, or settlement.

(c) Except as otherwise provided in this article, the entire amount of any judgment, award, or settlement of the recipient's action or claim, with or without suit, regardless of how characterized by the parties or whether the amount includes medical costs, shall be subject to the state department's lien.

(d) Where the action or claim is brought by the recipient alone and the recipient incurs a personal liability to pay attorney fees, the state department will pay its reasonable share of attorney fees not to exceed twenty-five percent of the state department's lien. The state department shall not be liable for costs.

(e) The state department's right to recover under this section is independent of the recipient's right. ~~The contributory negligence of the recipient shall not be imputed to the state department.~~

SECTION 2. Effective date - applicability. This act shall take effect January 1, 2000, and shall apply to causes of action arising under the "Colorado Medical Assistance Act" on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 7, 1999