

## CHAPTER 49

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**COURTS**

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**SENATE BILL 07-066**

BY SENATOR(S) Gordon, Fitz-Gerald, Groff, and Shaffer;  
also REPRESENTATIVE(S) Madden, Carroll M., Carroll T., Frangas, Garcia, Hodge, Labuda, Levy, McGihon, Merrifield,  
Pommer, Primavera, Solano, and Todd.

**AN ACT**

**CONCERNING THE FORM OF PAYMENT OF JUDGMENTS UNDER THE "HEALTH CARE AVAILABILITY ACT".**

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

**SECTION 1. Legislative declaration.** (1) The general assembly determines and declares:

(a) It is in the best interests of the citizens of this state to ensure that each disabled individual who receives a judgment for a future damages award in excess of one hundred fifty thousand dollars under the provisions of article 64 of title 13, Colorado Revised Statutes, has meaningful access to the benefits of the judgment in accordance with Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.;

(b) Title II of the "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., mandates that a qualified individual with a disability shall not be excluded from participating in, or be denied the benefits of, the activities of a public entity, and shall not be subjected to discrimination by the public entity;

(c) Meaningful accessibility to the benefits of the judgment can best be accomplished by enabling the legal representative of a person under disability to exercise the right to elect to receive a lump-sum payment when the legal representative determines that the election is in the best interests of the person under disability; and

(d) It is also in the best interests of the citizens of this state to preserve the right of the state medical assistance program to receive full reimbursement for the

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

assistance rendered to a person under disability who is eligible for medical assistance, when the person is the beneficiary of a disability trust or a pooled trust account, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner.

**SECTION 2.** 13-64-205 (1) (f), Colorado Revised Statutes, is amended, and the said 13-64-205 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**13-64-205. Determination of judgment to be entered.** (1) In order to determine what judgment is to be entered on a verdict requiring findings of special damages under this part 2, the court shall proceed as follows:

~~(f) Within no more than three months after the entry of verdict by the trier of fact and before the court enters judgment for periodic payments,~~ The plaintiff who meets the criteria set forth in this subsection (1) may elect to receive the immediate payment to the plaintiff of the present value of the future damage award in a lump-sum amount in lieu of periodic payments. In order to exercise this right, the plaintiff must EITHER:

(I) (A) Have reached his ~~twenty-first~~ OR HER EIGHTEENTH birthday by the time the periodic payment order is entered;

~~(B)~~ (B) Not be an incapacitated person, as defined in section 15-14-102 (5), C.R.S.; and

~~(C)~~ (C) Have been provided financial counseling and must be making an informed decision; OR

(II) BE A PERSON UNDER DISABILITY WHO HAS A LEGAL REPRESENTATIVE AUTHORIZED TO TAKE ACTION ON HIS OR HER BEHALF, AS DESCRIBED IN SECTION 13-81-102.

(2) FOR PURPOSES OF PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION, "LEGAL REPRESENTATIVE", "PERSON UNDER DISABILITY", AND "TAKE ACTION" SHALL HAVE THE SAME MEANINGS AS PROVIDED IN SECTION 13-81-101.

**SECTION 3.** 13-81-101 (4), Colorado Revised Statutes, is amended to read:

**13-81-101. Definitions.** As used in this article, unless the context otherwise requires:

(4) "Take action" means the bringing, commencement, maintenance, or prosecution of any action, suit, or proceeding to enforce any right, or the assertion of any such right in any other manner, affirmatively or by way of defense. "TAKE ACTION" SHALL ALSO INCLUDE EXERCISING THE RIGHT TO ELECT TO RECEIVE A LUMP-SUM PAYMENT ON BEHALF OF THE PLAINTIFF IN A CIVIL ACTION FOR PURPOSES OF SECTION 13-64-205 (1) (f) WHEN THE LEGAL REPRESENTATIVE DETERMINES THAT THE ELECTION IS IN THE BEST INTEREST OF THE PLAINTIFF.

**SECTION 4.** 13-81-102, Colorado Revised Statutes, is amended to read:

**13-81-102. Right of legal representative.** (1) When there is a legal representative appointed for ~~any~~ A person under disability, all rights to take action, except rights of the person under disability against the legal representative himself OR HERSELF, vest in said legal representative for the benefit of ~~said~~ THE person under disability, and the legal representative has authority to take action thereon in his OR HER own name.

(2) A LEGAL REPRESENTATIVE MAY:

(a) ELECT, ON BEHALF OF A PLAINTIFF IN A CIVIL ACTION, A FORM OF FUNDING OF A JUDGMENT FOR PERIODIC PAYMENTS, AS DESCRIBED IN SECTION 13-64-207;

(b) ELECT TO RECEIVE THE IMMEDIATE PAYMENT TO THE PLAINTIFF OF THE PRESENT VALUE OF THE FUTURE DAMAGE AWARD IN A LUMP-SUM AMOUNT, IN LIEU OF PERIODIC PAYMENTS;

(c) PETITION A COURT OF COMPETENT JURISDICTION TO ESTABLISH A DISABILITY TRUST PURSUANT TO SECTION 15-14-412.8, C.R.S., FUNDED BY THE PROCEEDS OF A SETTLEMENT OR JUDGMENT RECEIVED BY, OR ON BEHALF OF, A PERSON UNDER DISABILITY WHO IS UNDER SIXTY-FIVE YEARS OF AGE AND WHO IS DISABLED, AS DEFINED IN TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1382c (a) (3); OR

(d) PETITION A COURT OF COMPETENT JURISDICTION TO ESTABLISH A POOLED TRUST ACCOUNT PURSUANT TO SECTION 15-14-412.9, C.R.S., FUNDED BY THE PROCEEDS OF A SETTLEMENT OR JUDGMENT RECEIVED BY, OR ON BEHALF OF, A PERSON UNDER DISABILITY WHO IS DISABLED, AS DEFINED IN TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1382c (a) (3).

**SECTION 5. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to civil actions pending on or after the applicable effective date of this act.

Approved: March 22, 2007