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HOUSE BILL 436

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO MEDICAID; CLARIFYING THIRD-PARTY LIABILITY AND
ASSIGNMENT OF RIGHTS; AMENDING A SECTION OF THE PUBLIC
ASSISTANCE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 27-2-23 NMSA 1978 (being Laws 1969,
Chapter 232, Section 1) is amended to read:

"27-2-23. THIRD PARTY LIABILITY.--

A. Medicaid is the payor of last resort for
medically necessary goods and services furnished to medicaid
recipients.

~~[A.]~~ B. The ~~[health and social services]~~ department
shall make reasonable efforts to ascertain any legal liability
of third parties who are or may be liable to pay all or part of
the medical cost of injury, disease or disability of an

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underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 applicant for or recipient of medical assistance.

2 C. An applicant, recipient or legal representative
3 shall inform the department of:

4 (1) any rights the applicant or recipient has
5 to third-party benefits; and

6 (2) the name and address of a person that is
7 or may be liable to provide third-party benefits.

8 D. A health care provider shall notify the
9 department when the health care provider has reason to believe
10 that a third party may be liable for payment of the costs of
11 health care services provided to medicaid recipients.

12 ~~[B.]~~ E. When the department makes medical
13 assistance payments ~~[in]~~ on behalf of a recipient, the
14 department is subrogated to any right of the recipient against
15 a third party for recovery of medical expenses to the extent
16 that the department has made payment.

17 F. The application for medicaid benefits shall
18 constitute an assignment to the department, as described in
19 Section 27-2-28 NMSA 1978, of a medicaid applicant's right to
20 any settlement, judgment or award that may be obtained against
21 a third party to the full extent of the amount of medical
22 assistance provided by medicaid for the benefit of the
23 applicant.

24 G. The assignment made by submitting an application
25 for medicaid shall be considered a statutory lien on any

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[bracketed material] = delete

1 settlement, judgment or award received by the recipient from a
2 liable third party.

3 H. In regard to all or part of a lien, the
4 department may:

- 5 (1) compromise or settle the lien; or
- 6 (2) in circumstances of hardship, waive the
7 lien.

8 I. Whenever the department's recovery under the
9 lien is the result of an action initiated by a medicaid
10 recipient, the attorney for the medicaid recipient is entitled
11 to the department's pro rata share of the recipient's attorney
12 fees and costs. Attorney fees shall not exceed:

- 13 (1) one-third of the settlement for cases
14 settled prior to trial; or
- 15 (2) two-fifths of the settlement, judgment or
16 award recovered in cases when a trial is convened."