

# WEST VIRGINIA CODE: §16-5Q-4

## **§16-5Q-4. Assignment of rights; right of subrogation by the James "Tiger" Morton Catastrophic Illness Commission to the rights of recipients of medical assistance; rules as to effect of subrogation.**

(a) (1) Submission of an application to the Catastrophic Illness Commission for medical assistance is, as a matter of law, an assignment of the right of the applicant, or legal representative thereof, to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of medical services paid for by the Catastrophic Illness Commission's Medical Assistance Program.

(2) At the time the application is made, the Catastrophic Illness Commission shall include a statement along with such application that explains that the applicant has assigned all such rights to the Catastrophic Illness Commission, and the legal implications of making such assignment as provided in this section.

(3) If medical assistance is paid or will be paid by the Catastrophic Illness Commission to a provider of medical care on behalf of a recipient of medical assistance because of a "catastrophic illness", as defined by this article, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the Department of Human Services, on behalf of the Catastrophic Illness Commission, shall have the right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he or she has been reimbursed by the other person. The Department of Human Services shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the catastrophic illness for which the recipient has received damages.

(4) When an action or claim is brought by a medical assistance recipient, or by someone on his or her behalf, against a third party who may be liable for the catastrophic illness or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the Department of Human Services, on behalf of the Catastrophic Illness Commission for reimbursement of an amount sufficient to reimburse the Department of Human Services the full amount of benefits paid on behalf of the recipient under the Catastrophic Illness Commission's Medical Assistance Program for the catastrophic illness of the medical assistance recipient. The claim of the Department of Human Services on behalf of the Catastrophic Illness Commission, assigned by such recipient shall not exceed the amount of medical expenses for the catastrophic illness of the recipient paid by the Department of Human Services on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to the subrogation. Any settlement, compromise, judgement or award that excludes or limits the cost of actual

medical services or care shall not preclude the Department of Human Services from enforcing its rights under this section. The Secretary of the Department of Human Services may compromise, settle and execute a release of any such claim in whole or in part.

(b) (1) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him or her against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses, even though such person received medical assistance in the payment of such medical expenses in whole or in part.

(2) If the action be tried by a jury, the jury shall not be informed as to the interest of the Department of Human Services on behalf of the Catastrophic Illness Commission, if any, and such fact shall not be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical assistance given by the commission be withheld and paid over to the Department of Human Services on behalf of the commission. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the Department of Human Services on behalf of the Catastrophic Illness Commission, there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the Department of Human Services shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he or she may have against another person and delivering to the Department of Human Services from the proceeds of such settlement the sums received by him or her from the commission or paid by the commission for his or her medical assistance. If such other person is aware of or has been informed of the interest of the Department of Human Services on behalf of the commission in the matter, it shall be the duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the Department of Human Services, to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient or his or her representative to recover damages for a catastrophic illness or death, in which the Department of Human Services on behalf of the commission has an interest, shall be satisfied without first giving the Department of Human Services notice and reasonable opportunity to establish its interest. The Department of Human Services shall have sixty days from the receipt of such written notice to advise the recipient or his or her representative in writing of its desire to establish its interest through the assignment. If no such written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the Department of Human Services the portion of the recovery proceeds less the Department of Human Services' share of attorney's fees and costs expended in the matter. In the event of less than full recovery the recipient and the Department of Human Services shall agree as to the amount to be paid to it for its claim. If there is no recovery, the Department of Human Services shall under no circumstances be liable for any costs or attorney fees expended in the matter. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian,

attorney or personal representative for failure to subrogate the Department of Human Services, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award without the written approval of the Department of Human Services, that person shall be liable to the Department of Human Services for any amount that, as a result of the disposition of the funds, is not recoverable by the Department of Human Services. In the event that a controversy arises concerning the subrogation claims by the Department of Human Services, an attorney shall interplead, pursuant to Rule 22 of the Rules of Civil Procedure, the portion of the recipient's settlement that will satisfy the Department of Human Services exclusive of attorney fees and costs regardless of any contractual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the Department of Human Services or the Catastrophic Illness Commission to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by the Catastrophic Illness Commission's Medical Assistance Program.