WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5Q

WV Legislature

§16-5Q-1. Creation of the James "Tiger" Morton catastrophic illness fund.

Moneys in the fund created in the State Treasury, designated the "James >Tiger' Morton Catastrophic Illness Fund" shall be distributed in accordance with the provisions of this article. The purpose of this fund is to provide a source of economic assistance to the citizens of this state facing catastrophic illness. In addition to any funds appropriated by the Legislature, the Tiger Morton Fund may receive donations of cash or property from other sources, including gifts, grants, or donations from any source whatsoever. After appropriation by the Legislature, the catastrophic illness commission may make expenditures from the fund as necessary to accomplish the purposes of this article.

WV Legislature

§16-5Q-2. Catastrophic illness commission; composition; meetings.

(a) The catastrophic illness commission shall consist of six members appointed for terms of five years by the Governor, by and with the advice and consent of the Senate, and the long term care ombudsman, who shall serve as a nonvoting ex officio member. One member shall be a medical doctor licensed to practice medicine in this state, one member shall be an attorney licensed to practice law in this state, two members shall be from the public at large who are active in community affairs, one member shall be a nurse licensed to practice in this state, and one member shall be a social worker licensed in this state. The terms of office of the first appointments to the catastrophic illness commission shall be as follows: The medical doctor and attorney shall be appointed for an initial term of three years; the initial term of the nurse appointee and the licensed social worker appointee shall be four years; the initial term of the remaining members of the commission appointed by the Governor shall be five years. No more than five of the members appointed by the Governor may be from the same political party. Members of the catastrophic illness commission, other than the ex officio member, may receive expenses only up to $125 per day, not to exceed $15,000 in the aggregate per year. The commission shall meet at least quarterly and annually elect a chairperson. Meetings shall be conducted in accordance with the provisions of article nine-a, chapter six of this code. Special meetings may be called. Before discharging any duties, members shall comply with the oath or affirmation requirements of article one, chapter six of this code. Members are subject to the ethical standards and financial disclosure requirements of the West Virginia governmental ethics act in chapter six-b of this code and serve at the will and pleasure of the Governor as provided in section four, article six, chapter six of this code.

(b) The catastrophic illness commission shall make an annual recommendation to the Legislature regarding appropriations from the catastrophic illness fund. This recommendation shall be made annually, in writing, to the Legislature no later than the second Wednesday of January.

(c) The commission shall appoint an executive director whose compensation shall be fixed by the commission within its budgetary appropriation. The executive director shall be classified exempt and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall carry out the decisions and actions of the commission, administer all affairs of the commission in accordance with its policies and discharge other duties as the commission shall from time to time determine. The commission may employ other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation.

(d) The secretary of the Department of Human Services shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to accomplish the purpose of the James "Tiger" Morton catastrophic illness fund including, but not limited to, establishing eligibility standards for the distribution of moneys from the fund.

The secretary may propose emergency rules to establish the eligibility standards.

(e) The secretary shall assist the commission in the investigation of any suspected fraud related to an application for assistance through the catastrophic illness fund.

WV Legislature

§16-5Q-3.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§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.

WV Legislature

(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

www.LegisLature

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.

WV Legislature