

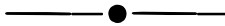
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2004 APR -6 A 11:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4655

(By Delegates Michael, Cann, Foster, Leach,
Stalnaker, Boggs and Proudfoot)



Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

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FOR

H. B. 4655

(BY DELEGATES MICHAEL, CANN, FOSTER, LEACH,
STALNAKER, BOGGS AND PROUDFOOT)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-10, relating to subrogation rights of the children's health insurance plan; providing that submission of an application for benefits through the children's health insurance agency constitutes an assignment of rights to the agency to recover benefits paid by the agency; requiring that a jury is not to be informed of the interest of the agency; providing for the deduction of attorney fees from the amount paid to the agency; requiring a person with notice of the interests of the agency to withhold the amount of settlement proceeds necessary to reimburse the agency; and, imposing liability on persons who fail to reimburse the agency.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-10, to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-10. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) Submission of an application to the children's health
2 insurance agency for medical assistance is, as a matter of law,
3 an assignment of the right of the applicant or legal representa-
4 tive thereof, to recovery from personal insurance or other
5 sources, including, but not limited to, liable third parties, to the
6 extent of the cost of children's health insurance agency services
7 paid for by the children's health insurance agency program.
8 This assignment of rights does not extend to medicare benefits.
9 At the time the application is made, the children's health
10 insurance agency shall include a statement along with the
11 application that explains that the applicant has assigned his or
12 her rights and the legal implications of making an assignment
13 as provided in this section.

14 If medical assistance is paid or will be paid to a provider of
15 medical care on behalf of a recipient of medical assistance
16 because of any sickness, injury, disease or disability, and
17 another person is legally liable for the expense, either pursuant
18 to contract, negligence or otherwise, the children's health
19 insurance agency shall have a right to recover full reimburse-
20 ment from any award or settlement for the medical assistance
21 from the other person, or from the recipient of the assistance if
22 he or she has been reimbursed by the other person. The chil-
23 dren's health insurance agency shall be legally assigned the
24 rights of the recipient against the person so liable, but only to

25 the extent of the reasonable value of the medical assistance paid
26 and attributable to the sickness, injury, disease or disability for
27 which the recipient has received damages. When an action or
28 claim is brought by a medical assistance recipient or by
29 someone on his or her behalf against a third party who may be
30 liable for the injury, disease, disability or death of a medical
31 assistance recipient, any settlement, judgment or award
32 obtained is subject to the claim of the children's health insur-
33 ance agency for reimbursement of an amount sufficient to
34 reimburse the children's health insurance agency the full
35 amount of benefits paid on behalf of the recipient under the
36 medical assistance program for the injury, disease, disability or
37 death of the medical assistance recipient. The claim of the
38 children's health insurance agency assigned by the recipient
39 may not exceed the amount of medical expenses for the injury,
40 disease, disability or death of the recipient paid by the chil-
41 dren's health insurance agency on behalf of the recipient. The
42 right of subrogation created in this section includes all portions
43 of the cause of action, by either settlement, compromise,
44 judgment or award, notwithstanding any settlement allocation
45 or apportionment that purports to dispose of portions of the
46 cause of action not subject to the subrogation. Any settlement,
47 compromise, judgment or award that excludes or limits the cost
48 of medical services or care does not preclude the children's
49 health insurance agency from enforcing its rights under this
50 section. The children's health insurance agency may compro-
51 mise, settle and execute a release of any claim, in whole or in
52 part.

53 (b) Nothing in this section shall be construed so as to
54 prevent the recipient of medical assistance from maintaining an
55 action for injuries received by them against any other person
56 and from including therein, as part of the compensatory
57 damages sought to be recovered, the amount or amounts of his
58 or her medical expenses, even though the person received

59 medical assistance in the payment of the medical expenses, in
60 whole or in part.

61 If the action be tried by a jury, the jury is not to be informed
62 as to the interest of the children's health insurance agency, if
63 any, and the fact is not to be disclosed to the jury at any time.
64 The trial judge shall, upon the entry of judgment on the verdict,
65 direct that an amount equal to the amount of medical assistance
66 given be withheld and paid over to the children's health
67 insurance agency. Irrespective of whether the case be termi-
68 nated by judgment or by settlement without trial, from the
69 amount required to be paid to the children's health insurance
70 agency there shall be deducted the attorney fees attributable to
71 the amount in accordance with and in proportion to the fee
72 arrangement made between the recipient and his or her attorney
73 of record so that the children's health insurance agency shall
74 bear the pro rata portion of the attorney fees. Nothing in this
75 section shall preclude any person who has received medical
76 assistance from settling any cause of action which he or she
77 may have against another person and delivering to the chil-
78 dren's health insurance agency, from the proceeds of the
79 settlement, the sums received by him or her from the children's
80 health insurance agency or paid by the children's health
81 insurance agency for his or her medical assistance. If the other
82 person is aware of or has been informed of the interest of the
83 children's health insurance agency in the matter, it shall be the
84 duty of the person to whose benefit the release inures to
85 withhold so much of the settlement as may be necessary to
86 reimburse the children's health insurance agency to the extent
87 of its interest in the settlement. No judgment, award of or
88 settlement in any action or claim by a medical assistance
89 recipient to recover damages for injuries, disease or disability,
90 in which the children's health insurance agency has interest,
91 shall be satisfied without first giving the children's health
92 insurance agency notice and reasonable opportunity to establish
93 its interest. The children's health insurance agency shall have

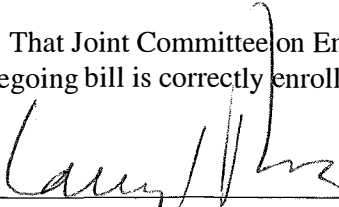
94 sixty days from receipt of written notice to advise the recipient
95 or his or her representative in writing of the children's health
96 insurance agency's desire to establish its interest through the
97 assignment. If no written intent is received within the sixty-day
98 period, then the recipient may proceed and in the event of full
99 recovery forward to the children's health insurance agency the
100 portion of the recovery proceeds less the children's health
101 insurance agency's share of attorney's fees and costs expended
102 in the matter. In the event of less than full recovery the recipient
103 and the children's health insurance agency shall agree as to the
104 amount to be paid to the children's health insurance agency for
105 its claim. If there is no recovery, the children's health insurance
106 agency shall under no circumstances be liable for any costs or
107 attorney's fees expended in the matter. If, after being notified
108 in writing of a subrogation claim and possible liability of the
109 recipient, guardian, attorney or personal representative for
110 failure to subrogate the children's health insurance agency, a
111 recipient, his or her guardian, attorney or personal representa-
112 tive disposes of the funds representing the judgment, settlement
113 or award, without the written approval of the children's health
114 insurance agency, that person shall be liable to the children's
115 health insurance agency for any amount that, as a result of the
116 disposition of the funds, is not recoverable by the children's
117 health insurance agency. In the event that a controversy arises
118 concerning the subrogation claims by the children's health
119 insurance agency, an attorney shall interplead, pursuant to rule
120 twenty-two of the rules of civil procedure, the portion of the
121 recipient's settlement that will satisfy the children's health
122 insurance agency exclusive of attorney's fees and costs regard-
123 less of any contractual arrangement between the client and the
124 attorney.

125 (c) Nothing contained herein shall authorize the children's
126 health insurance agency to institute a class action or multiple
127 plaintiff action against any manufacturer, distributor or vendor
128 of any product to recover children's health insurance agency

129 care expenditures paid for by the children's health insurance

130 agency program.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee



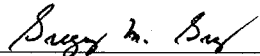
Chairman House Committee

Originating in the House.


In effect ninety days from passage.



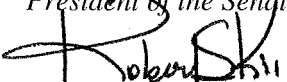
Clerk of the Senate



Clerk of the House of Delegates

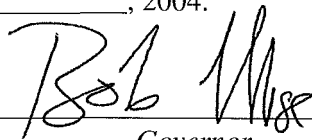


President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.



Governor

PRESENTED TO THE
GOVERNOR

DATE 3/31/04

TIME 10:30am