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
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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 insurance agency 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 children’s health insurance agency services paid for by the children’s health insurance agency program.

2 This assignment of rights does not extend to medicare benefits.

3 At the time the application is made, the children’s health insurance agency shall include a statement along with the application that explains that the applicant has assigned his or her rights and the legal implications of making an assignment as provided in this section.

4 If medical assistance is paid or will be paid to a provider of medical care on behalf of a recipient of medical assistance because of any sickness, injury, disease or disability, and another person is legally liable for the expense, either pursuant to contract, negligence or otherwise, the children’s health insurance agency shall have a right to recover full reimbursement from any award or settlement for the medical assistance from the other person, or from the recipient of the assistance if he or she has been reimbursed by the other person. The children’s health insurance agency 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 sickness, injury, disease or disability for which the recipient has received damages. 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 injury, disease, disability or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the children’s health insurance agency for reimbursement of an amount sufficient to reimburse the children’s health insurance agency the full amount of benefits paid on behalf of the recipient under the medical assistance program for the injury, disease, disability or death of the medical assistance recipient. The claim of the children’s health insurance agency assigned by the recipient may not exceed the amount of medical expenses for the injury, disease, disability or death of the recipient paid by the children’s health insurance agency 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, judgment or award that excludes or limits the cost of medical services or care does not preclude the children’s health insurance agency from enforcing its rights under this section. The children’s health insurance agency may compromise, settle and execute a release of any claim, in whole or in part.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by them 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 the person received
medical assistance in the payment of the medical expenses, in
whole or in part.

If the action be tried by a jury, the jury is not to be informed
as to the interest of the children’s health insurance agency, if
any, and the fact is not to 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 be withheld and paid over to the children’s health
insurance agency. Irrespective of whether the case be termi-
nated by judgment or by settlement without trial, from the
amount required to be paid to the children’s health insurance
agency there shall be deducted the attorney fees attributable to
the 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 children’s health insurance agency shall
bear the pro rata portion of the 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 chil-
dren’s health insurance agency, from the proceeds of the
settlement, the sums received by him or her from the children’s
health insurance agency or paid by the children’s health
insurance agency for his or her medical assistance. If the other
person is aware of or has been informed of the interest of the
children’s health insurance agency 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 children’s health insurance agency 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 to recover damages for injuries, disease or disability,
in which the children’s health insurance agency has interest,
shall be satisfied without first giving the children’s health
insurance agency notice and reasonable opportunity to establish
its interest. The children’s health insurance agency shall have
sixty days from receipt of written notice to advise the recipient or his or her representative in writing of the children’s health insurance agency’s desire to establish its interest through the assignment. If no written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the children’s health insurance agency the portion of the recovery proceeds less the children’s health insurance agency’s share of attorney’s fees and costs expended in the matter. In the event of less than full recovery the recipient and the children’s health insurance agency shall agree as to the amount to be paid to the children’s health insurance agency for its claim. If there is no recovery, the children’s health insurance agency shall under no circumstances be liable for any costs or attorney’s 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 children’s health insurance agency, a recipient, his or her guardian, attorney or personal representa-
tive disposes of the funds representing the judgment, settlement or award, without the written approval of the children’s health insurance agency, that person shall be liable to the children’s health insurance agency for any amount that, as a result of the disposition of the funds, is not recoverable by the children’s health insurance agency. In the event that a controversy arises concerning the subrogation claims by the children’s health insurance agency, an attorney shall interplead, pursuant to rule twenty-two of the rules of civil procedure, the portion of the recipient’s settlement that will satisfy the children’s health insurance agency exclusive of attorney’s fees and costs regard-
less of any contractual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the children’s health insurance agency to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover children’s health insurance agency
care expenditures paid for by the children’s health insurance agency program.
That Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butches
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 3/30/04
TIME 10:30AM