WEST VIRGINIA LEGISLATURE

Regular Session, 2004

ENROLLED

SENATE BILL NO. 772

(By Senator Prezioso)

PASSED March 11, 2006

In Effect 90 days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5Q-4, relating to subrogation rights of the Department of Health and Human Resources on behalf of the James “Tiger” Morton Catastrophic Illness Commission from personal insurance or other sources; legal assignment of rights; setting forth effect of subrogation; allowing action for compensatory damages; notice to the Department of Health and Human Resources of intent to enter judgment, award or settlement; giving the Department of Health and Human Resources right to assert interest through assignment; and providing for attorney fees.

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 §16-5Q-4, to read as follows:
ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.

§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 Health and Human Resources, 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 has been reimbursed by the other person. The Department of Health and Human Resources 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 Health and Human Resources on behalf of the Catastrophic Illness Commission for reimbursement of an amount sufficient to reimburse the Department of Health and Human Resources 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 Health and Human Resources, 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 Health and Human Resources 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 Health and Human Resources from enforcing its rights under this section. The Secretary of the Department of Health and Human Resources 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 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 Health
and Human Resources 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 Health
and Human Resources on behalf of the commission.
Irrespective of whether the case be terminated by judg-
ment or by settlement without trial, from the amount
required to be paid to the Department of Health and
Human Resources, 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 Health and Human Resources 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 Health and Human Resources 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 Health and Human Resources on behalf of the commis-
sion 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 Health and Human Resources, 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 representative to recover damages for a
catastrophic illness or death, in which the Department of
Health and Human Resources on behalf of the commission
has an interest, shall be satisfied without first giving the
Department of Health and Human Resources notice and
reasonable opportunity to establish its interest. The
Department of Health and Human Resources 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 Health and
Human Resources the portion of the recovery proceeds less
the Department of Health and Human Resources's 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 Health and Human Resources shall agree as
to the amount to be paid to it for its claim. If there is no
recovery, the Department of Health and Human Resources
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
Health and Human Resources, 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 Health
and Human Resources, that person shall be liable to the
Department of Health and Human Resources for any
amount that, as a result of the disposition of the funds, is
not recoverable by the Department of Health and Human
Resources. In the event that a controversy arises concern-
ing the subrogation claims by the Department of Health
and Human Resources, 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 Health and Human Resources 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 Health and Human Resources 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31st Day of December, 2006.

Governor