WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED

Senate Bill No. 322
(By Senators Oliverio and Chafin)

[Passed April 11, 2009; in effect ninety days from passage.]
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AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to exempting the first $25,000 of the death benefit of a life insurance policy from assignment by Medicaid recipients to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Assignment of rights; right of subrogation by Department of Health and Human Resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) Submission of an application to the Department of Health and Human Resources for medical assistance is, as a matter of law, an assignment of the right of the appli-
cant 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 Medicaid program. This assignment of rights does not extend to Medicare benefits:

Provided, That the first $25,000 of the death benefit of a life insurance policy is exempt from assignment under the provisions of this section.

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

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 such expense, either pursuant to contract, negligence or otherwise, the Department of Health and Human Resources shall have a 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 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 Department of Health and Human Resources for reimbursement of an amount sufficient to reimburse the department 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 Department of
Health and Human Resources assigned by such recipient
shall not exceed the amount of medical expenses for the
injury, disease, disability or death of the recipient paid by
the department 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 shall not preclude the Department of Health and
Human Resources from enforcing its rights under this
section. The secretary may compromise, settle and execute
a release of any such claim, in whole or in part.

(b) Nothing in this section shall be construed so as to
prevent the recipient of medical assistance from maintain-
ing 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.

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, 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 be
withheld and paid over to the Department of Health and
Human Resources. 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
Health and Human Resources 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 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 department or paid by the department 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 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 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 Department of Health and Human Resources has interest, shall be satisfied without first giving the department notice and reasonable opportunity to establish its interest. The department shall have sixty days from receipt of such written notice to advise the recipient or his or her representative in writing of the department's 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 the portion of the recovery proceeds less the department'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 shall agree as to the amount to be paid to the department for its claim. If there is no recovery, the department 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 department, 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, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department. In the event that a controversy arises concerning the subrogation claims by the department, 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 department exclusive of attorney’s 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 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 Medicaid 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 
Day of 

Governor