

Regular Session, 2014

HOUSE BILL NO. 814

BY REPRESENTATIVE JAMES

MEDICAID: Extends right of Medicaid recovery in cases of third party liability for injury, illness, or death to Medicaid managed care organizations that provide covered services to Medicaid enrollees

1 AN ACT

2 To amend and reenact R.S. 46:446, relative to recovery of assistance and medical payments  
3 made by medical assistance programs; to provide for definitions; to confer upon  
4 Medicaid managed care organizations certain rights of recovery; to provide relative  
5 to notice, pleadings, compromise, and prescription in cases of third party liability for  
6 injury, illness, or death; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 46:446 is hereby amended and reenacted to read as follows:

9 §446. Recovery of assistance and medical payments; notice; pleadings;  
10 compromise; prescription; privilege for reimbursement of Medicaid  
11 payments

12 A. As used in this Section, the following terms have the meaning ascribed  
13 in this Subsection:

14 (1) "Department" means the Department of Health and Hospitals.

15 (2) "Medicaid" means the medical assistance program provided for in Title  
16 XIX of the Social Security Act.

17 (3) "Medicaid managed care organization" means any private entity that  
18 contracts with the department to provide Medicaid benefits and services to enrollees  
19 of the Medicaid program.

1           A: B. When an injury has been sustained or an illness or death incurred by  
2 any person under circumstances creating in some third person or legal entity a legal  
3 liability or obligation to pay damages or compensation to that person or to his  
4 spouse, representative, or dependent, the ~~Department of Health and Hospitals~~  
5 department, a Medicaid managed care organization, or both shall have a cause of  
6 action against such third party ~~and/or~~ and may intervene in a suit filed by or on  
7 behalf of the injured, ill, or deceased person or his spouse, representative, or  
8 dependent against such third party to recover the assistance payments and medical  
9 expenses the ~~Department of Health and Hospitals~~ department, Medicaid managed  
10 care organization, or each has paid or is obligated to pay on behalf of the injured, ill,  
11 or deceased person in connection with said injury, illness, or death.

12           B: C. Any person or his spouse, representative, or dependent who files suit  
13 for the recovery of damages or compensation as the result of an injury, illness, or  
14 death for which assistance payments of medical expenses in whole or in part have  
15 been paid by the ~~Department of Health and Hospitals~~ department, a Medicaid  
16 managed care organization, or both, for which the department, Medicaid managed  
17 care organization, or each has an obligation to pay therefor, shall at the time suit is  
18 filed cause a copy of the petition to be served on the department, Medicaid managed  
19 care organization, or both, in the manner prescribed by Article 1313 of the Louisiana  
20 Code of Civil Procedure. Such person filing suit shall be responsible to the  
21 department, Medicaid managed care organization, or both to the extent of the  
22 medical payments or assistance received, interest, and attorney fees if he fails to have  
23 service made upon the department, Medicaid managed care organization, or both.  
24 Such person shall also be responsible to the department, Medicaid managed care  
25 organization, or both if he compromises his claim without giving the department,  
26 Medicaid managed care organization, or both written notice at least thirty days  
27 before the compromise is affected. This written notice shall include the name and  
28 date of birth of all injured or ill recipients and the name and address of the party or  
29 parties potentially liable for damages or compensation.

1           ~~C. D.~~ Pleadings filed on behalf of the ~~Department of Health and Hospitals~~  
2           department or Medicaid managed care organization shall be accompanied by an  
3           itemized statement of its monetary claim, and when accompanied by an affidavit to  
4           the correctness thereof to the best of the affiant's knowledge and belief, such  
5           itemized statement shall be accepted as prima facie proof of the amount, purpose,  
6           and necessity of such payments.

7           ~~D. E.~~ No compromise of any claim referred to in Subsections ~~A and B~~ B and  
8           C of this Section shall be binding upon or affect the rights of the ~~Department of~~  
9           ~~Health and Hospitals~~ department or a Medicaid managed care organization against  
10          a third party if the department or Medicaid managed care organization has notified  
11          such third party in writing of the amount of its claim prior to the date the  
12          compromise settlement is made. The notice provided for herein may be directed to  
13          either the third party or his agent.

14          ~~E. F.~~ An intervention filed by the ~~Department of Health and Hospitals~~  
15          department or a Medicaid managed care organization as provided by Subsection ~~A~~  
16          B of this Section is not barred by prescription if it was not barred at the time the  
17          main demand was filed, provided such intervention is filed within ninety days of date  
18          of service of main demand upon the department.

19          ~~F. G.~~ The ~~Department of Health and Hospitals~~ department and a Medicaid  
20          managed care organization shall have a privilege for the medical assistance payments  
21          made by the department or Medicaid managed care organization on behalf of an  
22          injured or ill Medicaid recipient on the amount payable to the injured recipient, his  
23          heirs, or legal representatives out of the total amount of any recovery or sum had,  
24          collected, or to be collected, whether by judgment or by settlement or compromise,  
25          from another person on account of such injuries, and on the amount payable by any  
26          insurance company under any contract providing for indemnity or compensation to  
27          the injured person. The privilege of an attorney shall have precedence over the  
28          privilege created under this Section.

1           ~~G.~~ H. The privilege created herein shall become effective if, prior to the  
2 payment of insurance proceeds, or to the payment of any judgment, settlement, or  
3 compromise on account of injuries, a written notice containing the name and address  
4 of the injured person, and if known, the name of the person alleged to be liable to the  
5 injured person on account of the injuries received, is mailed by the ~~Department of~~  
6 ~~Health and Hospitals~~ department, a Medicaid managed care organization, or ~~its an~~  
7 attorney or agent of either, by certified mail, return receipt requested, to the injured  
8 person, to his attorney, to the person alleged to be liable to the injured person on  
9 account of the injuries sustained, to any insurance carrier which has insured such  
10 person against liability, and to any insurance company obligated by contract to pay  
11 indemnity or compensation to the injured person. This privilege shall be effective  
12 against the persons given notice according to the provisions hereof, and shall not be  
13 defeated nor rendered ineffective as against the persons who have been given such  
14 notice, because of failure to give such notice to other persons named herein.

15           ~~H.~~ I. Any insurer, potentially liable third party, or other person who, having  
16 received notice in accordance with the provisions hereof, pays over any monies  
17 subject to the privilege created herein to any injured person, or to the attorney, heirs,  
18 or legal representatives of any injured person, and any injured person, his legal  
19 representative, or attorney who receives monies subject to the privilege herein shall  
20 be liable to the ~~Department of Health and Hospitals~~ department, Medicaid managed  
21 care organization, or both for the amount of the privilege not to exceed the amount  
22 paid by the insurer, potentially liable third party, or other person.

23           ~~F.~~ J. Nothing in this Section shall be construed to create any statutory lien or  
24 privilege on any life insurance proceeds or trust proceeds in favor of any third  
25 person.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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James

HB No. 814

**Abstract:** Extends right of Medicaid recovery in cases of third party liability for injury, illness, or death to Medicaid managed care organizations that contract with the Dept. of Health and Hospitals to provide covered services to Medicaid enrollees.

Present law provides that in cases of injury, illness, or death that create third party liability or obligate third party payment of damages, the Department of Health and Hospitals (DHH) shall have a cause of action against such third party to recover Medicaid assistance obligated or paid on behalf of the injured, ill, or deceased person in connection with the injury, illness, or death. Provides for notice, pleadings, compromise, and prescription in such recovery cases.

Proposed law retains present law and extends the right of Medicaid recovery conferred therein upon DHH to Medicaid managed care organizations.

Proposed law defines "Medicaid managed care organization" as any private entity that contracts with DHH to provide Medicaid benefits and services to Medicaid enrollees.

(Amends R.S. 46:446)