

Regular Session, 2014

# ACT No. 824

HOUSE BILL NO. 814

BY REPRESENTATIVE JAMES

1

## AN ACT

2 To amend and reenact R.S. 46:446, relative to recovery of medical assistance 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~~ medical assistance payments;  
10 notice; pleadings; compromise; prescription; privilege for reimbursement of  
11 Medicaid 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.

20 A.B. When an injury has been sustained or an illness or death incurred by  
21 any person under circumstances creating in some third person or legal entity a legal  
22 liability or obligation to pay damages or compensation to that person or to his  
23 spouse, representative, or dependent, the Department of Health and Hospitals  
24 department shall have a cause of action against such third party and/or to recover the  
25 medical assistance payments the department has paid or is obligated to pay on behalf

1           of the injured, ill, or deceased person in connection with the injury, illness, or death.  
2           The department, a Medicaid managed care organization, or both, may intervene in  
3           a suit filed by or on behalf of the injured, ill, or deceased person or his spouse,  
4           representative, or dependent against such third party to recover the assistance  
5           payments and medical expenses medical assistance payments the Department of  
6           Health and Hospitals department, Medicaid managed care organization, or each, has  
7           paid or is obligated to pay on behalf of the injured, ill, or deceased person in  
8           connection with said injury, illness, or death.

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

28           C.D. Pleadings filed on behalf of the Department of Health and Hospitals  
29          department or Medicaid managed care organization shall be accompanied by an  
30          itemized statement of its monetary claim, and when accompanied by an affidavit to

1                   the correctness thereof to the best of the affiant's knowledge and belief, such  
2                   itemized statement shall be accepted as prima facie proof of the amount, purpose,  
3                   and necessity of such payments.

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

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

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

26                  G.H. The privilege created herein in Subsection G of this Section shall  
27                  become effective if, prior to the payment of insurance proceeds, or to the payment  
28                  of any judgment, settlement, or compromise on account of injuries, a written notice  
29                  containing the name and address of the injured person, and if known, the name of the  
30                  person alleged to be liable to the injured person on account of the injuries received,

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

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

20           I.J. Nothing in this Section shall be construed to create any statutory lien or  
21          privilege on any life insurance proceeds or trust proceeds in favor of any third  
22          person.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_