

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 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.

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 shall have a cause of action against such third party ~~and/or~~ to recover the  
6 medical assistance payments the department has paid or is obligated to pay on behalf  
7 of the injured, ill, or deceased person in connection with the injury, illness, or death.  
8 The department, a Medicaid managed care organization, or both, may intervene in  
9 a suit filed by or on behalf of the injured, ill, or deceased person or his spouse,  
10 representative, or dependent against such third party to recover the ~~assistance~~  
11 ~~payments and medical expenses~~ medical assistance payments the ~~Department of~~  
12 ~~Health and Hospitals~~ department, Medicaid managed care organization, or each, has  
13 paid or is obligated to pay on behalf of the injured, ill, or deceased person in  
14 connection with said injury, illness, or death.

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

1 organization, or both, written notice at least thirty days before the compromise is  
2 affected. This written notice shall include the name and date of birth of all injured  
3 or ill recipients and the name and address of the party or parties potentially liable for  
4 damages or compensation.

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

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

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

23 ~~F. G.~~ The ~~Department of Health and Hospitals~~ department and a Medicaid  
24 managed care organization shall have a privilege for the medical assistance payments  
25 made by the department or Medicaid managed care organization on behalf of an  
26 injured or ill Medicaid recipient on the amount payable to the injured recipient, his  
27 heirs, or legal representatives out of the total amount of any recovery or sum had,  
28 collected, or to be collected, whether by ~~judgment or by settlement~~ judgment,  
29 settlement, or compromise, from another person on account of such injuries, and on

1 the amount payable by any insurance company under any contract providing for  
2 indemnity or compensation to the injured person. The privilege of an attorney shall  
3 have precedence over the privilege created under this Section.

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

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

26 ~~F. J.~~ F. J. Nothing in this Section shall be construed to create any statutory lien or  
27 privilege on any life insurance proceeds or trust proceeds in favor of any third  
28 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 medical assistance payments 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)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Changed inconsistent references to assistance and medical payments to the phrase "medical assistance payments".
2. Specified that DHH, a Medicaid managed care organization, or both, shall have a cause action to recover medical assistance payments.
3. Added technical amendments.