

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 6

By Senators Oliverio, Barrett, Garcia, Phillips, Queen,
and Woodrum

[Introduced February 12, 2025; referred
to the Committee on Banking and Insurance; and
then to the Committee on Health and Human
Resources]

1 A BILL to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to
2 exempting the cash value of a life insurance policy from Medicaid eligibility calculations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Definitions; Assignment of rights; right of subrogation by the department for third-party liability; notice requirement for claims and civil actions; notice requirement for settlement of third-party claim; penalty for failure to notify the department; provisions related to trial; attorneys fees; class actions and multiple plaintiff actions not authorized; and Secretary's authority to settle.

1 (a) Definitions. — As used in this section, unless the context otherwise requires:

2 (1) "Bureau" means the Bureau for Medical Services.

3 (2) "Department" means the Department of Human Services, or its contracted designee.

4 (3) "Recipient" means a person who applies for and receives assistance under the
5 Medicaid Program.

6 (4) "Secretary" means the Secretary of the Department of Human Services.

7 (5) "Third-party" means an individual or entity that is alleged to be liable to pay all or part of
8 the costs of a recipient's medical treatment and medical-related services for personal injury,
9 disease, illness or disability, as well as any entity including, but not limited to, a business
10 organization, health service organization, insurer, or public or private agency acting by or on behalf
11 of the allegedly liable third-party.

12 (b) Assignment of rights. —

13 (1) Submission of an application to the department for medical assistance is, as a matter of
14 law, an assignment of the right of the applicant or his or her legal representative to recover from
15 third parties past medical expenses paid for by the Medicaid program: Provided, That the first
16 \$25,000 of the cash value of a life insurance policy or of the death benefit of a life insurance policy
17 is exempt from assignment under the provisions of this section.

(2) At the time an application for medical assistance is made, the department shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(3) This assignment of rights does not extend to Medicare benefits.

(4) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third-party and from including, as part of the compensatory damages sought to be recovered, the amounts of his or her past medical expenses.

(5) The department shall be legally subrogated to the rights of the recipient against the third party.

(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(7) A recipient is considered to have authorized all third-parties to release to the department information needed by the department to secure or enforce its rights as assignee under this chapter.

(c) Notice requirement for claims and civil actions. —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.

(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within 60 days of receipt of a claim or within 30 days of receipt of information or documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within 30 days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than fifteen days after receipt of a request for same.

(d) Notice of settlement requirement. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third-party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the Secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an

70 evidentiary hearing. The recipient and the department shall be provided ample notice of the same
71 and be given just opportunity to present the necessary evidence, including fact witness and expert
72 witness testimony, to establish the amount to which the department is entitled to be reimbursed
73 pursuant to this section.

74 (B) The department shall have the burden of proving by a preponderance of the evidence
75 that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's
76 decision should be set forth in a detailed order containing the requisite findings of fact and
77 conclusions of law to support its rulings.

78 (4) Any settlement by a recipient with one or more third-parties which would otherwise fully
79 resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt from
80 the provisions of this section.

81 (5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any
82 dispute as to allocation prior to effectuating a settlement with a third party.

83 (e) Department failure to respond to notice of settlement. — If the department fails to
84 appropriately respond to a notification of settlement, the amount to which the department is
85 entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient
86 has allocated toward past medical expenses.

87 (f) Penalty for failure to notify the department. — A legal representative acting on behalf of
88 a recipient or third party that fails to comply with the provisions of this section is liable to the
89 department for all reimbursement amounts the department would otherwise have been entitled to
90 collect pursuant to this section but for the failure to comply. Under no circumstances may a pro se
91 recipient be penalized for failing to comply with the provisions of this section.

92 (g) Miscellaneous provisions relating to trial. —

93 (1) Where an action implicated by this section is tried by a jury, the jury may not be
94 informed at any time as to the subrogation lien of the department.

95 (2) Where an action implicated by this section is tried by judge or jury, the trial judge shall,

96 or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict
97 awarded that represents past medical expenses.

98 (3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of
99 the judgment any damages awarded for past medical expenses be withheld and paid directly to
100 the department, not to exceed the amount of past medical expenses paid by the department on
101 behalf of the recipient.

102 (h) Attorneys' fees. — Irrespective of whether an action or claim is terminated by judgment
103 or settlement without trial, from the amount required to be paid to the department there shall be
104 deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with
105 and in proportion to the fee arrangement made between the recipient and his or her attorney of
106 record so that the department shall bear the pro-rata share of the reasonable costs and attorneys'
107 fees: *Provided*, That if there is no recovery, the department shall under no circumstances be liable
108 for any costs or attorneys' fees expended in the matter.

109 (i) Class actions and multiple plaintiff actions not authorized. — Nothing in this article shall
110 authorize the department to institute a class action or multiple plaintiff action against any
111 manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by
112 the Medicaid program.

113 (j) Secretary's authority. — The Secretary or his or her designee may compromise, settle
114 and execute a release of any claim relating to the department's right of subrogation, in whole or in
115 part.

NOTE: The purpose of this bill is to make life insurance cash value exempt when
calculating eligibility for Medicaid

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.