

HOUSE BILL 600

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3lr2371
CF SB 502

By: ~~Delegate Pena-Melnyk~~ Delegates Pena-Melnyk, Nathan-Pulliam, Oaks, Pendergrass, and V. Turner

Introduced and read first time: January 31, 2013

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2013

CHAPTER _____

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Judgments – Third-Party**
3 **Tortfeasors**

4 FOR the purpose of requiring a certain judgment obtained in favor of a Maryland
5 Medical Assistance Program recipient to be increased by a certain amount
6 under certain circumstances; authorizing the Department of Health and Mental
7 Hygiene to collect from a Program recipient the full amount of certain payments
8 under certain circumstances; and generally relating to judgments in favor of
9 Maryland Medical Assistance Program recipients and recovery of payments by
10 the Department of Health and Mental Hygiene.

11 BY repealing and reenacting, with amendments,
12 Article – Health – General
13 Section 15–120
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2012 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Health – General**

19 15–120.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) If a Program recipient has a cause of action against a person, the
2 Department shall be subrogated to that cause of action to the extent of any payments
3 made by the Department on behalf of the Program recipient that result from the
4 occurrence that gave rise to the cause of action.

5 (b) (1) An attorney representing a Program recipient in a cause of action
6 to which the Department has a right of subrogation shall notify the Department prior
7 to filing a claim, commencing an action, or negotiating a settlement.

8 (2) The attorney shall notify the Department in advance of the
9 resolution of a cause of action and shall allow the Department 3 business days from
10 the receipt of the notice to establish its subrogated interest.

11 (3) This subsection may not be construed to create a cause of action for
12 notifying or failing to notify the Department.

13 (c) (1) Any Program recipient or attorney, guardian, or personal
14 representative of a Program recipient who receives money in settlement of or under a
15 judgment or award in a cause of action in which the Department has a subrogation
16 claim shall, after receiving written notice of the subrogation claim, hold that money,
17 for the benefit of the Department, to the extent required for the subrogation claim,
18 after deducting applicable attorney fees and litigation costs.

19 (2) A person who, after written notice of a subrogation claim and
20 possible liability under this paragraph, disposes of the money, without the written
21 approval of the Department, is liable to the Department for any amount that, because
22 of the disposition, is not recoverable by the Department.

23 (3) The Department may compromise or settle and release its
24 subrogation claim if, in its judgment, collection of the claim will cause substantial
25 hardship:

26 (i) To the Program recipient; or

27 (ii) In a wrongful death action, to the surviving dependents of a
28 deceased Program recipient.

29 (4) (i) The Department is not liable for payment of or contribution
30 to any attorney fees or litigation costs of any Program recipient or attorney, guardian,
31 or personal representative of any Program recipient.

32 (ii) The deduction of applicable attorney fees and litigation costs
33 under paragraph (1) of this subsection may not be considered as payment for or
34 contribution to those fees or costs by the Department.

35 ~~(D) (1) IF A JUDGMENT IS OBTAINED IN FAVOR OF A PROGRAM~~
36 ~~RECIPIENT AGAINST A THIRD PARTY TORTFEASOR FOR DAMAGES THAT~~

~~1 INCLUDE PAYMENTS MADE BY THE DEPARTMENT ON BEHALF OF THE PROGRAM
2 RECIPIENT AND THE JUDGMENT IS NOT PAID BY THE THIRD PARTY
3 TORTFEASOR WITHIN 30 DAYS AFTER THE JUDGMENT IS FINAL AND ALL
4 APPEALS ARE EXHAUSTED, THE AMOUNT OF THE JUDGMENT SHALL BE
5 INCREASED BY AN AMOUNT EQUAL TO THE AMOUNT OF THE PAYMENTS MADE BY
6 THE DEPARTMENT.~~

7 (D) (1) IF A JUDGMENT FOR DAMAGES IS OBTAINED AGAINST A
8 THIRD-PARTY TORTFEASOR IN FAVOR OF A PROGRAM RECIPIENT ON WHOSE
9 BEHALF THE PROGRAM HAS MADE PAYMENTS FOR MEDICAL CARE AND THE
10 JUDGMENT IS NOT PAID BY THE THIRD-PARTY TORTFEASOR WITHIN 30 DAYS
11 AFTER THE JUDGMENT IS FINAL AND ALL APPEALS ARE EXHAUSTED, THE
12 PROGRAM RECIPIENT SHALL BE ENTITLED TO REQUIRE THE COURT TO
13 INCREASE THE AMOUNT OF THE JUDGMENT BY AN AMOUNT EQUAL TO THE
14 AMOUNT OF THE PAYMENTS MADE BY THE DEPARTMENT.

15 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A
16 JUDGMENT IN FAVOR OF A PROGRAM RECIPIENT IS INCREASED UNDER
17 PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT MAY COLLECT FROM
18 THE PROGRAM RECIPIENT THE FULL AMOUNT OF THE PAYMENTS MADE BY THE
19 DEPARTMENT ON BEHALF OF THE PROGRAM RECIPIENT WITHOUT ANY
20 REDUCTION FOR ATTORNEY'S FEES OR PROCUREMENT COSTS.

21 [(d)] (E) Any action brought under this section is not exclusive and is
22 independent of and in addition to any right, remedy, or cause of action available to the
23 State, the Department, any other State agency, or a Program recipient or any other
24 individual.

25 [(e)] (F) (1) (i) In this subsection the following words have the
26 meanings indicated.

27 (ii) "Cigarette" means any roll of tobacco wrapped in:

- 28 1. Paper;
- 29 2. A substance not containing tobacco; or
- 30 3. A substance containing tobacco which because of its
31 appearance, the type of tobacco used in the filler, or its packaging and labeling, is
32 likely to be used by the consumers of ordinary paper-wrapped cigarettes.

33 (iii) 1. "Manufacturer of a tobacco product" means a
34 designer, producer, or processor of a tobacco product engaged in the marketing or
35 promotion of a tobacco product.

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1 2. “Manufacturer of a tobacco product” includes an
2 entity not otherwise a manufacturer of a tobacco product that imports a tobacco
3 product or otherwise holds itself out as a manufacturer of a tobacco product.

4 3. “Manufacturer of a tobacco product” does not include:

5 A. A grower, buyer, dealer, distributor, or wholesaler of
6 leaf tobacco; or

7 B. A retailer, distributor, or wholesaler of a tobacco
8 product.

9 (iv) “Smokeless tobacco” means a product that consists of cut,
10 ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

11 (v) “Tobacco product” means cigarettes or smokeless tobacco.

12 (2) In any action under this section or pursuant to any other right,
13 remedy, or cause of action brought by the State against a manufacturer of a tobacco
14 product, the causation and the amount of medical assistance expenditures attributable
15 to the use of a tobacco product may be proved or disproved by evidence of statistical
16 analysis, without proof of the causation or the amount of expenditures for any
17 particular Program recipient or any other individual.

18 (3) Nothing contained in paragraph (2) of this subsection prohibits or
19 limits the right of any party to introduce any other evidence, otherwise admissible,
20 that supports or rebuts the evidence of statistical analysis described in paragraph (2)
21 of this subsection.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.