



Ohio Revised Code

Section 3701.026 Right of subrogation against liable third party.

Effective: January 14, 1993

Legislation: House Bill 478 - 119th General Assembly

(A) The acceptance of assistance under the program for medically handicapped children gives a right of subrogation to the department of health against the liability of a third party for the costs of goods or services paid by the department under division (E) of section 3701.023 of the Revised Code. The department's subrogation claim shall not exceed the total cost of the goods and services paid under division (E) of section 3701.023 of the Revised Code.

(B) To enforce its subrogation rights, the department may do any of the following:

(1) Intervene or join in any action or proceeding brought by a medically handicapped child or his parent or guardian against any third party who may be liable for the cost of goods and services paid under division (E) of section 3701.023 of the Revised Code;

(2) Institute and pursue legal proceedings against any third party who may be liable for the cost of goods and services paid under division (E) of section 3701.023 of the Revised Code;

(3) Initiate legal proceedings in conjunction with a medically handicapped child or his parent or guardian against any third party who may be liable for the cost of goods and services paid under division (E) of section 3701.023 of the Revised Code.

(C) When an action or claim is brought against a third party by a medically handicapped child participating in the program or his parent or guardian, the entire amount of any settlement or compromise of the action or claim, or any court award or judgment, is subject to the subrogation right of the department. If all or part of settlement, compromise, award, or judgment is established in the form of a trust to benefit the child or his family or guardians, the department may waive its right of subrogation against all or part of the trust. Any settlement, compromise, award, or judgment that excludes the costs of goods and services paid under division (E) of section 3701.023 of the Revised Code shall not preclude the department from enforcing its subrogation right under this section.



(D) No settlement, compromise, judgment, or award or any recovery in any action or claim by a medically handicapped child or his parent or guardian when the department has a right of subrogation shall be made final without first giving the department notice and the opportunity to perfect its right of subrogation. If the department is not given notice, the child, parent, or guardian is liable to reimburse the department for the cost of goods and services paid under division (E) of section 3701.023 of the Revised Code out of any recovery received. The third party becomes liable to the department as soon as the third party is notified in writing of the valid claims for subrogation under this section.

(E) Subrogation does not apply to that portion of any judgment, award, settlement, or compromise of a claim, to the extent that attorney's fees, costs, or other expenses are incurred by a medically handicapped child or his parent or guardian in securing the judgment, award, settlement, or compromise, or to the extent that the cost of goods and services specified in divisions (B) and (D) of section 3701.023 of the Revised Code are paid by the child, parent, or guardian. Attorney's fees and costs or other expenses in securing any recovery shall not be assessed against any subrogated claim of the department.