



## Ohio Revised Code

### Section 5160.37 Right of recovery for cost of medical assistance.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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(A) A medical assistance recipient's enrollment in a medical assistance program gives an automatic right of recovery to the department of medicaid and a county department of job and family services against the liability of a third party for the cost of medical assistance paid on behalf of the recipient. When an action or claim is brought against a third party by a medical assistance recipient, any payment, settlement or compromise of the action or claim, or any court award or judgment, is subject to the recovery right of the department of medicaid or county department. Except in the case of a medical assistance recipient who receives medical assistance through a medicaid managed care organization, the department's or county department's claim shall not exceed the amount of medical assistance paid by the department or county department on behalf of the recipient. A payment, settlement, compromise, judgment, or award that excludes the cost of medical assistance paid for by the department or county department shall not preclude a department from enforcing its rights under this section.

(B) In the case of a medical assistance recipient who receives medical assistance through a medicaid managed care organization, the amount of the department's or county department's claim shall be the amount the medicaid managed care organization pays for medical assistance rendered to the recipient, even if that amount is more than the amount the department or county department pays to the medicaid managed care organization for the recipient's medical assistance.

(C) A medical assistance recipient, and the recipient's attorney, if any, shall cooperate with the departments. In furtherance of this requirement, the medical assistance recipient, or the recipient's attorney, if any, shall, not later than thirty days after initiating informal recovery activity or filing a legal recovery action against a third party, provide written notice of the activity or action to the department of medicaid or county department if it has paid for medical assistance under a medical assistance program.

(D) The written notice that must be given under division (C) of this section shall disclose the identity and address of any third party against whom the medical assistance recipient has or may



have a right of recovery.

(E) No settlement, compromise, judgment, or award or any recovery in any action or claim by a medical assistance recipient where the department or county department has a right of recovery shall be made final without first giving the department or county department written notice as described in division (C) of this section and a reasonable opportunity to perfect its rights of recovery. If the department or county department is not given the appropriate written notice, the medical assistance recipient and, if there is one, the recipient's attorney, are liable to reimburse the department or county department for the recovery received to the extent of medical assistance payments made by the department or county department.

(F) The department or county department shall be permitted to enforce its recovery rights against the third party even though it accepted prior payments in discharge of its rights under this section if, at the time the department or county department received such payments, it was not aware that additional medical expenses had been incurred but had not yet been paid by the department or county department. The third party becomes liable to the department or county department as soon as the third party is notified in writing of the valid claims for recovery under this section.

(G)(1) Subject to division (G)(2) of this section, the right of recovery of the department or county department does not apply to that portion of any judgment, award, settlement, or compromise of a claim, to the extent of attorneys' fees, costs, or other expenses incurred by a medical assistance recipient in securing the judgment, award, settlement, or compromise, or to the extent of medical, surgical, and hospital expenses paid by such recipient from the recipient's own resources.

(2) Reasonable attorneys' fees, not to exceed one-third of the total judgment, award, settlement, or compromise, plus costs and other expenses incurred by the medical assistance recipient in securing the judgment, award, settlement, or compromise, shall first be deducted from the total judgment, award, settlement, or compromise. After fees, costs, and other expenses are deducted from the total judgment, award, settlement, or compromise, the department of medicaid or county department shall receive no less than one-half of the remaining amount, or the actual amount of medical assistance paid, whichever is less.

(H) A right of recovery created by this section may be enforced separately or jointly by the



department of medicaid or county department. To enforce its recovery rights, the department or county department may do any of the following:

(1) Intervene or join in any action or proceeding brought by the medical assistance recipient or on the recipient's behalf against any third party who may be liable for the cost of medical assistance paid;

(2) Institute and pursue legal proceedings against any third party who may be liable for the cost of medical assistance paid;

(3) Initiate legal proceedings in conjunction with any injured, diseased, or disabled medical assistance recipient or the recipient's attorney or representative.

(I) A medical assistance recipient shall not assess attorney fees, costs, or other expenses against the department of medicaid or a county department when the department or county department enforces its right of recovery created by this section.

(J) The right of recovery given to the department under this section includes payments made by a third party under contract with a person having a duty to support.

(K) The department of medicaid may assign to a medical assistance provider the right of recovery given to the department under this section with respect to any claim for which the department has notified the provider that the department intends to recoup the department's prior payment for the claim.