

Legislative Analysis



MEDICAID: NOTICE OF CERTAIN LEGAL ACTIONS TO DCH & MEDICAID HEALTH PLANS

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House Bill 5646

Sponsor: Rep. Bob Constan

Committee: Government Operations

Complete to 6-22-10

A SUMMARY OF HOUSE BILL 5646 AS INTRODUCED 12-3-09

The bill would amend Section 106 of the Social Welfare Act to amend provisions dealing with the state's ability to recover medical expenses paid under the act when individuals receiving medical assistance (Medicaid) are engaged in certain legal actions. Also, some existing provisions would be eliminated.

Under the bill, if an individual receiving medical assistance (Medicaid) under the Social Welfare Act files a complaint in which the Department of Community Health may have a right to recover expenses, the individual, his or her representative, or his or her legal counsel would be required to notify the department and serve a copy of the complaint on the department not later than seven days after the complaint has been filed with the court. If the individual is enrolled in a Medicaid contracted health plan, notice would also have to be provided to the Medicaid plan together with the notice to department not later than seven days after the complaint is filed with court.

Proof of Notification

The complainant or his or her representative would be required to certify that he or she provided notice and a copy of the complaint to the department, on the summons and complaint form, in a manner to be determined by the state court administrator.

Settlement Option

If an individual or his or her representative seeks to settle an action in which the state department may have a right to recover expenses paid under the act without filing a complaint, the individual or the representatives would be required to notify the department in writing before beginning settlement discussions. The parties would have to allow the department or its representatives an opportunity to participate in settlement discussions. If the individual is enrolled in a Medicaid contracted health plan, the individual or representative would be required to notify the Medicaid contracted health plan in writing and allow the health plan or its representative an opportunity to participate in the settlement discussion, in addition to providing notice to the state department before the matter is settled.

Notice Not Given

If notice was not given as required above, the department or the Medicaid contracted plan would be entitled to recover from the individual all of the expenses paid under the act and attorney fees and costs associated with recovering the medical expenses paid under the act.

No Complaint Filed/Claim Settled

If no complaint was filed but the claim was settled and notice of the settlement was not given as required, the department would be entitled to recover from the individual all of the medical expenses paid under the Social Welfare Act, and attorney fees and costs associated with recovering the medical expenses paid.

Attorney Representation Requirements

If the individual is represented by legal counsel, the legal counsel (and not the individual or the individual's representative) must do all of the following:

- Certify that he or she has provided notice and a copy of the complaint to the department, on the summons and complaint form, in a manner determined by the state court administrator. The certification would be required to be on all cases that are no-fault automobile insurance cases, medical malpractice cases, personal injury-automobile negligence cases, other personal injury cases, or any other case in which the department may have a right to recover expenses paid under the act.
- Notify the department in writing before beginning settlement discussions. The parties to the discussion would be required to allow the department or its representative an opportunity to participate in those discussions.
- Notify the Medicaid contracted health plan in writing in addition to providing notice to the state department before the matter is settled.

Stricken Language

Existing provisions regarding legal actions would be struck from the act. Those provisions say:

If a legal action in which the state department, a Medicaid contracted health plan, or both has a right to recover expenses paid under this act is filed and settled after November 29, 2004, without notice to the state department or the Medicaid contracted health plan, [the department or plan] may file a legal action against the individual or his or her legal counsel, or both, to recover expenses paid under the act. The attorney general shall recover any cost or attorney fees associated with a recovery under this subsection.

FISCAL IMPACT:

The fiscal impact is indeterminate.

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