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CIVIL PRACTICE

Actions Generally: Provide for Notice of Civil Recovery Action Involving Recipients of Medical Assistance

CODE SECTION:	O.C.G.A. § 9-2-21 (amended)
BILL NUMBER:	SB 249
ACT NUMBER:	520
SUMMARY:	The Act provides that any person who has received Medicaid benefits for treatment of injuries giving rise to a tort claim must give notice to the Department of Medical Assistance prior to the initiation of a recovery action. Initiation of a recovery action includes any communication with a party who may be liable or financially responsible for the liability; it is not limited to filing an action in court.
EFFECTIVE DATE:	July 1, 1993

History

Often Medicaid recipients, while receiving medical benefits through the State, are also eligible for third-party benefits either by virtue of supplementary insurance coverage or because of the liability of someone else. In such situations, the State is entitled to liens, assignments, and subrogation rights with respect to the proceeds from these third-party payors.[1] However, the State frequently has no way of learning about such payments which hampers its chance of recovery. The Department of Medical Services, the state agency responsible for collecting these benefits, conducted a nationwide survey to discover and evaluate how other states handled such recovery.[2] This Act was a result of that research.

1. 1979 Ga. Laws 1293 (formerly found at O.C.G.A. § 49-4-149 (1990)). The entitlement to third-party payments reflected in the Georgia Medicaid Statute is derivative of the federal Social Security Act's mandate to ascertain liability of third-parties and seek recovery. See 42 U.S.C. § 1396(a)(25) (Supp. 1988) and the consequent regulation, 42 C.F.R. § 433.135 (1992).

2. Telephone Interview with Elizabeth McGown, Director of the Division of Program Compliance, Georgia Department of Medical Assistance (Apr. 7, 1993) [hereinafter McGown Interview].

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SB 249

The Act amends the Georgia Civil Practice Act relating to parties to tort actions by adding a new subsection at the end of Code section 9-2-21.[3] This subsection (c) applies to any person who has received Medicaid pursuant to chapter 4 of title 49.[4] The subsection requires that, prior to initiating a recovery action from a third-party payor, the "representative or attorney who has actual knowledge of the receipt of said benefits" must provide notice of the claim to the Department of Medical Assistance.[5] Such legal notice is adequate if made through the United States mail.[6]

Although such notice is not a condition precedent to filing a tort action, it is required to be made before initiating any communication with a party who may be liable or with a person financially responsible for that liability.[7] The bill, as introduced, did not consider communication with a potentially liable party to be initiating a recovery action.[8] However, the House Judiciary Committee, in a substitute bill, suggested including these communications.[9] The inclusion of these communications, which strengthened the reach of the bill, is important because often these recovery matters are concluded through discussions between attorneys or a demand letter with a lawsuit never actually being filed.[10] The substitute was passed, thereby requiring lawyers negotiating with insurance companies for recovery to notify the Department of Medical Assistance of those communications.[11]

At one point the Medical Association of Georgia attempted to sponsor an amendment to the bill making it a crime of welfare fraud for an attorney not to give proper notice. The amendment, however, was introduced and defeated.[12]

The Act was an effort by the Georgia Department of Medical Assistance to make recovery from third-party payors more efficient and effective.[13] It provides technical assistance to the Department; it does not substantively change the law or the current process by which

3. O.C.G.A. § 9-2-21 (Supp. 1993).
4. O.C.G.A. tit. 49, ch. 4 (1990) is the Georgia Medicaid statute. McGown Interview, *supra* note 2.
5. O.C.G.A. § 9-2-21(c) (Supp. 1993).
6. *Id.*
7. McGown Interview, *supra* note 2.
8. SB 249, as introduced, 1993 Ga. Gen. Assem.
9. SB 249 (HCS), 1993 Ga. Gen. Assem.
10. McGown Interview, *supra* note 2.
11. *Id.*
12. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (Apr. 6, 1993). Sen. Oliver sponsored the bill. *Id.*
13. *Id.*

recovery actions are conducted.[14] By receiving notice of pending claims, however, the State then can more effectively pursue the reimbursements it has a legal right to receive.[15]

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14. *Id.*
15. McGown Interview, *supra* note 2.