

**STATE OF RHODE ISLAND  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
PUBLIC NOTICE OF PROPOSED RULE-MAKING**

In accordance Rhode Island General Laws (RIGL) 42-35, notice is hereby given that the Executive Office of Health and Human Services proposes the following rule making activity:

**MEDICAL ASSISTANCE PROGRAM**

**Adoption of Section 0311 INTERCEPTION OF INSURANCE PAYMENTS  
Amendment of Section 0312 LIENS & RECOVERY OF MA PAYMENTS**

Proposed rule making to the Medical Assistance Program are being initiated to support changes to RIGL with amendments to Article 11 regarding medical assistance recoveries. Section 0311 proposes the legal basis and process for the interception of insurance payments. The rules further establish the notice requirements for OHHS as well as provide details for the claimant if a hearing is requested.

Proposed revisions to Section 0312 revise guidelines to be consistent with language in Article 11. Language has been added to further define the legal basis, application of the lien, recovery, and transfer/sale of property.

In the development of these rules, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

These proposed rules are accessible on the R.I. Secretary of State website (<http://www.sec.state.ri.us/ProposedRules/>) and the EOHHS website ([www.ohhs.ri.gov](http://www.ohhs.ri.gov)) or available in hard copy upon request (401 462-2018 or RI Relay, dial 711). **A public hearing will be held to consider the proposed rule on Thursday, August 2, 2012 at 4:00 PM at the DaVinci Center for Community Progress, Inc., 470 Charles Street, Providence, RI 02904.** Persons wishing to testify may do so by signing up at the Hearing or by submitting written testimony by Friday, August 10, 2012 to Kimberly Merolla-Brito, Office of Policy Development, RI Department of Human Services, Louis Pasteur Building, 57 Howard Avenue Fl # 1, Cranston, RI 02920.

The Hearing will begin at 4:00 P.M. and will conclude when the last speaker finishes testimony or at 6:00 P.M., whichever occurs first. The seating capacity of the DaVinci Center will be enforced and therefore the number of persons participating in the Hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The DaVinci Center is accessible to the handicapped. Individuals with hearing impairments may request an interpreter's presence by calling 711 or Relay RI 1-800-745-6575 (Voice) and 1-800-745-555 (TDD). Requests for this service must be made at least 72 hours in advance of the Hearing date.

The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

## **0311 INTERCEPTION OF INSURANCE PAYMENTS**

### **0311.05 LEGAL BASIS**

EFF:09/2012

In accordance with state law and applicable administrative rules, when applying for Medicaid, an applicant automatically assigns his/her rights to the Executive Office of Health and Human Services, the RI Medical State agency, any third party payments from insurers. Nothing in these sections shall limit the Executive Office of Health and Human services from recovery of any other monies allowed, to the extent of the distribution, in accordance with all state and federal laws.

### **0311.10 PROCESS**

EFF:09/2012

Every domestic insurer or insurance company authorized to issue policies of liability insurance and any worker's compensation insurer, shall review information provided by the Executive Office of Health and Human Services pursuant to RIGL Chapter 27-57.1 indicating whether or not the claimant has received Medicaid as a result of the accident or loss which is the basis of the claim. Said review shall occur within thirty (30) days prior of making any payment equal to or in excess of five hundred dollars (\$500.00) to any claimant who is a resident of this state, for personal injury or workers' compensation benefits under a contract of insurance

The Executive Office of Health and Human Services shall electronically furnish these insurers and insurance companies with a database data match option report of names of individuals with last known addresses who as of the date of the report, who have Medicaid in excess of five hundred dollars (\$500).

To facilitate the efficient and prompt reporting of those Medicaid beneficiaries in one centralized location, the duty and responsibility of the insurance companies doing business is as follows:

- o Utilize one centralized database, to which the Executive Office of Health and Human Services shall report and administer.
- o Any insurer receiving information identifying a Medicaid Beneficiary shall maintain the confidentiality of that information to the full extent required under federal and state law. Minimal data elements, including but not limited to the date of injury and other necessary identifying information, shall be shared with an agency contracted by the Executive Office of Health and Human Services which maintains a centralized database of insurance claims.
- o The contracted centralized database is required to keep confidential: any personal and personnel information; records sufficient to identify a person applying for or receiving Medicaid; preliminary drafts, notes, impressions, memoranda, working papers, and work products; as well as any other records, reports, opinions, information, and statements deemed confidential pursuant state or federal law or regulation, or rule of court. Any such confidential data shall not be disclosed to the insurer.

- o Matched results indicating that a beneficiary is a claimant of an insurer are returned to the Executive Office of Health and Human Services through its contracted agency. Proper quality assurance shall be performed by the contracted agency to insure the claim is open and collect additional information from the insurer including but not limited to contact information.

If the insurer determines from the information provided by the Executive Office of Health and Human Services pursuant to RIGL 27-57.1-4 that the claimant or payee has received Medicaid, as a result of the accident or loss which is the basis of the claim, the insurer shall, except to the extent that payments are subject to liens or interests (i.e., health care providers, attorney fees, holders of security interests, or the assignment of rights under RIGL 40-6-9 and 40-6-10), withhold from payment the amount to the extent of the distribution for Medicaid as a result of the accident or loss, dating back to the date of the incident. The insurer shall pay such amount to the Executive Office of Health and Human Service and shall pay the balance to the claimant or other entitled person. Workers' compensation claimants who receive Medicaid, provided in accordance chapter 40-8, shall be subject to the provisions of 27-57.1. The workers' compensation reimbursement payments made to the Executive Office of Health and Human Services in accordance shall be limited to that set forth in chapter 28-33 and section 40-6-10.

### **0312.15 NOTICE**

EFF:09/2012

The Executive Office and Health and Human Services shall provide written notice to the claimant and his attorney if any which shall include the date, name, social security number, case number, and amount of the payment being withheld to reimburse the state, reason for the payment and opportunity to request a hearing.

### **0312.20 REQUEST FOR HEARING**

EFF:09/2012

Any claimant aggrieved by any action taken under these procedures may within thirty (30) days of the date of the notice to the claimant request a hearing from the Executive Office of Health and Human Services. Any payments made by an insurer pursuant to this chapter shall be made to the Executive Office of Health and Human Services, unless there is request for hearing within thirty (30) days of the notice, or within ten (10) business days of a decision after hearing and in accordance with the decision of any hearing that takes place.