

COUNCIL OF THE DISTRICT OF COLUMBIA

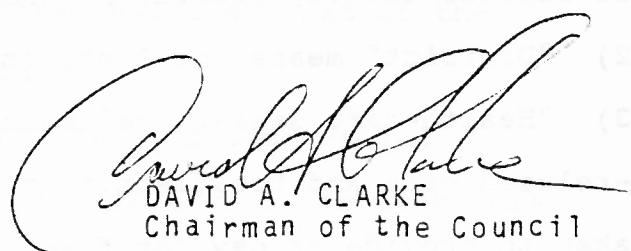
NOTICE

D.C. LAW 5-86

"Health-Care Assistance Reimbursement Act
of 1984".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 5-271 on first and second readings, March 27, 1984 and April 10, 1984, respectively. Following the signature of the Mayor on April 26, 1984, this legislation was assigned Act No. 5-124, published in the May 4, 1984 edition of the D.C. Register, (Vol. 31 page 2098) and transmitted to Congress April 30, 1984 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 5-86, effective June 14, 1984.



DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

April 30

May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 30, 31

June 1, 4, 5, 6, 7, 8, 11, 12, 13

D.C. LAW 5 - 86

AN ACT

Enrolled Original

EFFECTIVE DATE JUN 14 1984

D.C. ACT 5-124

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APR 26 1984

To authorize the District of Columbia to recoup all or part of the expense of providing health-care assistance when the beneficiary has, or would have had but for the government's assistance, a claim against a third party for the care and treatment the District has undertaken to provide or pay for.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Assistance Reimbursement Act of 1984".

New Chapter
5 of title
3

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Beneficiary" means any individual who has received health-care assistance from the District and, if applicable, that individual's guardian, conservator, personal representative, estate, dependents, and survivors.

New
D.C. Code,
sec. 3-501
(1985 supp.)

(2) "District" means the District of Columbia.

(3) "Health-care assistance" means health or health-related care and treatment that the District has undertaken to provide or pay for free of charge or at a discounted rate, and includes future care and treatment that the Mayor, in his or her discretion, reasonably anticipates will be provided or paid for by the District. The term "health-care assistance" includes, but shall not be limited to, medical, surgical, nursing, dental, hospital, nursing

home, hospice, and home care, prostheses and medical appliances, physical and occupational therapy, counseling and psychotherapy, social work, related transportation costs, and funeral and burial expenses.

(4) "Third party" means a third-party tortfeasor, beneficiary's insurer, or any other individual, organization, or entity that is or may be liable to a beneficiary, in tort or contract, for all or part of the care and treatment the District has undertaken to provide or pay for as health-care assistance.

Sec. 3. Right to Reimbursement Established;
Subrogation and Assignment.

New
D.C. Code,
sec. 3-502

Note
D.C. Code,
sec. 32-119
(1985 supp.)

(a) Whenever the District provides health-care assistance to a beneficiary who has suffered an injury or illness under circumstances creating liability in a third party or under circumstances that would have created such a liability had the beneficiary instead of the District incurred the expense of the health-care assistance, it shall have an independent, direct cause of action against that third party for the unreimbursed value or cost of the health-care assistance provided.

(b) As soon as the District begins providing health-care assistance to a beneficiary, it shall become subrogated to any right or claim that the beneficiary has against a third party for the care and treatment it has undertaken to provide or pay for as health-care assistance. Alternatively, or in addition to the legal subrogation effected under this subsection, the Mayor may require a

beneficiary to execute a written assignment of that same right or claim.

Sec. 4. Set-off.

(a) Except as provided in subsection (b), whenever the District is a defendant in a proceeding brought by a beneficiary, it shall have a right to set off from a judgment against it any damages that represent compensation for the care and treatment it has undertaken to provide or pay for as health-care assistance.

(b) No set-off shall be allowed from a judgment entered against the District pursuant to any provision of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Code, sec. 6-1901 et seq.).

Sec. 5. Enforcement of Right; Waiver.

(a) In enforcing its right to reimbursement, the District may:

(1) permit the beneficiary to proceed on behalf of the District in prosecuting, in conjunction with his or her own claims, the District's claim for the unreimbursed value or cost of the health-care assistance provided;

(2) intervene or join in any proceeding brought by the beneficiary;

(3) institute and prosecute a proceeding either alone (in its own or the beneficiary's name) or in conjunction with the beneficiary; or

(4) compromise or settle and execute a release of its claim against a third party.

New
D.C. Cod
sec. 3-51

Note
D.C. Cod
secs. 6-
1973,
-1974,
21-1110
(1985 s)

New
D.C. Cod
sec. 3-51
(1985 sup)

(b) The Mayor may waive, in whole or in part, enforcement of the District's claim against a third party if enforcement in a particular case would not be cost effective or would result in undue hardship to the beneficiary, including any dependents or survivors of the actual recipient of health-care assistance. If waiver is based on the avoidance of undue hardship, the Mayor may in addition void the legal subrogation or assignment effected pursuant to section 3(b). In determining whether and to what extent reimbursement should be sought or awarded under this act, the Mayor or a court, respectively, shall give due consideration to the extent of the beneficiary's injuries and his or her current and future needs, including the current and future needs of any dependents or survivors of the actual recipient of health-care assistance.

(c) No proceeding prosecuted or judgment received by the District pursuant to this act shall be a bar to a beneficiary's claim or cause of action for elements of damage not covered by the District's cause of action, or shall operate to deny the beneficiary recovery of those elements of damage.

Sec. 6. Settlement Probative of Liability.

Any settlement or compromise of a claim or cause of action between a beneficiary and third party for more than what in the opinion of the court is a nominal amount in light of the claims asserted shall be admissible in evidence as probative of that third party's liability to the District.

New
D.C. Code,
sec. 3-505
(1985 supp.)

Sec. 7. Notice.

(a) Any individual or institutional health-care provider that bills the District for health-care assistance furnished to a beneficiary shall provide the Mayor with written notice of any known or suspected third-party liability as soon as the health-care provider acquires knowledge of or suspects the existence of that liability. The written notice shall include the beneficiary's name and, if known, the name of the third party and a description of the circumstances allegedly creating a liability.

(b) If either the beneficiary or the Mayor separately institutes a proceeding against or settlement negotiations with a third party, the party instituting the proceeding or negotiations shall have 20 calendar days to give the other party written notice of the action by personal service or certified mail. If a court proceeding has been instituted, proof of timely notice shall be filed with the court. Whenever the Mayor separately institutes a proceeding under this act, written notice to the beneficiary shall advise him or her of the Mayor's right to reimbursement and, if the beneficiary has not proceeded to trial in another proceeding or executed a settlement agreement, his or her rights to intervene or join in the proceeding and to retain private counsel.

(c) After deducting a beneficiary's litigation costs and reasonable attorney's fees, a third party who is aware that the District might have a claim against the remainder of a judgment or settlement awarded or executed in favor of

New
D.C. Code,
sec. 3-506

Note
D.C. Code,
sec. 3-204
(1985 supp.)

the beneficiary shall not satisfy the remainder of that judgment or settlement without first giving the Mayor both written notice of the judgment or settlement and 30 calendar days from the date notice is received to determine the appropriateness of a lien under section 8, and, if appropriate, to perfect and satisfy that lien.

(d) If a beneficiary retains private counsel, counsel shall be responsible for giving all notices required by this section.

Sec. 8. Lien.

(a) Except as limited by subsections (b) and (c), the District shall have a lien, perfected in accordance with subsection (d), upon any judgment or settlement awarded or executed in favor of a beneficiary against a third party for that amount of the judgment or settlement that represents the care and treatment it has undertaken to provide or pay for as health-care assistance.

(b) If the beneficiary prosecutes a claim on behalf of the District in a proceeding or settlement negotiations and incurs a personal liability for litigation costs and attorney's fees, the Mayor shall determine in good faith what, if any, contribution to those costs and fees would be appropriate, and that contribution shall be subtracted from the amount of the lien.

(c) The beneficiary shall have the right to retain at least 1/5 of the net amount of a judgment or settlement after deducting litigation costs and a reasonable attorney's fee.

New
D.C. Code,
sec. 3-507
(1985 supp.)

(d) To perfect a lien under this section, the Mayor, before payment of any part of a judgment or settlement is made to the beneficiary, shall:

(1) file in the Office of the Recorder of Deeds, in a docket provided for this type of lien, a written notice containing the beneficiary's name and address, the approximate date and location of the incident that caused or allegedly caused the beneficiary's injury or illness, and the name of the third party; and

(2) provide by personal service or certified mail copies of the written notice of lien together with a statement of the date of filing to the beneficiary, the third party, and, if applicable and ascertained by the Mayor, the insurer of a third-party tortfeasor.

(e) If after receiving a notice of lien under subsection (d)(2) a beneficiary, third party, or an insurer of a third-party tortfeasor disposes of funds covered by a lien perfected under this section without paying the District the amount of its lien that could have been satisfied from those funds after paying off any prior liens, that beneficiary, third party, or insurer shall, for a period of 1 year from the date the funds were improperly disposed of, be liable to the District for any amount that, because of the disposition, it is unable to recover.

Sec. 9. Rules.

The Mayor may, pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.), issue

New
D.C. C.
sec. 1
(1985)

rules to effectuate the purposes of this act, including, but not limited to, rules for:

(1) determining the unreimbursed value of health or health-related care and treatment that the District undertakes to provide directly;

(2) determining the appropriateness and amount of a District contribution under section 8(b);

(3) establishing procedures to implement the notice requirements in section 7; and

(4) facilitating the District's compliance with applicable federal regulations.

Sec. 10. Existing Rights to Reimbursement Preserved.

This act shall not be construed to limit or repeal any other provision of law that invests the District with a right to reimbursement for health-care assistance provided to a beneficiary or specified class of beneficiary.

New
D.C. Code,
3-509
Note
D.C. Code,
secs. 1-624.
1-624.32,
4-501
(1985 supp.)

Sec. 11. Partial Retroactive Application.

This act shall have full application and effect except for those pending cases in which a trial has commenced or a settlement agreement has been executed by the effective date specified in section 12.

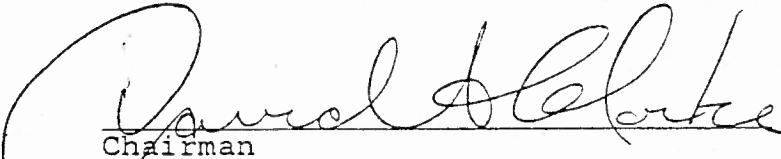
Note
D.C. Code,
sec. 3-501 t
3-509
(1985 supp.)

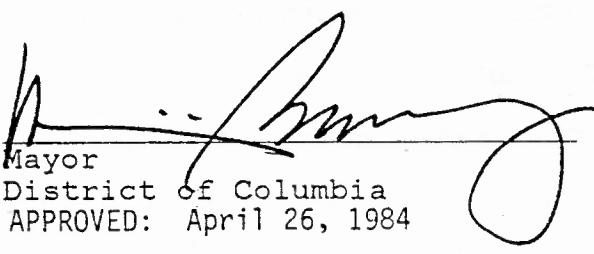
Sec. 12. Effective Date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973

Code,
3-508
supp

(87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).


Chairman
Council of the District of Columbia


Mayor
District of Columbia
APPROVED: April 26, 1984

Orig:



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Five — Second Session

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B 5-271

 Item on Consent Calendar ACTION & DATE: Adopted First Reading, 3-27-84 VOICE VOTE: Unanimous

Recorded vote on request

Absent: Jarvis

 ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote

A.B. — Absent

N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

4/10/84

Date

 Item on Consent Calendar ACTION & DATE: Adopted Final Reading, 4-10-84 VOICE VOTE: Unanimous

Recorded vote on request

Absent: Spaulding and Smith

 ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote

A.B. — Absent

N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

4/10/84

Date

 Item on Consent Calendar ACTION & DATE: _____ VOICE VOTE: _____

Recorded vote on request

Absent: _____

 ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote

A.B. — Absent

N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date