

House Bill 166 – State Operating Budget  
Testimony by Sean Harris  
For the Ohio Association for Justice  
Before the House Finance Subcommittee on Health and Human Services  
Re: Medicaid Tort Recovery  
April 11, 2019

1. Introduction

- a. Chair Romanchuk, Ranking Member West, and members,
- b. Thank you for the opportunity to present a problem that can and should be fixed.
- c. My name is Sean Harris. I serve as the President of the Ohio Association for Justice.

2. Ohio Association for Justice

- a. OAJ is the statewide bar association for trial attorneys.
- b. Our mission is to preserve our Constitutional right to have disputes heard by a jury. A right our founders believed was so fundamental they included it as the 7<sup>th</sup> Amendment in the Bill of Rights of the federal Constitution and in Article 1, Section 5 of our Ohio Constitution.
- c. OAJ members help Ohioans and their families get back on their feet after they have been injured.
- d. There is a problem between Medicaid and a third-party vendor, HMS, regarding the issue of subrogation.

3. Subrogation

- a. The best way to explain the issue is by way example: A car driven by a Medicaid recipient is hit --- rear end collision --- and the driver is injured.
- b. The medical bills for injured driver are paid by Medicaid.
- c. Medicaid then has a lien on, right to reimbursed out of, any financial settlement or recovery from the at-fault driver's insurance company.

- d. The issue:
- i. It can be difficult, if not impossible, to obtain a final lien letter from Medicaid.
  - ii. That is, we know we have to pay Medicaid back, we're asking Medicaid how much we have to pay, and Medicaid doesn't or can't tell us.
  - iii. Some car insurance companies require a final lien before they will even begin settlement negotiations, further delaying the process.
  - iv. And when the final lien is obtained, it can often be simply a number, not an itemization by date, provider, and service rendered. Without an itemization, you cannot tell if there is medical bills paid by Medicaid that is unrelated to claim, such as a cold or flu.
- e. The current system:
- i. No one answers the phone at Medicaid's "Tort Recovery" department. There are no case workers. All calls are sent to a voice mail where you cannot leave a message.
  - ii. Instead, Medicaid subrogation is managed by a third party vendor: HMS.
  - iii. HMS is a large national company responsible for the collection of Ohio's public money. HMS serves as middle man or go-between. To obtain lien information, lawyers must go through HMS's web portal or call their national call center. HMS then passes the request for information on to Medicaid.
  - iv. Medicaid has failed to provide lien information to HMS in a timely manner, and HMS has failed recover Ohio public funds within a reasonable period of time. All the while, Ohio is losing out.
  - v. Delays of several months to a year are not uncommon to get the final lien, which needlessly delays reimbursement of public monies to the State.

#### 4. Solution

- a. There are multiple possible solutions to this problem.
- b. For example, you could examine the contract between Medicaid and HMS to look for ways to incentivize or penalize Medicaid to promptly provide information to HMS, and HMS to promptly collect and return Ohio's public money.
- c. There may be other ways as well.

#### 5. Conclusion

- a. We acknowledge this problem is not on the same scale as the major issues of cost control, drug and prescription spending, and work requirements, that you are discussing.
- b. Appreciate the attention that you, Mr. Chairman and Rep. West, have has already given the matter.
- c. Thank you.