

HOUSE BILL NO. 204

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

IN THE HOUSE

JANUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 17, 1989	FIRST READING.
FEBRUARY 3, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1989	PRINTING REPORT.
FEBRUARY 7, 1989	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 8, 1989	SECOND READING, DO PASS.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 90; NOES, 5.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, PASS CONSIDERATION.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN.

AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 204
 2 INTRODUCED BY Cobb
 3 BY REQUEST OF THE DEPARTMENT OF SOCIAL
 4 AND REHABILITATION SERVICES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
 7 OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON,
 8 RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY
 9 RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY
 10 THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO
 11 NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY
 12 FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611,
 13 53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315,
 14 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
 15 APPLICABILITY DATES."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 53-2-612, MCA, is amended to read:

19 "53-2-612. Subrogation--and--third-party-liability-for
 20 certain--benefits: Lien of department or county upon
 21 third-party recoveries. (1) The department is subrogated to
 22 the right of each recipient or beneficiary of medical
 23 benefits to recover damages or compensation from a third
 24 party to the extent necessary to reimburse the department
 25 for medical benefits paid to or on behalf of the recipient

1 or-beneficiary. Upon determination that a third party is
 2 liable for the medical expenses of a recipient or
 3 beneficiary under this section, the department shall
 4 immediately notify the third party of the subrogation. Upon
 5 notice by the department, a county, or the recipient to a
 6 third party or his insurer as provided in subsection (5)(b),
 7 the department or county has a lien upon all money paid by a
 8 third party or his insurer in satisfaction of a judgment or
 9 settlement arising from a recipient's claim for damages or
 10 compensation for personal injury, disease, illness, or
 11 disability to the extent that the department or county has
 12 paid medical assistance on behalf of the recipient for the
 13 same personal injury, disease, illness, or disability.

14 (2) The department or county may, in the name of the
 15 recipient or beneficiary to whom or on whose behalf medical
 16 benefits have assistance has been paid and to whose rights
 17 the department has been subrogated by the department or
 18 county, commence and prosecute to final conclusion any
 19 action which may be necessary to recover from a third party
 20 or his insurer compensation or damages for medical costs
 21 incurred by the recipient or beneficiary assistance paid by
 22 the department or county on behalf of the recipient. This
 23 section does not affect the right of the recipient or
 24 beneficiary to initiate and prosecute to final conclusion an
 25 action for damages or compensation in his own name in

accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) If the department or county has a lien under this section and a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has an unpaid lien on the recipient's recovery, as provided in 71-3-1114, and there is not a sufficient amount to satisfy each lien, each lienor is entitled to share in the recovery in the same proportion that its claim bears to the total claims of all lienors. Each lienor's proportion must be determined without deduction from any claim of the lienor's share of attorney fees and costs, if any.

(d) A recipient may not, without the consent of the department or county, release a third party or his insurer from liability for a personal injury, disease, illness, or disability for which the department or county paid or may pay medical assistance.

(e) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted first and paid. Unless the department or county and the recipient or-beneficiary agree to a different settlement, the amount previously paid as medical benefits assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient or-beneficiary. However, any recipient-or-beneficiary-who-initiates-an-action-to-recover damages-or-compensation-shall-receive-no-less-than-one-third of-the-total-amount-recovered-after-the-deduction-of-reasonable-attorney-fees-and-costs.

(4) (a) A recipient or-beneficiary of medical benefits assistance or his legal representative shall notify the department or county by means-of-a certified letter within 30 days if the recipient or-beneficiary or his legal representative asserts a claim against a third party or his insurer for damages or compensation for an a personal

1 injury, disease, illness, or disability for which the
 2 department or county paid medical benefits assistance in
 3 whole or in part or for which the recipient has applied for
 4 medical assistance. The notice must be mailed to the
 5 director of the department and or the director of the county
 6 department that paid medical assistance. At the same time, a
 7 copy must be sent by certified mail to the third party or
 8 his insurer.

9 (b) The notice must contain the following information:

10 {a}(i) the name and address of the recipient or
 11 beneficiary and his legal representative, if any;

12 {b}(ii) the name and address of the third party alleged
 13 to be liable to the recipient or beneficiary;

14 {c}(iii) the name and address of any known insurer of
 15 the third party; and

16 {d}(iv) the judicial district and docket number of any
 17 action filed.

18 (c) A recipient and his legal representative are
 19 jointly and severally liable to the department or county for
 20 the amount it is entitled to receive under this section if:

21 (i) the recipient or his legal representative fails to
 22 timely notify the department or county or fails to mail a
 23 copy of the notice to the third party or his insurer; and

24 (ii) a third party or his insurer that did not receive
 25 notice from the department or county as provided for in

1 subsection (5)(b) pays the recipient or his legal
 2 representative without satisfying any lien of the department
 3 or county.

4 {5}--{a}--No recipient or beneficiary who has received
 5 medical assistance from the department as a result of an
 6 injury which creates a claim or cause of action may release
 7 the liable third party or his insurer from liability to the
 8 department. If any liable third party or his insurer, after
 9 receiving notice of the department's subrogation claim,
 10 makes payment on account of injury or death and the
 11 department has not been reimbursed for the medical benefits
 12 paid on behalf of the recipient or beneficiary, the insurer
 13 or third party is liable to the department for the amount of
 14 medical benefits paid by the department.

15 {b}--The notice requirements of subsection {5}{a} are
 16 satisfied if:

17 {i}--the insurer receives from the department, by
 18 certified mail, a statement of the claims paid or medical
 19 services rendered by the department, together with a claim
 20 for reimbursement; or

21 {ii}--the insurer receives a claim from a recipient or
 22 beneficiary stating that the recipient or beneficiary has
 23 applied for or has received medical assistance from the
 24 department in connection with the same claim.

25 (5) (a) If a third party or his insurer that has

1 received notice of the department's or county's lien as
 2 provided for in subsection (5)(b) makes payment in whole or
 3 in part of the recipient's claim without first satisfying
 4 the lien of the department or county, the third party or his
 5 insurer is liable to the department or county for the amount
 6 the department or county is entitled to receive under this
 7 section.

8 (b) For the purposes of subsection (5)(a), a third
 9 party or his insurer has been given notice if:

10 (i) the department or county mails, by certified mail,
 11 to the third party or his insurer:

12 (A) a statement of the medical assistance paid or
 13 which may be paid by the department or county on behalf of
 14 the recipient; and

15 (B) a claim for reimbursement;

16 (ii) the recipient or his legal representative mails,
 17 by certified mail, to the third party or his insurer:

18 (A) a copy of the notice required by subsection
 19 (4)(a); or

20 (B) a statement stating that the recipient has applied
 21 for or has received medical assistance from the department
 22 or county in connection with the same claim; or

23 (iii) the recipient or his legal representative has
 24 commenced an action against the third party or his insurer
 25 for damages or compensation for personal injury, disease,

1 illness, or disability for which the department or county
 2 has paid or may pay medical assistance, in whole or in part,
 3 and the department or county files in the court in which the
 4 action is pending a notice of lien stating that a lien is
 5 claimed for medical assistance on any money paid in
 6 satisfaction of any judgment in or settlement of the action
 7 and that:

8 (A) medical assistance in a stated amount has been
 9 paid by the department or county on behalf of the recipient;
 10 or

11 (B) medical assistance may be paid on behalf of the
 12 recipient.

13 (6) As used in this section, the following definitions
 14 apply:

15 (a) "County" means a county department of welfare in a
 16 county that has not transferred its public assistance
 17 responsibilities to the state under the provisions of Title
 18 53, chapter 2, part 8.

19 (b) "Legal representative" means an attorney,
 20 attorney-in-fact, conservator, estate, guardian, personal
 21 representative, recipient's survivor, or any other person,
 22 firm, or corporation having or exercising authority on
 23 behalf of a recipient with respect to a claim or action to
 24 recover damages or compensation from a third party or his
 25 insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "third Third party" means an individual, institution, corporation, or public or private agency which that is or may be liable to pay all or part of the medical cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient or beneficiary of medical benefits assistance from the state department or a county and includes but is not limited to insurers, health service organizations, and those parties liable or who may be liable in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

"53-6-143. ~~Exclusion---of---liens-----recoveries.~~
Limitations on liens and recoveries. No applicant hereunder may be (1) An applicant for or recipient of assistance may not be required to execute an agreement for creating a lien on his real property.

(2) No A lien may be imposed against the real or personal property of an individual prior to his death on account for recovery of medical assistance paid or to be paid on his behalf ~~(except pursuant to the judgment of a~~

~~court on account of benefits incorrectly paid on behalf of the individual}. There may be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received the assistance, from his estate and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 18 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of an individual. To the extent necessary for reimbursement of medical assistance paid to an individual, the department of social and rehabilitation services is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 53-2-612, under this chapter only:~~

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving

1 spouse, if any; and
 2 (ii) if there is no surviving child of the recipient
 3 who is under age 21, blind, or permanently and totally
 4 disabled.

5 (4) Recoveries shall must be prorated to the federal
 6 government and the state in the proportion to which each
 7 contributed to the medical assistance. Recovery for medical
 8 assistance paid prior to July 1, 1974, shall be prorated to
 9 reimburse the county share of participation. The provisions
 10 of this section are hereby extended to provide for the
 11 recovery of all medical assistance paid under this part and
 12 likewise to all medical aid to the aged assistance paid by
 13 the department of social and rehabilitation services during
 14 the period of time July 1, 1965, through June 30, 1967."

15 **Section 3.** Section 53-2-611, MCA, is amended to read:

16 "53-2-611. **Recovery from recipient's estate.** (1) Upon
 17 the death of any recipient of ~~public assistance--other--than~~
 18 ~~aid--to--families--with-dependent-children-or-general-relief~~
 19 medical assistance under Title 53, chapter 6, part 1, the
 20 department shall execute and present a claim against the
 21 estate of such person within the time specified in the
 22 published notice to creditors in the estate matter for the
 23 total amount of assistance paid under this title, separately
 24 stating therein the amount of all assistance paid ~~from--and~~
 25 on or after July 1, 1953. The department's claim is subject

1 to the limitations specified in 53-6-143(3).

2 ~~{2}--The department shall not assert its claim during~~
 3 ~~the lifetime and continued occupancy of any real estate of a~~
 4 ~~deceased recipient's estate by the surviving spouse or~~
 5 ~~dependent as a home or residence unless other claimants or~~
 6 ~~persons shall have instituted proceedings for the probate of~~
 7 ~~the estate of the deceased recipient, in which case the~~
 8 ~~department shall file its claim hereunder.~~

9 ~~{3}~~(2) All sums money recovered hereunder under this
 10 section from any source shall must be distributed to the
 11 county and to the general fund of the state of Montana as
 12 their according to the county's or state's interests may
 13 appear. If the federal law so requires, the federal
 14 government shall ~~be~~ is entitled to a share of any amounts
 15 collected hereunder under this section in proportion to the
 16 amounts which that it has contributed to the grants
 17 recovered, and the The amount due the United States shall
 18 must be promptly paid by the department to the United States
 19 government."

20 NEW SECTION. **Section 4.** Repealer. Section 53-3-315,
 21 MCA, is repealed.

22 NEW SECTION. **Section 5.** Extension of authority. Any
 23 existing authority to make rules on the subject of the
 24 provisions of [this act] is extended to the provisions of
 25 [this act].

1 NEW SECTION. **Section 6.** Effective date --
2 applicability -- retroactive applicability date. (1) [This
3 act] is effective on passage and approval.
4 (2) [Sections 1 and 4] apply to recoveries for
5 personal injury that occurs, disease or illness that is
6 diagnosed, or disability that commences on or after [the
7 effective date of this act].
8 (3) [Sections 2 and 3] apply retroactively, within the
9 meaning of 1-2-109.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB204, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing the department of Social and Rehabilitation Services or a county a lien on, rather than a subrogation interest in, a third party recovery by a recipient whose medical expenses were paid by the department or county; revising provisions relating to notice to the department or county; providing for liability for failure to satisfy the lien; amending Sections 53-2-611, 53-2-612, and 53-6-143, MCA; repealing Section 53-3-315, MCA, and providing an immediate effective date and applicability dates.

ASSUMPTIONS:

1. The federal medicaid matching rate is 71.17% in FY90 and 71.28% in FY91.
2. Five additional Medicaid tort cases each year will be completed because of the requirement to notice the department or county.
3. The average recovery per Medicaid tort case is \$5,483.
4. There is no impact on local government expenditures.

FISCAL IMPACT:Expenditures:

The passage of this bill will not affect department expenditures.

	<u>FY90</u>			<u>FY91</u>		
<u>Revenue:</u>	<u>Current</u>	<u>Proposed</u>		<u>Current</u>	<u>Proposed</u>	
	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
General Fund	\$181,629	\$189,413	\$ 7,784	\$180,936	\$188,690	\$ 7,754
Federal Funds	448,371	467,587	19,216	449,064	468,310	19,246
Total	\$630,000	\$657,000	\$ 27,000	\$630,000	\$657,000	\$ 27,000

Ray Shackelford 1/23/89
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

John Cobb 1/26/89
 JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB204, as introduced

HB204

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 204
INTRODUCED BY COBB
BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON,
RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY
RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY
THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO
NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY
FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611,
53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Subrogation--and--third-party-liability-for
certain--benefits: Lien of department or county upon
third-party recoveries. (1) The department is subrogated to
the right of each recipient or beneficiary of medical
benefits to recover damages or compensation from a third
party to the extent necessary to reimburse the department
for medical benefits paid to or on behalf of the recipient

or beneficiary. Upon determination that a third party is
liable for the medical expenses of a recipient or
beneficiary under this section, the department shall
immediately notify the third party of the subrogation. Upon
notice by the department, a county, or the recipient to a
third party or his insurer as provided in subsection (5)(b),
the department or county has a lien upon all money paid by a
third party or his insurer in satisfaction of a judgment or
settlement arising from a recipient's claim for damages or
compensation for personal injury, disease, illness, or
disability to the extent that the department or county has
paid medical assistance on behalf of the recipient for the
same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the
recipient or beneficiary to whom or on whose behalf medical
benefits have assistance has been paid and to whose rights
the department has been subrogated by the department or
county, commence and prosecute to final conclusion any
action which may be necessary to recover from a third party
or his insurer compensation or damages for medical costs
incurred by the recipient or beneficiary assistance paid by
the department or county on behalf of the recipient. This
section does not affect the right of the recipient or
beneficiary to initiate and prosecute to final conclusion an
action for damages or compensation in his own name in

accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420; AND

(III) IS ONLY FOR ONE-HALF OF THE AMOUNT OF MEDICAL ASSISTANCE PAID IF THE DEPARTMENT OR COUNTY DID NOT PARTICIPATE PRO RATA IN THE COSTS AND EXPENSES OF THE ACTION.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

~~(c) if the department or county has a lien under this section and a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has an unpaid lien on the recipient's recovery, as provided in 71-3-1114, and there is not a sufficient amount to satisfy each lien, each lienor is entitled to share in the recovery in the same proportion~~

~~that its claim bears to the total claims of all lienors. Each lienor's proportion must be determined without deduction from any claim of the lienor's share of attorney fees and costs, if any.~~

~~(d) A recipient may not, without the consent of the department or county, release a third party or his insurer from liability for a personal injury, disease, illness, or disability for which the department or county paid or may pay medical assistance.~~

~~(e)(C) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted first and paid. Unless the department or county and the recipient or beneficiary agree to a different settlement, the amount previously paid as medical benefits assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient or beneficiary. However, any recipient or beneficiary who initiates an action to recover damages or compensation shall receive no less than one-third of the total amount recovered after the deduction of reasonable attorney fees and costs.~~

(4) (a) A recipient or beneficiary of medical benefits assistance or his legal representative shall notify the

1 department or county by means-of-a certified letter within
 2 30 days if the recipient or--beneficiary or his legal
 3 representative asserts a claim against a third party or his
 4 insurer for damages or compensation for an a personal
 5 injury, disease, illness, or disability for which the
 6 department or county paid medical benefits assistance in
 7 whole or in part or for which the recipient has applied for
 8 medical assistance. The notice must be mailed to the
 9 director of the department and or the director of the county
 10 department that paid medical assistance. At the same time, a
 11 copy must be sent by certified mail to the third party or
 12 his insurer.

13 (b) The notice must contain the following information:

14 (a)(i) the name and address of the recipient or
 15 beneficiary and his legal representative, if any;

16 (b)(ii) the name and address of the third party alleged
 17 to be liable to the recipient or-beneficiary;

18 (c)(iii) the name and address of any known insurer of
 19 the third party; and

20 (d)(iv) the judicial district and docket number of any
 21 action filed.

22 (c) A recipient and OR his legal representative are
 23 jointly--and--severally, WHO HAS RECEIVED ACTUAL NOTICE THAT
 24 THE DEPARTMENT OR COUNTY HAS PAID MEDICAL ASSISTANCE, IS
 25 liable to the department or county for the amount it is

1 entitled to receive under this section if:

2 (i) the recipient or his legal representative fails to
 3 timely notify the department or county or fails to mail a
 4 copy of the notice to the third party or his insurer; and

5 (ii) a third party or his insurer that did not receive
 6 notice from the department or county as provided for in
 7 subsection (5)(b) pays the recipient or his legal
 8 representative without satisfying any lien of the department
 9 or county.

10 (5)--(a)--No-recipient-or-beneficiary-who--has--received
 11 medical--assistance--from--the--department-as-a-result-of-an
 12 injury-which-creates-a-claim-or-cause-of-action-may--release
 13 the--liable-third-party-or-his-insurer-from-liability-to-the
 14 department--if-any-liable-third-party-or-his-insurer--after
 15 receiving--notice--of--the--department's--subrogation-claim,
 16 makes--payment--on--account--of--injury--or--death--and--the
 17 department--has-not-been-reimbursed-for-the-medical-benefits
 18 paid-on-behalf-of-the-recipient-or-beneficiary--the--insurer
 19 or-third-party-is-labile-to-the-department-for-the-amount-of
 20 medical-benefits-paid-by-the-department--

21 (b)--The--notice--requirements-of-subsection-(5)(a)--are
 22 satisfied-if:

23 (i)--the--insurer--receives--from--the--department--by
 24 certified--mail--a-statement-of-the-claims-paid-or-medical
 25 services-rendered-by-the-department--together-with-a-claim

1 ~~for reimbursement; or~~

2 ~~(ii) the insurer receives a claim from a recipient or~~
 3 ~~beneficiary stating that the recipient or beneficiary has~~
 4 ~~applied for or has received medical assistance from the~~
 5 ~~department in connection with the same claim;~~

6 (5) (a) If a third party or his insurer that has
 7 received notice of the department's or county's lien as
 8 provided for in subsection (5)(b) makes payment in whole or
 9 in part of the recipient's claim without first satisfying
 10 the lien of the department or county, the third party or his
 11 insurer is liable to the department or county for the amount
 12 the department or county is entitled to receive under this
 13 section.

14 (b) For the purposes of subsection (5)(a), a third
 15 party or his insurer has been given notice if:

16 (i) the department or county mails, by certified mail,
 17 to the third party or his insurer;

18 (A) a statement of the medical assistance paid or
 19 which may be paid by the department or county on behalf of
 20 the recipient; and

21 (B) a claim for reimbursement;

22 (ii) the recipient or his legal representative mails,
 23 by certified mail, to the third party or his insurer;

24 (A) a copy of the notice required by subsection

25 (4)(a); or

1 (B) a statement stating that the recipient has applied
 2 for or has received medical assistance from the department
 3 or county in connection with the same claim; or

4 (iii) the recipient or his legal representative has
 5 commenced an action against the third party or his insurer
 6 for damages or compensation for personal injury, disease,
 7 illness, or disability for which the department or county
 8 has paid or may pay medical assistance, in whole or in part,
 9 and the department or county files in the court in which the
 10 action is pending a notice of lien stating that a lien is
 11 claimed for medical assistance on any money paid in
 12 satisfaction of any judgment in or settlement of the action
 13 and that:

14 (A) medical assistance in a stated amount has been
 15 paid by the department or county on behalf of the recipient;
 16 or

17 (B) medical assistance may be paid on behalf of the
 18 recipient.

19 (6) As used in this section, the following definitions
 20 apply:

21 (a) "County" means a county department of welfare in a
 22 county that has not transferred its public assistance
 23 responsibilities to the state under the provisions of Title
 24 53, chapter 2, part 8.

25 (b) "Legal representative" means an attorney,

attorney-in-fact, conservator, estate, guardian, personal representative, recipient's survivor, or any other person, firm, or corporation having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or his insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "third Third party" means an individual, institution, corporation, or public or private agency which that is or may be liable to pay all or part of the medical cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient or beneficiary of medical benefits assistance from the state department or a county and includes but is not limited to insurers, health service organizations, and those parties liable or who may be liable in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

"53-6-143. Exclusion---of---liens-----recoveries. Limitations on liens and recoveries. No applicant hereunder may-be (1) An applicant for or recipient of assistance may

not be required to execute an agreement for creating a lien on his real property.

(2) No A lien may be imposed against the real or personal property of an individual prior to his death on account for recovery of medical assistance paid or to be paid on his behalf (except-pursuant-to-the-judgment-of-a court-on-account-of-benefits-incorrectly-paid-on--behalf-of the--individual)--There--may--be--no-adjustment-or-recovery (except--in-the-case-of-an-individual-who-was--65--years--of age--or--older--when--he--received--the-assistance--from-his estate-and-then--only--after--the--death--of--his--surviving spouse--if-any--and-only-at-a-time-when-he-has-no-surviving child-who-is-under-age-18-or-is--blind--or--permanently--and totally--disabled)--of-any-medical-assistance-correctly-paid on-behalf-of-an-individual--To--the--extent--necessary--for reimbursement--of--medical-assistance-paid-to-an-individual, the-department-of--social--and--rehabilitation--services--is subrogated-to-the-rights-of-the-individual-to-recover-from-a third--party--who-may-be-liable-to-pay-the-medical-expenses, as-provided-in-53-2-612: under this chapter only:

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

1 (i) as provided in 53-2-611, except that it may not
 2 recover for any assistance paid on behalf of a recipient for
 3 services provided before he reached age 65; or

4 (ii) as provided in 53-2-612.

5 (b) The department may recover under 53-2-611 only:

6 (i) after the death of the recipient's surviving
 7 spouse, if any; and

8 (ii) if there is no surviving child of the recipient
 9 who is under age 21, blind, or permanently and totally
 10 disabled.

11 (4) Recoveries shall must be prorated to the federal
 12 government and the state in the proportion to which each
 13 contributed to the medical assistance. Recovery for medical
 14 assistance paid prior to July 1, 1974, shall be prorated to
 15 reimburse the county share of participation. The provisions
 16 of this section are hereby extended to provide for the
 17 recovery of all medical assistance paid under this part and
 18 likewise to all medical aid to the aged assistance paid by
 19 the department of social and rehabilitation services during
 20 the period of time July 1, 1965, through June 30, 1967."

21 **Section 3.** Section 53-2-611, MCA, is amended to read:

22 "53-2-611. Recovery from recipient's estate. (1) Upon
 23 the death of any recipient of public-assistance--other--than
 24 aid--to--families--with-dependent-children-or-general-relief
 25 medical assistance under Title 53, chapter 6, part 1, the

1 department shall execute and present a claim against the
 2 estate of such person within the time specified in the
 3 published notice to creditors in the estate matter for the
 4 total amount of assistance paid under this title, separately
 5 stating therein the amount of all assistance paid from--and
 6 on or after July 1, 1953. The department's claim is subject
 7 to the limitations specified in 53-6-143(3).

8 ~~{2}--The department shall not assert its claim during~~
 9 ~~the lifetime and continued occupancy of any real estate of a~~
 10 ~~deceased recipient's estate by the surviving spouse or~~
 11 ~~dependent as a home or residence unless other claimants or~~
 12 ~~persons shall have instituted proceedings for the probate of~~
 13 ~~the estate of the deceased recipient, in which case the~~
 14 ~~department shall file its claim hereunder.~~

15 ~~{3}{2}~~ All sums money recovered hereunder under this
 16 section from any source shall must be distributed to the
 17 county and to the general fund of the state of Montana as
 18 their according to the county's or state's interests may
 19 appear. If the federal law so requires, the federal
 20 government shall--be is entitled to a share of any amounts
 21 collected hereunder under this section in proportion to the
 22 amounts which that it has contributed to the grants
 23 recovered, and the The amount due the United States shall
 24 must be promptly paid by the department to the United States
 25 government."

1 NEW SECTION. **Section 4.** Repealer. Section 53-3-315,
2 MCA, is repealed.

3 NEW SECTION. **Section 5.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 6.** Effective date --
8 applicability -- retroactive applicability date. (1) [This
9 act] is effective on passage and approval.

10 (2) [Sections 1 and 4] apply to recoveries for
11 personal injury that occurs, disease or illness that is
12 diagnosed, or disability that commences on or after [the
13 effective date of this act].

14 (3) [Sections 2 and 3] apply retroactively, within the
15 meaning of 1-2-109.

-End-

HOUSE BILL NO. 204

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON,
RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY
RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY
THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO
NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY
FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611,
53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Subrogation--and--third-party-liability-for
certain--benefits: Lien of department or county upon
third-party recoveries. (1) The department is subrogated to
the right of each recipient or beneficiary of medical
benefits to recover damages or compensation from a third
party to the extent necessary to reimburse the department
for medical benefits paid to or on behalf of the recipient

or beneficiary. Upon determination that a third party is
liable for the medical expenses of a recipient or
beneficiary under this section, the department shall
immediately notify the third party of the subrogation. Upon
notice by the department, a county, or the recipient to a
third party or his insurer as provided in subsection (5)(b),
the department or county has a lien upon all money paid by a
third party or his insurer in satisfaction of a judgment or
settlement arising from a recipient's claim for damages or
compensation for personal injury, disease, illness, or
disability to the extent that the department or county has
paid medical assistance on behalf of the recipient for the
same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the
recipient or beneficiary to whom or on whose behalf medical
benefits have assistance has been paid and to whose rights
the department has been subrogated by the department or
county, commence and prosecute to final conclusion any
action which may be necessary to recover from a third party
or his insurer compensation or damages for medical costs
incurred by the recipient or beneficiary assistance paid by
the department or county on behalf of the recipient. This
section does not affect the right of the recipient or
beneficiary to initiate and prosecute to final conclusion an
action for damages or compensation in his own name in

1 accordance with the provisions of this section.

2 (3) (a) The lien:

3 (i) applies to all money paid by a third party or his
4 insurer regardless of whether the recovery is allocated by
5 the parties or a court to any particular type or element of
6 damages; and

7 (ii) is subordinate to the lien of an attorney under
8 37-61-420; AND

9 (III) IS ONLY FOR ONE-HALF OF THE AMOUNT OF MEDICAL
10 ASSISTANCE PAID IF THE DEPARTMENT OR COUNTY DID NOT
11 PARTICIPATE PRO RATA IN THE COSTS AND EXPENSES OF THE
12 ACTION.

13 (b) Unless specifically provided by law, the
14 recipient's right to recover damages or compensation from a
15 third party or his insurer may not be reduced or denied on
16 the ground that the recipient's costs of medical treatment
17 and medical-related services have been paid by the
18 department or county under any public assistance program.

19 ~~(c) If the department or county has a lien under this~~
20 ~~section and a physician, nurse, physical therapist,~~
21 ~~occupational therapist, chiropractor, person practicing~~
22 ~~dentistry, or hospital has an unpaid lien on the recipient's~~
23 ~~recovery, as provided in 71-3-1114, and there is not a~~
24 ~~sufficient amount to satisfy each lien, each lienor is~~
25 ~~entitled to share in the recovery in the same proportion~~

1 ~~that its claim bears to the total claims of all lienors.~~
2 ~~Each lienor's proportion must be determined without~~
3 ~~deduction from any claim of the lienor's share of attorney~~
4 ~~fees and costs, if any.~~

5 ~~(d) A recipient may not, without the consent of the~~
6 ~~department or county, release a third party or his insurer~~
7 ~~from liability for a personal injury, disease, illness, or~~
8 ~~disability for which the department or county paid or may~~
9 ~~pay medical assistance.~~

10 ~~(e)(C) From the amount collected by the department,~~
11 ~~county, or recipient from legal proceedings or as a result~~
12 ~~of settlement, reasonable attorney fees and costs must be~~
13 ~~first deducted first and paid. Unless the department or~~
14 ~~county and the recipient or beneficiary agree to a different~~
15 ~~settlement, the amount previously paid as medical benefits~~
16 ~~assistance by the department or county, less a pro rata~~
17 ~~share of attorney fees and costs, must be deducted next and~~
18 ~~paid to the department or county. The remainder, if any,~~
19 ~~must be paid to the recipient or beneficiary. However, any~~
20 ~~recipient or beneficiary who initiates an action to recover~~
21 ~~damages or compensation shall receive no less than one-third~~
22 ~~of the total amount recovered after the deduction of~~
23 ~~reasonable attorney fees and costs.~~

24 (4) (a) A recipient or beneficiary of medical benefits
25 assistance or his legal representative shall notify the

1 department or county by means of a certified letter within
 2 30 days if the recipient or--beneficiary or his legal
 3 representative asserts a claim against a third party or his
 4 insurer for damages or compensation for an a personal
 5 injury, disease, illness, or disability for which the
 6 department or county paid medical benefits assistance in
 7 whole or in part or for which the recipient has applied for
 8 medical assistance. The notice must be mailed to the
 9 director of the department and or the director of the county
 10 department that paid medical assistance. At the same time, a
 11 copy must be sent by certified mail to the third party or
 12 his insurer.

13 (b) The notice must contain the following information:

14 (a)(i) the name and address of the recipient or
 15 beneficiary and his legal representative, if any;

16 (b)(ii) the name and address of the third party alleged
 17 to be liable to the recipient or-beneficiary;

18 (c)(iii) the name and address of any known insurer of
 19 the third party; and

20 (d)(iv) the judicial district and docket number of any
 21 action filed.

22 (c) A recipient and OR his legal representative are
 23 jointly--and--severally, WHO HAS RECEIVED ACTUAL NOTICE THAT
 24 THE DEPARTMENT OR COUNTY HAS PAID MEDICAL ASSISTANCE, IS
 25 liable to the department or county for the amount it is

1 entitled to receive under this section if:

2 (i) the recipient or his legal representative fails to
 3 timely notify the department or county or fails to mail a
 4 copy of the notice to the third party or his insurer; and

5 (ii) a third party or his insurer that did not receive
 6 notice from the department or county as provided for in
 7 subsection (5)(b) pays the recipient or his legal
 8 representative without satisfying any lien of the department
 9 or county.

10 (5)--(a)--No recipient or-beneficiary who--has--received
 11 medical--assistance--from--the--department as a result of an
 12 injury which creates a claim or cause of action may--release
 13 the--liable third party or his insurer from liability to the
 14 department; if any liable third party or his insurer, after
 15 receiving--notice--of--the--department's--subrogation claim,
 16 makes--payment--on--account--of--injury--or--death--and--the
 17 department--has not been reimbursed for the medical benefits
 18 paid on behalf of the recipient or-beneficiary, the--insurer
 19 or third party is liable to the department for the amount of
 20 medical benefits paid by the department.

21 (b)--The--notice--requirements of subsection (5)(a) are
 22 satisfied if:

23 (i)--the--insurer--receives--from--the--department, by
 24 certified--mail, a statement of the claims paid or medical
 25 services rendered by the department, together with a claim

1 ~~for reimbursement; or~~

2 ~~{ii} the insurer receives a claim from a recipient or~~
 3 ~~beneficiary stating that the recipient or beneficiary has~~
 4 ~~applied for or has received medical assistance from the~~
 5 ~~department in connection with the same claim;~~

6 (5) (a) If a third party or his insurer that has
 7 received notice of the department's or county's lien as
 8 provided for in subsection (5)(b) makes payment in whole or
 9 in part of the recipient's claim without first satisfying
 10 the lien of the department or county, the third party or his
 11 insurer is liable to the department or county for the amount
 12 the department or county is entitled to receive under this
 13 section.

14 (b) For the purposes of subsection (5)(a), a third
 15 party or his insurer has been given notice if:

16 (i) the department or county mails, by certified mail,
 17 to the third party or his insurer:

18 (A) a statement of the medical assistance paid or
 19 which may be paid by the department or county on behalf of
 20 the recipient; and

21 (B) a claim for reimbursement;

22 (ii) the recipient or his legal representative mails,
 23 by certified mail, to the third party or his insurer:

24 (A) a copy of the notice required by subsection
 25 (4)(a); or

1 (B) a statement stating that the recipient has applied
 2 for or has received medical assistance from the department
 3 or county in connection with the same claim; or

4 (iii) the recipient or his legal representative has
 5 commenced an action against the third party or his insurer
 6 for damages or compensation for personal injury, disease,
 7 illness, or disability for which the department or county
 8 has paid or may pay medical assistance, in whole or in part,
 9 and the department or county files in the court in which the
 10 action is pending a notice of lien stating that a lien is
 11 claimed for medical assistance on any money paid in
 12 satisfaction of any judgment in or settlement of the action
 13 and that:

14 (A) medical assistance in a stated amount has been
 15 paid by the department or county on behalf of the recipient;
 16 or

17 (B) medical assistance may be paid on behalf of the
 18 recipient.

19 (6) As used in this section, the following definitions
 20 apply:

21 (a) "County" means a county department of welfare in a
 22 county that has not transferred its public assistance
 23 responsibilities to the state under the provisions of Title
 24 53, chapter 2, part 8.

25 (b) "Legal representative" means an attorney,

attorney-in-fact, conservator, estate, guardian, personal representative, recipient's survivor, or any other person, firm, or corporation having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or his insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "third Third party" means an individual, institution, corporation, or public or private agency which that is or may be liable to pay all or part of the medical cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient or beneficiary of medical benefits assistance from the state department or a county and includes but is not limited to insurers, health service organizations, and those parties liable or who may be liable in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

"53-6-143. Exclusion---of---liens-----recoveries. Limitations on liens and recoveries. No applicant hereunder may be (1) An applicant for or recipient of assistance may

not be required to execute an agreement for creating a lien on his real property.

(2) No A lien may be imposed against the real or personal property of an individual prior to his death on account for recovery of medical assistance paid or to be paid on his behalf {except-pursuant-to-the-judgment-of-a court-on-account-of-benefits-incorrectly-paid-on--behalf--of the--individual},---There--may--be--no-adjustment-or-recovery {except,-in-the-case-of-an-individual-who-was--65--years-of age--or--older--when--he--received--the-assistance,-from-his estate-and-then--only--after--the--death--of--his--surviving spouse,-if-any,-and-only-at-a-time-when-he-has-no-surviving child-who-is-under-age-18-or-is--blind--or--permanently--and totally--disabled}--of-any-medical-assistance-correctly-paid on-behalf-of-an-individual,---To--the--extent--necessary--for reimbursement--of--medical-assistance-paid-to-an-individual, the-department-of--social--and--rehabilitation--services--is subrogated-to-the-rights-of-the-individual-to-recover-from-a third--party--who-may-be-liable-to-pay-the-medical-expenses, as-provided-in-53-2-612, under this chapter only:

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.

(4) Recoveries ~~shall~~ must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967."

Section 3. Section 53-2-611, MCA, is amended to read:

"53-2-611. Recovery from recipient's estate. (1) Upon the death of any recipient of ~~public-assistance--other--than aid--to--families--with-dependent-children-or-general-relief~~ medical assistance under Title 53, chapter 6, part 1, the

department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this title, separately stating therein the amount of all assistance paid ~~from--and on or after July 1, 1953. The department's claim is subject to the limitations specified in 53-6-143(3).~~

~~(2)--The department shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the department shall file its claim hereunder.~~

~~(3)~~ (2) All ~~sums~~ money recovered hereunder under this section from any source ~~shall~~ must be distributed to the county and to the general fund of the state of Montana ~~as their~~ according to the county's or state's interests may appear. If the federal law so requires, the federal government ~~shall--be~~ is entitled to a share of any amounts collected hereunder under this section in proportion to the amounts which ~~that~~ it has contributed to the grants recovered, ~~and the~~ The amount due the United States ~~shall~~ must be promptly paid by the department to the United States government."

1 NEW SECTION. **Section 4.** Repealer. Section 53-3-315,
2 MCA, is repealed.

3 NEW SECTION. **Section 5.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 6.** Effective date --
8 applicability -- retroactive applicability date. (1) [This
9 act] is effective on passage and approval.

10 (2) [Sections 1 and 4] apply to recoveries for
11 personal injury that occurs, disease or illness that is
12 diagnosed, or disability that commences on or after [the
13 effective date of this act].

14 (3) [Sections 2 and 3] apply retroactively, within the
15 meaning of 1-2-109.

-End-

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 204 (third reading copy -- blue), respectfully report that HB 204 be amended and as so amended be concurred in:

Sponsor: Cobb (Crippen)

1. Page 3, line 6.

Following: "and"

Insert: "and"

2. Page 3, lines 8 through 12.

Following: "1" on line 8

Strike: remainder of line 8 through "ACTION" on line 12

3. Page 4.

Following: line 23

Insert: "(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien."

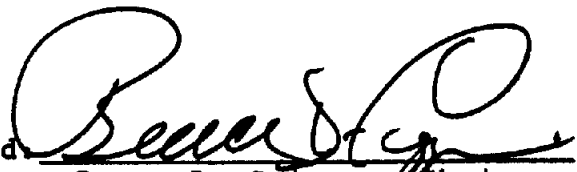
4. Page 8, line 25 through page 9, line 3.

Following: "attorney" on line 25

Strike: remainder of line 25 through "corporation" on page 9, line 3

AND AS AMENDED BE CONCURRED IN

Signed


Bruce D. Crippen Chairman

SENATE
HB 204

HOUSE BILL NO. 204

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON, RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611, 53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Subrogation--and--third-party-liability-for certain--benefits. Lien of department or county upon third-party recoveries. (1) The department is subrogated to the right--of--each--recipient--or--beneficiary--of--medical benefits--to--recover--damages--or--compensation--from--a--third party--to--the--extent--necessary--to--reimburse--the--department for--medical--benefits--paid--to--or--on--behalf--of--the--recipient

~~or-beneficiary. Upon determination that a third party is liable for the medical expenses of a recipient or beneficiary under this section, the department shall immediately notify the third party of the subrogation. Upon notice by the department, a county, or the recipient to a third party or his insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or his insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.~~

(2) The department or county may, in the name of the recipient or beneficiary to whom or on whose behalf medical benefits have assistance has been paid and to whose rights the department has been subrogated by the department or county, commence and prosecute to final conclusion any action which may be necessary to recover from a third party or his insurer compensation or damages for medical costs incurred by the recipient or beneficiary assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient or beneficiary to initiate and prosecute to final conclusion an action for damages or compensation in his own name in

accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and AND

(ii) is subordinate to the lien of an attorney under 37-61-420, AND

~~(iii) is only for one-half of the amount of medical assistance paid if the department or county did not participate pro rata in the costs and expenses of the action.~~

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

~~(c) If the department or county has a lien under this section and a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has an unpaid lien on the recipient's recovery, as provided in 71-3-1114, and there is not a sufficient amount to satisfy each lien, each lienor is entitled to share in the recovery in the same proportion~~

~~that its claim bears to the total claims of all lienors. Each lienor's proportion must be determined without deduction from any claim of the lienor's share of attorney fees and costs, if any.~~

~~(d) A recipient may not, without the consent of the department or county, release a third party or his insurer from liability for a personal injury, disease, illness, or disability for which the department or county paid or may pay medical assistance.~~

(e)(C) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted first and paid. Unless the department or county and the recipient or beneficiary agree to a different settlement, the amount previously paid as medical benefits assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient or beneficiary. However, any recipient or beneficiary who initiates an action to recover damages or compensation shall receive no less than one-third of the total amount recovered after the deduction of reasonable attorney fees and costs.

(D) IN ALL CASES OF PAYMENT TO THE DEPARTMENT OR COUNTY OUT OF AN AMOUNT COLLECTED FROM A THIRD PARTY OR

INSURER ON A RECIPIENT'S CLAIM, THE AMOUNT OF THE LIEN MUST BE REDUCED BY A PRO RATA SHARE OF ATTORNEY FEES AND COSTS AS PROVIDED IN SUBSECTION (3)(C), BUT THE DEPARTMENT OR COUNTY MAY NOT BE REQUIRED TO PARTICIPATE IN PAYMENT OF ATTORNEY FEES AND COSTS UNLESS THE RECIPIENT'S CLAIM RESULTS IN RECOVERY OUT OF WHICH THE DEPARTMENT OR COUNTY RECEIVES FULL OR PARTIAL PAYMENT OF ITS LIEN.

(4) (a) A recipient or-beneficiary of medical benefits assistance or his legal representative shall notify the department or county by means-of-a certified letter within 30 days if the recipient or--beneficiary or his legal representative asserts a claim against a third party or his insurer for damages or compensation for an a personal injury, disease, illness, or disability for which the department or county paid medical benefits assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department and or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or his insurer.

(b) The notice must contain the following information:

(a)(i) the name and address of the recipient or beneficiary and his legal representative, if any;

(b)(ii) the name and address of the third party alleged

to be liable to the recipient or-beneficiary;

(c)(iii) the name and address of any known insurer of the third party; and

(d)(iv) the judicial district and docket number of any action filed.

(c) A recipient and OR his legal representative are jointly--and--severally, WHO HAS RECEIVED ACTUAL NOTICE THAT THE DEPARTMENT OR COUNTY HAS PAID MEDICAL ASSISTANCE, IS liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or his legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or his insurer; and

(ii) a third party or his insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or his legal representative without satisfying any lien of the department or county.

(5)--(a)--No-recipient-or-beneficiary-who--has--received medical--assistance--from--the--department-as-a-result-of-an injury-which-creates-a-claim-or-cause-of-action-may--release the--liable-third-party-or-his-insurer-from-liability-to-the department--if-any-liable-third-party-or-his-insurer--after receiving--notice--of--the--department's--subrogation-claim, makes--payment--on--account--of--injury--or--death--and--the

department--has-not-been-reimbursed-for-the-medical-benefits
paid-on-behalf-of-the-recipient-or-beneficiary,--the--insurer
or-third-party-is-liable-to-the-department-for-the-amount-of
medical-benefits-paid-by-the-department.

{b}--The--notice--requirements-of-subsection-(5){a}-are
satisfied-if:

{i}--the--insurer--receives--from--the--department,--by
certified--mail,--a--statement-of-the-claims-paid-or-medical
services-rendered-by-the-department,--together-with--a--claim
for-reimbursement,--or

{ii}--the--insurer--receives-a-claim-from-a-recipient-or
beneficiary-stating-that-the-recipient--or--beneficiary--has
applied--for--or--has--received--medical-assistance-from-the
department-in-connection-with-the-same-claim.

(5) (a) If a third party or his insurer that has
received notice of the department's or county's lien as
provided for in subsection (5)(b) makes payment in whole or
in part of the recipient's claim without first satisfying
the lien of the department or county, the third party or his
insurer is liable to the department or county for the amount
the department or county is entitled to receive under this
section.

(b) For the purposes of subsection (5)(a), a third
party or his insurer has been given notice if:

(i) the department or county mails, by certified mail,

to the third party or his insurer:

(A) a statement of the medical assistance paid or
which may be paid by the department or county on behalf of
the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or his legal representative mails,
by certified mail, to the third party or his insurer:

(A) a copy of the notice required by subsection
(4)(a); or

(B) a statement stating that the recipient has applied
for or has received medical assistance from the department
or county in connection with the same claim; or

(iii) the recipient or his legal representative has
commenced an action against the third party or his insurer
for damages or compensation for personal injury, disease,
illness, or disability for which the department or county
has paid or may pay medical assistance, in whole or in part,
and the department or county files in the court in which the
action is pending a notice of lien stating that a lien is
claimed for medical assistance on any money paid in
satisfaction of any judgment in or settlement of the action
and that:

(A) medical assistance in a stated amount has been
paid by the department or county on behalf of the recipient;
or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

(b) "Legal representative" means an attorney, attorney-in-fact, conservator, estate, guardian, personal representative, recipient's survivor, or any other person, firm, or corporation having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or his insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "third Third party" means an individual, institution, corporation, or public or private agency which that is or may be liable to pay all or part of the medical cost of medical treatment and medical-related services for

personal injury, disease, illness, or disability of a recipient or-beneficiary of medical benefits assistance from the state department or a county and includes but is not limited to insurers, health service organizations, and those parties liable or who may be liable in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

"53-6-143. Exclusion---of---liens-----recoveries: Limitations on liens and recoveries. No-applicant-hereunder may-be (1) An applicant for or recipient of assistance may not be required to execute an agreement for creating a lien on his real property.

(2) No A lien may be imposed against the real or personal property of an individual prior to his death on account for recovery of medical assistance paid or to be paid on his behalf (except-pursuant-to-the-judgment-of-a court-on-account-of-benefits-incorrectly-paid-on--behalf--of the--individual);--There--may--be--no-adjustment-or-recovery (except,-in-the-case-of-an-individual-who-was--65--years--of age--or--older--when--he--received--the-assistance,-from-his estate-and-then--only--after--the--death--of--his--surviving spouse,-if-any,-and-only-at-a-time-when-he-has-no-surviving child-who-is-under-age-18-or-is--blind--or--permanently--and totally--disabled)--of-any-medical-assistance-correctly-paid on-behalf-of-an-individual;--To--the--extent--necessary--for reimbursement--of--medical-assistance-paid-to-an-individual,

~~the department of social and rehabilitation services is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 53-2-612, under this chapter only:~~

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.

(4) Recoveries shall must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the

recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967."

Section 3. Section 53-2-611, MCA, is amended to read:

"53-2-611. Recovery from recipient's estate. (1) Upon the death of any recipient of ~~public assistance other than aid to families with dependent children or general relief~~ medical assistance under Title 53, chapter 6, part 1, the department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this title, separately stating therein the amount of all assistance paid ~~from and~~ on or after July 1, 1953. The department's claim is subject to the limitations specified in 53-6-143(3).

~~(2) The department shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the department shall file its claim hereunder.~~

~~(3)(2)~~ All sums money recovered hereunder under this section from any source shall must be distributed to the

1 county and to the general fund of the state of Montana as
 2 their according to the county's or state's interests may
 3 appear. If the federal law so requires, the federal
 4 government ~~shall--be~~ is entitled to a share of any amounts
 5 collected hereunder under this section in proportion to the
 6 amounts which that it has contributed to the grants
 7 recovered~~7.~~ and-the The amount due the United States ~~shall~~
 8 must be promptly paid by the department to the United States
 9 government."

10 NEW SECTION. **Section 4.** Repealer. Section 53-3-315,
 11 MCA, is repealed.

12 NEW SECTION. **Section 5.** Extension of authority. Any
 13 existing authority to make rules on the subject of the
 14 provisions of [this act] is extended to the provisions of
 15 [this act].

16 NEW SECTION. **Section 6.** Effective date --
 17 applicability -- retroactive applicability date. (1) [This
 18 act] is effective on passage and approval.

19 (2) [Sections 1 and 4] apply to recoveries for
 20 personal injury that occurs, disease or illness that is
 21 diagnosed, or disability that commences on or after [the
 22 effective date of this act].

23 (3) [Sections 2 and 3] apply retroactively, within the
 24 meaning of 1-2-109.

-End-