

Notes Of Decisions (26)

In general

Ohio Department of Job and Family Services, Tort Recovery Unit (ODJFS) right to reimbursement for medical expenses paid on behalf of injured motorist through Medicaid program was not subject to pro rata reduction on the basis that motorist's settlement agreement with his automobile insurer was for less than the true value of his claim; motorist's recovery for categories of damages other than medical expenses was protected from reimbursement, action for reimbursement was based on statutory right of recovery, rather than subrogation, and there was no stipulation regarding what percentage of settlement constituted payment for medical expenses. [Encompass Indemn. Co. v. Bates \(Ohio App. 10 Dist., Franklin, 09-28-2012\) No. 11AP-1010, 2012-Ohio-4503, 2012 WL 4502941](#) , Unreported. [Health 497](#)

Ohio Department of Human Services (ODHS) did not have right to subrogation and could not recover costs of health services provided to patient who was injured due to medical malpractice from patient's subsequent recovery from treating physician. [Ohio Dept. of Human Serv. v. Crespo \(Ohio App. 8 Dist., 01-09-1995\) 99 Ohio App.3d 709, 651 N.E.2d 1037](#) . [Health 496\(3\)](#) ; [Subrogation 32](#)

Department of Human Services could not recover from medical malpractice defendants payments made to defendants on behalf of Medicaid recipient as a result of defendants' alleged negligence where Department produced no evidence concerning specific amount paid on recipient's behalf resulting from defendants' negligence. [Isbell v. Kaiser Found. Health Plan \(Cuyahoga 1993\) 85 Ohio App.3d 313, 619 N.E.2d 1055](#) . [Health 535\(4\)](#)

Department of Human Services could not assert subrogation claim in medical malpractice action filed by Medicaid recipient against hospital and physicians, even though payments made by Department to defendants on recipient's behalf were, in part, proximately caused by defendants' negligence; Medicaid payments are collateral source benefits which neither medical malpractice plaintiffs nor Department may recover on statutory subrogation claim from medical malpractice defendants, and fact that plaintiff may obtain substantial jury verdict against defendant does not establish that plaintiff did in fact recover amount of Medicaid payments from defendant. [Isbell v. Kaiser Found. Health Plan \(Cuyahoga 1993\) 85 Ohio App.3d 313, 619 N.E.2d 1055](#) . [Subrogation 2](#)

Where the department of public welfare obtains subrogation rights, under [RC 5101.58](#) , as the result of an automobile accident, the department is a party "claiming an interest arising out of a motor vehicle accident," and is therefore entitled to an accident report from the director of highway safety under [RC 5502.12](#) . [1978 OHIO OAG No. 78-012](#) .

Conflicting provisions

Under its plain language, former statute that otherwise provided that collateral source of indemnity could not be subrogated to claimant against physician, podiatrist, or hospital permitted subrogation against physician, podiatrist, or hospital if a statute expressly provides for right of subrogation. [Layman v. Woo \(Ohio, 05-28-1997\) 78 Ohio St.3d 485, 678 N.E.2d 1217, 1997-Ohio-195](#) . [Subrogation 32](#)

Subrogation rights of State Department of Human Services against funds received by Medicaid recipient from settlement paid by tort-feasor's personal liability insurer were defeated by immunity accorded by statute to tort-feasor as employee of political subdivision. [McCaslin v. Ohio Dept. of Human Serv. \(Ohio App. 10 Dist., 06-06-1995\) 104 Ohio App.3d 495, 662 N.E.2d 835](#) . [Health 497](#)

Since claim of estate of deceased moped rider against driver of automobile which fatally injured rider was barred by "two dismissal" rule, state's derivative claim for reimbursement of Medicaid benefits expended on behalf of rider prior to his death was barred by doctrine of res judicata. [Ohio Dept. of Human Serv. v. Kozar \(Ohio App. 8 Dist., 01-09-1995\) 99 Ohio App.3d 713, 651 N.E.2d 1039](#) . [Judgment 570\(3\)](#)

Statute granting right of setoff for collateral benefits to political subdivisions precluded Department of Human Services from exercising its right of subrogation to require city to pay Department to extent of its medical payments to injured plaintiff. [Galanos v. Cleveland \(Ohio 1994\) 70 Ohio St.3d 220, 638 N.E.2d 530](#) . [Municipal Corporations 743](#) ; [Subrogation 33\(2\)](#)

[RC 2305.27](#) , a special provision, irreconcilably conflicts with [RC 5101.58](#) , a general provision, and in applying [RC 1.51](#) , [RC 2305.27](#) prevails because there is no manifest intent that [RC 5101.58](#) , which has been in effect for five years after [RC 2305.27](#) was last amended, should prevail. [Holaday v. Bethesda Hosp.](#) (Hamilton 1986) 29 Ohio App.3d 347, 505 N.E.2d 1003, 29 O.B.R. 475 .

Attorney fees and expenses

Ahlborn decision, holding that federal law did not sanction an assignment by Medicaid beneficiary of any rights to payment for anything other than medical expenses, did not require that state agency's recovery of Medicaid benefits for medical care of tort victims be reduced by a pro rata share of victims' attorney fees and costs in settling claims against tortfeasors, where state law provided for payment of such fees and costs before calculating agency's recovery and was structured so that agency took no more than half of remaining recovery, thus ensuring that beneficiary retained a portion of or settlement to compensate for other categories of damages. [Mulk v. Ohio Dept. of Job & Family Servs.](#) (Ohio App. 10 Dist., 11-10-2011) 969 N.E.2d 1254, 2011-Ohio-5850 , appeal not allowed 131 Ohio St.3d 1484, 963 N.E.2d 824, 2012-Ohio-1143 , certiorari denied 133 S.Ct. 242, 568 U.S. 825, 184 L.Ed.2d 44 . [Health](#) 497

Failure to reduce state agency's recovery of Medicaid payments for medical care of beneficiaries by a pro rata share of attorney fees and costs incurred by beneficiaries in obtaining settlements against third-party tortfeasors would not violate general law of subrogation, on theory that agency, as subrogee, could not maintain a greater right to recovery than the beneficiaries, as subrogors; applicable statute had been amended to replace agency's right of subrogation with a right of recovery. [Mulk v. Ohio Dept. of Job & Family Servs.](#) (Ohio App. 10 Dist., 11-10-2011) 969 N.E.2d 1254, 2011-Ohio-5850 , appeal not allowed 131 Ohio St.3d 1484, 963 N.E.2d 824, 2012-Ohio-1143 , certiorari denied 133 S.Ct. 242, 568 U.S. 825, 184 L.Ed.2d 44 . [Subrogation](#) 33(2)

Department of Job and Family Services (DJFS) would not be unjustly enriched, when seeking to recover Medicaid payments for medical care provided to tort victims, if its recovery was not reduced by a pro rata share of victims' attorney fees and costs incurred in obtaining settlement of their tort claims; case involved reimbursement of DJFS for a benefit that it incurred, not retention by DJFS of a benefit conferred by the injured parties, and applicable statute limited DJFS's recovery to the lesser of the actual medical expenses paid or 50 percent of tort victims' recovery after payment of attorney's fees and costs, thus ensuring that DJFS did not receive an excess recovery. [Mulk v. Ohio Dept. of Job & Family Servs.](#) (Ohio App. 10 Dist., 11-10-2011) 969 N.E.2d 1254, 2011-Ohio-5850 , appeal not allowed 131 Ohio St.3d 1484, 963 N.E.2d 824, 2012-Ohio-1143 , certiorari denied 133 S.Ct. 242, 568 U.S. 825, 184 L.Ed.2d 44 . [Health](#) 497 ; [Implied and Constructive Contracts](#) 3

Failure to reduce state agency's recovery of Medicaid payments to beneficiaries by a pro rata share of beneficiaries' attorney fees and costs incurred in obtaining settlement of their claims against third-party tortfeasors did not violate Takings Clause; beneficiaries' automatic grant of a right of recovery to agency based on acceptance of public assistance was made before any recovery was obtained from a liable third party, such that beneficiaries had no property interest in that portion of the recovery, and beneficiaries did receive compensation in form of the initial payments of their medical expenses. [Mulk v. Ohio Dept. of Job & Family Servs.](#) (Ohio App. 10 Dist., 11-10-2011) 969 N.E.2d 1254, 2011-Ohio-5850 , appeal not allowed 131 Ohio St.3d 1484, 963 N.E.2d 824, 2012-Ohio-1143 , certiorari denied 133 S.Ct. 242, 568 U.S. 825, 184 L.Ed.2d 44 . [Eminent Domain](#) 2.29 ; [Eminent Domain](#) 81.1

Statute limiting Department of Human Services' right to subrogation when the Department pays a portion of a medical malpractice plaintiff's medical bills did not require reduction of Department's subrogated claim by amount of malpractice plaintiff's attorney fees and costs, where judgment awarded to the plaintiff did not include recovery of such fees and costs. [St. Paul Fire & Marine Ins. Co. v. Berdyck](#) (Ohio App. 6 Dist., 03-05-1999) 132 Ohio App.3d 652, 725 N.E.2d 1190 . [Health](#) 496(3) ; [Health](#) 497

The statutory right of subrogation granted to the Ohio department of public welfare under [RC 5101.58](#) does not require any payment by the subrogee, the Ohio department of public welfare, of a medicaid recipient's attorney's fees in a successful personal injury action. [Padgett v. Ohio Dept. of Public Welfare](#) (Lucas 1979) 65 Ohio App.2d 96, 416 N.E.2d 639, 13 O.O.3d 114, 19 O.O.3d 59 . [Health](#) 497

When the statute which creates the right of subrogation in the Ohio department of public welfare does not specifically grant a right to deduct attorney's fees and expenses from the subrogated amount payable to the department of public welfare, a deduction for attorney's fees and expenses cannot be made by the subrogator. [Padgett v. Ohio Dept. of Public Welfare \(Lucas 1979\) 65 Ohio App.2d 96, 416 N.E.2d 639, 13 O.O.3d 114, 19 O.O.3d 59](#) . [Public Assistance](#) [72](#)

Absent an agreement with the attorney general pursuant to [RC 109.08](#) , an attorney who recovers a subrogation claim owed to the department of public welfare under [RC 5101.58](#) may not charge the department a fee for representing it. 1978 OHIO OAG No. 78-036 .

Parties

A department of human services may assert right of subrogation to recover Medicaid benefits against defendants in medical malpractice lawsuit; abrogating [29 Ohio App.3d 347, 29 O.B.R. 475, 505 N.E.2d 1003](#) . [Layman v. Woo \(Ohio, 05-28-1997\) 78 Ohio St.3d 485, 678 N.E.2d 1217, 1997-Ohio-195](#) . [Health](#) [🔑 496\(3\)](#) ; [Health](#) [🔑 497](#)

Fact that plaintiffs in medical malpractice action withdrew all claims for past and future medical expenses did not prohibit social services agency from recovering Medicaid benefits that had been paid; under statute, agency, as real party in interest with regard to such payments, had right to intervene or join in action to enforce its subrogation interests. [Layman v. Woo \(Ohio, 05-28-1997\) 78 Ohio St.3d 485, 678 N.E.2d 1217, 1997-Ohio-195](#) . [Health](#) [🔑 491](#) ; [Health](#) [🔑 496\(3\)](#) ; [Health](#) [🔑 510](#)

Under statute, Ohio Department of Human Services (ODHS) is given right of subrogation against liability of third party for cost of medical services arising out of injury to recipient of services; however, ODHS does not have right of subrogation for malpractice claim against physician or hospital, and has no right of subrogation against tort-feasor that is political subdivision. [Ohio Dept. of Human Serv. v. Crespo \(Ohio App. 8 Dist., 01-09-1995\) 99 Ohio App.3d 709, 651 N.E.2d 1037](#) . [Health](#) [🔑 496\(3\)](#) ; [Subrogation](#) [🔑 32](#)

Under statute which provides right of subrogation for Ohio Department of Human Services (ODHS) against liability of third party for cost of medical services arising out of injury to recipient of services, only right of recovery created is right of subrogation, and no separate rights against recipient are created. [Ohio Dept. of Human Serv. v. Crespo \(Ohio App. 8 Dist., 01-09-1995\) 99 Ohio App.3d 709, 651 N.E.2d 1037](#) . [Health](#) [🔑 496\(2\)](#) ; [Subrogation](#) [🔑 32](#)

The failure by a plaintiff to join as a party a governmental department which has both a common law right and a statutory right of subrogation to the claim of the plaintiff against a defendant warrants dismissal of plaintiff's action without prejudice, where there is evidence that such plaintiff has refused to join such department as a party notwithstanding the allegation of the defense of lack of proper joinder and where plaintiff has expressed a preference to join such department as a party only after effecting a recovery. [Ledwell v. May Co. \(Ohio Com.Pl. 1977\) 54 Ohio Misc. 43, 377 N.E.2d 798, 7 O.O.3d 138, 8 O.O.3d 347](#) .

The human services department may not bring suit against another state agency in the Court of Claims seeking reimbursement of medical care provided to a medicaid recipient as all parties to the "action" are members of the state as defined in [RC 2743.01\(A\)](#) ; it is axiomatic that a party cannot sue itself. [Ohio Dept. of Human Serv. v. Ohio Dept. of Transp. \(Franklin 1992\) 78 Ohio App.3d 658, 605 N.E.2d 1007](#) .

Limitation of actions

Two-year statute of limitations for subrogation claims did not apply to reimbursement claim by Ohio Department of Job and Family Services, Tort Recovery Unit (ODJFS) for medical expenses paid on behalf of injured motorist through Medicaid program following automobile accident, where claim was based on a statutory right of recovery, rather than subrogation. [Encompass Indemn. Co. v. Bates \(Ohio App. 10 Dist., Franklin, 09-28-2012\) No. 11AP-1010, 2012-Ohio-4503, 2012 WL 4502941](#) , Unreported. [Health](#) [511](#)

Class actions

Class action, brought against Department of Medicaid by prevailing plaintiffs in tort claims against third parties, in which prevailing plaintiffs sought to recover money from tort litigation collected by Department, was superior to administrative proceedings, for purposes of class certification; there was a strong likelihood that low income Medicaid recipients would not have been likely or able to pursue separate actions, and there was a desirability

of handling the controversy, namely, the constitutionality of statute under which Department collected funds, in one adjudication. [Pivonka v. Sears \(Ohio App. 8 Dist., 12-06-2018\) 2018-Ohio-4866, 2018 WL 6444273](#) , appeal allowed [155 Ohio St.3d 1412, 120 N.E.3d 30, 2019-Ohio-1205](#) . Parties 35.63