

830 CMR 175.00: INSURANCE

Section

175.24D.1.1: Intercept of Insurance Payments to Satisfy Child Support Liens

175.24D.1.1: Intercept of Insurance Payments to Satisfy Child Support Liens

(1) Purpose, General Rule, and Outline

(a) Purpose. The purpose of 830 CMR 175.24D.1.1 is to implement M.G.L. c. 175, § 24D, under which the Department of Revenue identifies insurance payments on which there are child support liens, and intercepts such payments to satisfy the liens in full or in part.

(b) General Rule. Prior to making a non-recurring payment of \$500 or more under a liability insurance policy or under the liability coverage portion of a multiperil policy or to a beneficiary under a life insurance contract, a company shall compare the claimant's identifying information to child support lien information maintained by DOR to determine whether there is a child support lien on the payment. If, based on information exchanged between the company and DOR, there is a child support lien on the payment, DOR shall issue a Notice of Lien and Levy to the company and the company shall distribute the proceeds according to the priorities listed in 830 CMR 175.24D.1.1(6). A payment meets the \$500 threshold if the entire payment, prior to any deductions allowed under 830 CMR 175.24D.1.1(6)(a), is equal to or greater than \$500.

(c) Outline. 830 CMR 175.24D.1.1 is organized as follows:

1. Purpose, General Rule, and Outline
2. Definitions
3. Exempt payments
4. Collection of claimant's Social Security number
5. Methods of Searching Child Support Lien Information
6. Priorities
7. Process for Issuing Payments
8. Audits
9. Penalties for Failure to Comply

(2) Definitions. For the purposes of 830 CMR 175.24D.1.1 the following terms have the following meanings:

Claimant, an individual 13 years of age or older or an estate who brings a claim against an insured party under a liability insurance policy issued in the Commonwealth or under the liability coverage portion of a multiperil policy issued in the Commonwealth, a beneficiary 13 years of age or older under a life insurance contract issued in the Commonwealth, or a beneficiary 13 years of age or older living in the Commonwealth who is designated to receive payment under a life insurance contract issued by a company licensed in the Commonwealth.

Company, all corporations, associations, partnerships or individuals engaged as principals in the business of insurance including reciprocal exchanges as defined in M.G.L. c. 175, § 1.

DOR, the Child Support Enforcement Division of the Department of Revenue, which is the single state agency for the Commonwealth responsible for establishing parentage and establishing, modifying and enforcing child support orders pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, and M.G.L. c. 119A.

Non-recurring Payment, payment of a liability settlement or award in a lump sum, payment of a liability settlement or award under a structured settlement, payment to the issuer of an annuity by a liability insurer under a structured settlement of a liability claim, payment of a life insurance death benefit in a lump sum, or payment of a life insurance death benefit under a life insurance contract authorizing payment in installments. Periodic disability insurance payments, payments under annuity contracts, Workers' Compensation payments and life insurance dividend payments are not non-recurring payments, and are not subject to 830 CMR 175.24D.1.1. Such payments are subject to reporting and intercept through other means, pursuant to M.G.L. c. 62E and M.G.L. c. 119A.

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Obligee, an individual to whom support is or may be owed or in whose favor a support order has been issued or a judgment of paternity has been or may be rendered, or a state or political subdivision to which rights under a child support obligation have been assigned or which has independent claims based on financial assistance provided to an individual obligee.

Service Provider, an individual or entity which documents that it has provided or will provide a benefit or service related to the claim, including but not limited to an attorney, a repair shop, a health care facility, a funeral home, a medical doctor or other health care professional.

(3) Exempt Payments. Payments based on damage to or loss of real property are not subject to 830 CMR 175.24D.1.1.

(4) Collection of Claimant's Identifying Information. An individual making a claim governed by 830 CMR 175.24D.1.1 shall provide his current address, date of birth and Social Security number to the insurance company, upon the request of the company. If a Social Security number has not been issued to the claimant, the company shall make and retain a photocopy of an identification card issued by a governmental agency bearing the claimant's likeness and date of birth. Any claimant who refuses to provide the information required by 830 CMR 175.24D.1.1(4) shall not receive payment on the claim, and the company that declines payment on this basis shall be exempt from suit and immune from liability.

(5) Methods of Searching Child Support Lien Information.

(a) Instant Match Method. Except as provided in 830 CMR 175.24D.1.1(5)(b), no more than 30 days before making a non-recurring payment of \$500 or more to a claimant or to the claimant's attorney or agent, a company shall search child support lien information provided through such means as shall be prescribed by DOR, to determine whether there is a child support lien on the payment. In conducting the search, the company shall compare the claimant's Social Security number to DOR's child support lien information. If, based on information provided by the company to DOR, there is a child support lien on the payment, DOR shall immediately forward a Notice of Child Support Lien and Levy to the company. Upon receipt of the Notice of Child Support Lien and Levy, the company shall distribute the funds according to the priorities listed in 830 CMR 175.24D.1.1(6).

(b) Ten Business Day Wait Method. Companies that do not access child support lien information using the means prescribed by DOR pursuant to 830 CMR 175.24D.1.1(5)(a) shall use the Ten Business Day Wait Method. No more than 30 days before making a non-recurring payment of \$500 or more, a company using the Ten Business Day Wait Method shall forward the name and Social Security number of the claimant to DOR, using a form and means of transmittal prescribed by DOR. If the company is unable to use a form and means of transmittal prescribed by DOR, it shall cooperate with DOR to identify another form and means of transmittal. If a Social Security number has not been issued to the claimant, the company shall forward the claimant's name, address and date of birth to DOR. DOR shall compare the information received from the company against child support lien information. If there is a child support lien on the payment, DOR shall forward a Notice of Child Support Lien and Levy to the company within ten business days of receiving the claimant information from the company, and the company shall distribute the funds according to the priorities listed in 830 CMR 175.24D.1.1(6). If, upon expiration of the ten business days, the company has not received a Notice of Child Support Lien and Levy, the company may issue payment on the claim in accordance with its usual practice.

(6) Priorities. In issuing payments pursuant to 830 CMR 175.24D.1.1(7), a company or claimant's attorney shall apply the following priorities to the payment:

(a) First Priority. The first priority of payment is to any service provider as compensation for benefits or services related to the claim. The service provider's right to be compensated for benefits or services unrelated to the claim shall be junior to any child support lien.

(b) Second Priority. The second priority of payment is to DOR, up to the amount of the child support lien, if any funds remain.

(c) Third Priority. The third priority of payment is to holders of liens not arising from benefits or services related to the claim, if any funds remain.

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(d) Fourth Priority. The fourth priority of payment is to the claimant, if any funds remain. Payments made by insolvent companies shall be governed by M.G.L. c. 175, §§ 180A through 180Q.

(7) Process for Issuing Payments.

(a) Funds Remitted Directly to DOR. When allocating a payment pursuant to the priorities listed in 830 CMR 175.24D.1.1(6), the company shall remit funds directly to DOR, and shall not include any other party as a payee on the instrument remitted to DOR. The company shall include the claimant's name and Social Security number on the instrument and attach a copy of the child support lien. The company shall also submit a completed insurance company remittance form prescribed by DOR. The company shall certify on the remittance form that no funds payable to any service providers under 830 CMR 175.24D.1.1(6)(a) are included in the funds remitted to DOR. If a company cannot make such a certification, the company shall remit funds in accordance with 830 CMR 175.24D.1.1(7)(b) if the claimant is represented by an attorney or in accordance with 830 CMR 175.24D.1.1(7)(c) if the claimant is not represented by an attorney. When remitting funds to DOR, the company shall send a copy of the Notice of Lien and Levy to the claimant or his or her attorney, within two business days of remitting funds to DOR. A company that does not allocate a payment pursuant to the priorities listed in 830 CMR 175.24D.1.1(6) and fails to either notify the claimant's attorney of the existence of a child support lien in accordance with 830 CMR 175.24D.1.1(7)(b) or to remit the funds in accordance with 830 CMR 175.24D.1.1(7)(c) shall be subject to penalty pursuant to 830 CMR 175.24D.1.1(9)(b).

(b) Funds Remitted to the Claimant's Attorney. If a company cannot allocate a payment pursuant to the priorities listed in 830 CMR 175.24D.1.1(6) and the claimant is represented by an attorney, then the company shall remit the payment to the claimant's attorney along with a copy of the Notice of Child Support Lien and Levy and a memorandum regarding insurance claim payment intercept prescribed by DOR. When remitting funds pursuant to 830 CMR 175.24D.1.1(7)(b), a company shall not include the Commonwealth as a payee. The claimant's attorney shall distribute the payment according to the priorities listed in 830 CMR 175.24D.1.1(6) within ten business days of receipt of the funds, notwithstanding the claimant's right to request an administrative review pursuant to M.G.L. c. 119A, § 17. The claimant's attorney shall transmit to DOR a completed attorney remittance form prescribed by DOR, whether or not funds remain after the claimant's attorney has satisfied debts owed to service providers pursuant to 830 CMR 175.24D.1.1(6)(a). The claimant's attorney shall transmit the attorney remittance form to DOR with the payment. In cases where there is no payment to DOR, the claimant's attorney shall transmit the completed attorney remittance form within 20 business days of the attorney's receipt of the funds from the company. The claimant's attorney shall certify on the remittance form that he or she has distributed the payment according to the priorities listed in 830 CMR 175.24D.1.1(6). The claimant's attorney shall not apply an insurance payment towards his or her services rendered in connection with the claim prior to disbursing any funds due DOR.

(c) Remittance of Funds When Claimant Not Represented by Attorney. If a company cannot allocate a payment pursuant to the priorities listed in 830 CMR 175.24D.1.1(6) and the claimant is not represented by an attorney, the company shall request that the claimant provide a signed statement that no funds are payable to any service providers under 830 CMR 175.24D.1.1(6)(a) or a signed statement that funds are payable to service providers under 830 CMR 175.24D.1.1(6)(a), accompanied by sufficient identifying information about such service providers to enable the company to allocate a payment. Upon receipt of the claimant's signed statement, the company shall allocate the payment pursuant to the priorities listed in 830 CMR 175.24D.1.1(6) and remit any funds due to DOR. The insurance company shall also submit to DOR the insurance remittance form and the claimant's signed statement. If the claimant fails to return a signed statement to the company within 30 days of the company's request, the company shall remit any funds due to DOR and shall certify on the insurance remittance form that it has requested a signed statement from the claimant pursuant to 830 CMR 175.24D.1.1(7)(c) and the claimant has failed to provide such a statement. When remitting funds to DOR, the company shall send copies of the Notice of Lien and Levy and the insurance remittance form to the claimant within two business days of remitting funds to DOR.

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(d) Funds Erroneously Remitted to DOR. A company that sends funds to DOR in error shall immediately send written notice thereof to DOR personnel with operational responsibility for the program authorized by M.G.L. c. 175, § 24D and 830 CMR 175.24D.1.1. Upon receiving such written notice, DOR shall return any such funds in its possession to the company. Notwithstanding the foregoing, DOR shall not be liable to the company, claimant, claimant’s attorney or service provider for any funds sent in error to DOR which DOR sent to the obligee prior to the date that is two business days from the date on which DOR received notice of the erroneous remittance.

(8) Audits. DOR or an agent acting on its behalf may periodically audit a company’s compliance with 830 CMR 175.24D.1.1. Pursuant to M.G.L. c. 119A, § 14, DOR or its agent may request, and a company shall provide, a list of non-recurring payments made during a time period specified by DOR or its agent. The list shall be in a format designated by DOR or its agent, and shall include the name and Social Security number of each claimant for whom a non-recurring payment of \$500 or more was made, the date and amount of each such payment, the name of the claimant’s attorney, if any, and any other information DOR or its agent may request. The list shall include all non-recurring payments of \$500 or more made during the specified time period, or a random sample of such payments, as specified by DOR or its agent. If the company is unable to use the format designated by DOR or its agent, the company shall cooperate with DOR or its agent to determine another format by which the information may be furnished. A company shall not be required to provide such a list more frequently than once a calendar quarter. The list shall be subject to examination by DOR, its agent and the Division of Insurance. Pursuant to M.G.L. c. 119A, § 15, DOR may subpoena any information necessary to determine whether a company or claimant’s attorney is in compliance with 830 CMR 175.24D.1.1.

(9) Penalties for Failure to Comply.

(a) Failure to Determine Whether Payments are Subject to Child Support Liens. A company that has knowingly failed to ascertain whether payments are subject to a child support lien, as determined by DOR or its agent through an audit, shall be subject to a penalty assessed by DOR, as follows:

<u>Failure Rate</u>	<u>Penalty</u>
5 % - 9.9 %	\$1,000
10 % - 14.9 %	\$2,000
15 % - 19.9 %	\$3,000
20 % - 24.9 %	\$4,000
25 % - 29.9 %	\$5,000
30 % - 49.9 %	\$10,000
50 % or higher	\$25,000

The “failure rate” for any consecutive 12-month period under audit is the number of claims for which the company knowingly failed to ascertain whether a payment was subject to a child support lien and which would, in fact, have been subject to a child support lien had such search been made, divided by the number of claims for which the company knowingly failed to ascertain whether a payment was subject to a child support lien.

(b) Failure by a Company to Comply with a Child Support Lien. A company that distributes funds that are subject to a child support lien directly to a claimant, or that distributes funds that are subject to a child support lien to a claimant’s attorney without notifying the attorney of the existence of a child support lien in accordance with 830 CMR 175.24D.1.1(7)(b), shall be subject to penalties in accordance with M.G.L. c. 119A, § 6. These penalties may be imposed whether or not the company determined if a payment was subject to a child support lien and are separate and distinct from any penalties under 830 CMR 75.24D.1.1(9)(a) for failure to determine if a payment is subject to a child support lien.

(c) Failure by a Claimant’s Attorney to Comply with a Child Support Lien. An attorney in receipt of unallocated funds pursuant to 830 CMR 175.24D.1.1(7)(b) who has been notified of a child support lien on the funds, but fails to distribute the funds in accordance with the priorities listed in 830 CMR 175.24D.1.1(6) within ten business days of receipt of the funds, shall be subject to penalties in accordance with M.G.L. c. 119A, § 6.

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(d) Administrative and Judicial Review. DOR shall provide written notice of a penalty assessed pursuant to 830 CMR 175.24D.1.1. Such notice shall inform the company or individual subject to the penalty that the company or individual must either pay the penalty within 30 days of the date of the notice, or request an administrative hearing by DOR within 30 days of the date of the notice. Failure to request an administrative hearing within 30 days of the date of the notice shall constitute a waiver of any and all administrative remedies, which waiver shall preclude the company or individual from any further review of or appeal from the agency action. Any administrative hearing shall be conducted by a Hearing Officer designated by DOR, and shall be governed by M.G.L. c. 30A, §§ 10 and 11. Judicial review of the decision of the Hearing Officer shall be governed by G.L. c. 30A, § 14.

#### REGULATORY AUTHORITY

830 CMR 175.24D.1.1: M.G.L. c. 14, § 6(1); c. 62C, § 3 and c. 175, § 24D.

NON-TEXT PAGE