

 **ORQ-1046**

Texas Department of Health

William R. Archer III, M.D.
Commissioner of Health

Patti J. Patterson, M.D., M.P.H.
Executive Deputy Commissioner

1100 West 49th Street
Austin, Texas 78756-3199
(512) 458-7111
<http://www.tdh.state.tx.us>

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I.D. # 39958

The Honorable Dan Morales
Attorney General of Texas
209 W. 14th E. Lavaca
Austin, Texas 78711-2548

RECEIVED
DEC 06 1997
Opinion Committee

Dear General Morales:

I am writing to request an Attorney General's Opinion under authority of the Texas Gov't Code Ann. §402.042(b)(2) (Vernon 1990).

An issue has arisen of whether the Texas Department of Health (TDH) is authorized under existing law to garnish Medicaid provider payments in order to satisfy a Medicaid provider's child support obligation.

Tex. Hum. Res. Code Ann. §32.036(b) prohibits the transfer or assignment of payments to providers of medical assistance and further states that "...no money paid or payable under the provisions of this chapter is subject to execution, levy, attachment, garnishment, or any other legal process..." Tex. Hum. Res. Code §32.036(c), which was added during the 75th session of the Texas Legislature, states "...this section does not apply to the extent that it conflicts with the Social Security Act (42 U.S.C. Section 1396a(a)(32))..."

Social Security Act 42 U.S.C. Section 1396a(a)(32) requires that a state's Medicaid State Plan prohibit the transfer or assignment of payments to providers of medical assistance, subject to certain exceptions. Subsection (B) states that "...nothing in this paragraph shall be construed (i) to prevent the making of such payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction..."

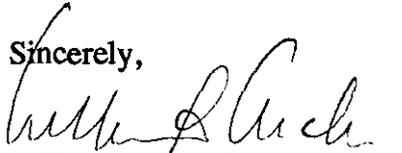
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QUESTION:

Does the TDH have authority under existing law to garnish Medicaid provider payments in order to satisfy a Medicaid provider's child support obligation?

Your consideration of this request will be greatly appreciated. If you need additional information or have questions, please contact the assigned staff attorney, Sharon Alexander, at (512) 458-7236.

Sincerely,



William R. Archer III, M.D.
Commissioner of Health