

**39-719a. Recovery of medical assistance paid; obligation of third party; payment by secretary secondary costs paid proportionately by parties as determined by court.** (a) Where medical assistance has been paid by the secretary and a third party has a legal obligation to pay such medical expenses to or on behalf of the recipient, the secretary may recover the same from the recipient or from the third party and shall be in all respects subrogated to the rights of the recipient in such cases except as provided under K.S.A. 39-786 and 39-787, and amendments thereto, or under section 303 and amendments thereto of the federal medicare catastrophic coverage act of 1988, whichever is applicable. Payment of medical assistance by the secretary shall be secondary to any other insurance coverage or third party with a legal obligation to pay such medical expenses to or on behalf of the recipient.

(b) Pursuant to this section unless otherwise agreed, the court shall fix attorney fees, which shall be paid proportionately by the secretary and the injured person, such person's dependents or personal representatives, in the amounts determined by the court. Attorney fees to be paid by the secretary shall be fixed by the court in an amount not to exceed 1/3 of the medical assistance recovered pursuant to subsection (a) for cases settled prior to trial, or in an amount not to exceed 2/5 of the medical assistance recovered pursuant to subsection (a) in cases when a trial is convened.

(c) In the event of a recovery pursuant to K.S.A. 60-258a, and amendments thereto, the secretary's right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.

**History:** L. 1953, ch. 224, § 1; L. 1967, ch. 245, § 7; L. 1969, ch. 226, § 6; L. 1970, ch. 168, § 1; L. 1973, ch. 186, § 12; L. 1988, ch. 143, § 9; L. 1989, ch. 124, § 3; L. 1991, ch. 119, § 1; July 1.