

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 982
PROPOSED COMMITTEE SUBSTITUTE H982-PCS80367-TR-1

Short Title: Modify Medicaid Subrogation Statute.

(Public)

Sponsors:

Referred to:

April 18, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEDICAID SUBROGATION STATUTE IN RESPONSE TO
THE UNITED STATES SUPREME COURT DECISION IN WOS V. E.M.A.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-57 reads as rewritten:

"§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the ~~State, or the county providing medical assistance benefits, State~~ shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. ~~The county attorney, or an attorney retained by the county or the State or both, or an attorney retained by the beneficiary of the assistance if this attorney has actual notice of payments made under this Part shall enforce this section.~~ A personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party shall include a claim for all medical assistance payments for health care items or services furnished to the medical assistance beneficiary as a result of the injury, hereinafter referred to as the "Medicaid claim". Any personal injury or wrongful death claim brought by a medical assistance beneficiary against a third party that does not state the Medicaid claim shall be deemed to include the Medicaid claim.

(a1) If the amount of the Medicaid claim does not exceed one-third of the medical assistance beneficiary's gross recovery, it is presumed that the gross recovery includes compensation for the full amount of the Medicaid claim. If the amount of the Medicaid claim exceeds one-third of the medical assistance beneficiary's gross recovery, it is presumed that one-third of the gross recovery represents compensation for the Medicaid claim.

(a2) A medical assistance beneficiary may dispute the presumptions established in subsection (a1) by applying to the court in which the medical assistance beneficiary's claim against the third party is pending, or if there is none, then to a court of competent jurisdiction, for a determination of the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim. An application under this subsection shall be filed with the court and served on the Department pursuant to the Rules of Civil Procedure no later than 30 days after the date that the settlement agreement is executed by all parties and, if required, approved by the court, or in cases in which judgment has been entered, no later than 30 days after the date of entry of judgment. The court shall hold an evidentiary hearing no sooner than 30 days after the date the action was filed. All of the following shall apply to the court's determination under this subsection:



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1 (1) The medical assistance beneficiary has the burden of proving by clear and
2 convincing evidence that the portion of the beneficiary's gross recovery that
3 represents compensation for the Medicaid claim is less than the portion
4 presumed under subsection (a1) of this section.

5 (2) The presumption under subsection (a1) of this section is not rebutted solely
6 by the fact that the medical assistance beneficiary was not able to recover the
7 full amount of all claims.

8 (3) The court may consider any factors the court deems just and reasonable in
9 determining the portion of the recovery that represents compensation for the
10 Medicaid claim.

11 (4) The parties may agree to a compromise of the Medicaid claim amount at any
12 time.

13 (a3) ~~Any~~Within 30 days of receipt of the proceeds of a settlement or judgment related to
14 a claim described in subsection (a) of this section, the medical assistance beneficiary or any
15 attorney retained by the beneficiary shall notify the Department of the receipt of the proceeds.
16 The medical assistance beneficiary or any attorney retained by the beneficiary of the assistance
17 shall, out of the proceeds obtained by or on behalf of the beneficiary by settlement with,
18 judgment against, or otherwise from a third party by reason of injury or death, distribute to the
19 Department the amount of assistance paid by the Department on behalf of or to the beneficiary,
20 as prorated with the claims of all others having medical subrogation rights or medical liens
21 against the amount received or recovered, but the amount paid to the Department shall not
22 exceed ~~one-third of the gross amount obtained or recovered.~~ the portion presumptively
23 determined under subsection (a1) of this section or the portion judicially determined under
24 subsection (a2) of this section. Unless an action has been commenced pursuant to subsection
25 (a2) of this section, the amount shall be paid to the Department within 30 days of the
26 beneficiary's receipt of the proceeds.

27 (a4) The United States and the State of North Carolina shall be entitled to shares in each
28 net recovery by the Department under this section. Their shares shall be promptly paid under
29 this section and their proportionate parts of such sum shall be determined in accordance with
30 the matching formulas in use during the period for which assistance was paid to the recipient.

31 (b) It is a Class 1 misdemeanor for any person seeking or having obtained assistance
32 under this Part for himself or another to willfully fail to disclose to the county department of
33 social services or its attorney the identity of any person or organization against whom the
34 recipient of assistance has a right of recovery, contractual or otherwise.

35 (c) This section applies to the administration of and claims payments made by the
36 Department of Health and Human Services under the NC Health Choice Program established
37 under Part 8 of this Article.

38 (d) As required to ensure compliance with this section, the Department may apply to the
39 court in which the medical assistance beneficiary's claim against the third party is pending, or if
40 there is none, then to a court of competent jurisdiction for enforcement of this section."

41 **SECTION 2.** This act is effective when it becomes law and applies to claims
42 brought by a medical assistance beneficiary against a third party in which either a settlement
43 agreement is executed by all parties or a judgment is entered against the third party on or after
44 the effective date. For claims in which the Medicaid claim has not been satisfied and as to
45 which, prior to the effective date of this act, either (i) a settlement agreement has been executed
46 by all parties, or (ii) judgment has been entered against the third party, the medical assistance
47 beneficiary shall have 90 days from the effective date of this act within which to apply to the
48 court pursuant to G.S. 108A-57(c).