

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 982
Committee Substitute Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H982-PCS70467-TG-57

Short Title: Modify Medicaid Subrogation Statute.

(Public)

Sponsors:

Referred to:

April 18, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE MEDICAID SUBROGATION STATUTE IN RESPONSE TO
3 THE UNITED STATES SUPREME COURT DECISION IN WOS V. E.M.A.

4 The General Assembly of North Carolina enacts:

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

6 "§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

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

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

25 (a2) A medical assistance beneficiary may dispute the presumptions established in
26 subsection (a1) of this section by applying to the court in which the medical assistance
27 beneficiary's claim against the third party is pending, or if there is none, then to a court of
28 competent jurisdiction, for a determination of the portion of the beneficiary's gross recovery
29 that represents compensation for the Medicaid claim. An application under this subsection shall
30 be filed with the court and served on the Department pursuant to the Rules of Civil Procedure
31 no later than 30 days after the date that the settlement agreement is executed by all parties and,
32 if required, approved by the court, or in cases in which judgment has been entered, no later than
33 30 days after the date of entry of judgment. The court shall hold an evidentiary hearing no
34 sooner than 30 days after the date the action was filed. All of the following shall apply to the
35 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 arising under subsection (a1) of this section is not rebutted
6 solely by the fact that the medical assistance beneficiary was not able to
7 recover the full amount of all claims.

8 (3) If the beneficiary meets its burden of rebutting the presumption arising under
9 subsection (a1) of this section, then the court shall determine the portion of
10 the recovery that represents compensation for the Medicaid claim and shall
11 order the beneficiary to pay the amount so determined to the Department in
12 accordance with subsection (a5) of this section. In making this
13 determination, the court may consider any factors that it deems just and
14 reasonable.

15 (4) If the beneficiary fails to rebut the presumption arising under subsection (a1)
16 of this section, then the court shall order the beneficiary to pay the amount
17 presumed pursuant to subsection (a1) of this section to the Department in
18 accordance with subsection (a5) of this section.

19 (a3) Notwithstanding the presumption arising pursuant to subsection (a1) of this section,
20 the medical assistance beneficiary and the Department may reach an agreement on the portion
21 of the recovery that represents compensation for the Medicaid claim. If such an agreement is
22 reached after an application has been filed pursuant to subsection (a2) of this section, a
23 stipulation of dismissal of the application signed by both parties shall be filed with the court.

24 (a4) Any~~Within~~ 30 days of receipt of the proceeds of a settlement or judgment related to
25 a claim described in subsection (a) of this section, the medical assistance beneficiary or any
26 attorney retained by the beneficiary shall notify the Department of the receipt of the proceeds.

27 (a5) The medical assistance beneficiary or any attorney retained by the beneficiary ~~of the~~
28 assistance shall, out of the proceeds obtained by or on behalf of the beneficiary by settlement
29 with, judgment against, or otherwise from a third party by reason of injury or death, distribute
30 to the Department ~~the amount of assistance paid by the Department on behalf of or to the~~
31 beneficiary, as prorated with the claims of all others having medical subrogation rights or
32 medical liens against the amount received or recovered, but the amount paid to the Department
33 shall not exceed one third of the gross amount obtained or recovered. ~~the amount due pursuant~~
34 to this section as follows:

35 (1) If, upon the expiration of the time for filing an application pursuant
36 subsection (a2) of this section, no application has been filed, then the amount
37 presumed pursuant to subsection (a1) of this section, as prorated with the
38 claims of all others having medical subrogation rights or medical liens
39 against the amount received or recovered, shall be paid to the Department
40 within 30 days of the beneficiary's receipt of the proceeds, in the absence of
41 an agreement pursuant to subsection (a3) of this section.

42 (2) If an application has been filed pursuant to subsection (a2) of this section
43 and no agreement has been reached pursuant to subsection (a3) of this
44 section, then the Department shall be paid as follows:

45 a. If the beneficiary rebuts the presumption arising under subsection
46 (a1) of this section, then the amount determined by the court pursuant
47 to subsection (a2) of this section, as prorated with the claims of all
48 others having medical subrogation rights or medical liens against the
49 amount received or recovered, shall be paid to the Department within
50 30 days of the entry of the court's order.

b. If the beneficiary fails to rebut the presumption arising under subsection (a1) of this section, then the amount presumed pursuant to subsection (a1) of this section, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the entry of the court's order.

(3) If an agreement has been reached pursuant to subsection (a3) of this section, then the agreed amount, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, shall be paid to the Department within 30 days of the execution of the agreement by the medical assistance beneficiary and the Department.

(a6) The United States and the State of North Carolina shall be entitled to shares in each net recovery by the Department under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

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

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

(d) As required to ensure compliance with this section, the Department may apply 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 enforcement of this section."

SECTION 2. This act is effective when it becomes law and applies (i) to Medicaid claims that arise on or after that date and (ii) to Medicaid claims arising prior to that date for which the Department has not been paid in full. For Medicaid claims that arose prior to the effective date of this act for which the Department has not been paid in full, the medical assistance beneficiary shall have 90 days from the effective date of this act within which to apply to the court pursuant to G.S. 108A-57(a2).