

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS75219-LN-6A (12/13)

Short Title: State Health Plan Subrogation.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT PERTAINING TO SUBROGATION RIGHTS OF THE TEACHERS' AND  
STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 135-40.13A reads as rewritten:

"§ 135-40.13A. **Liability of third person; right of subrogation; right of first recovery.**

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~ The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery pursuant to G.S. 135-40.13(g) ~~to the extent allowed by law.~~ If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

1 (c) In the event a Plan member recovers any amounts from a liable third party to  
2 which the Plan is entitled under this section, the Plan may recover the amounts directly  
3 from the Plan member. The Plan has a lien, for not more than the value of claims paid  
4 related to the liability of the third party, on any damages subsequently recovered against  
5 the liable third party. If the Plan member fails to pursue the remedy against a liable third  
6 party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce  
7 liability in the Plan's own name or in the name of the Plan member for the amount paid  
8 by the Plan.

9 (d) After considering relevant equities including the degree to which the Plan  
10 member would be made whole by the recovery, the Plan may reduce the amount of its  
11 lien for expenses paid by the Plan, including the Plan's proportionate share of the costs  
12 of collection."

13 **SECTION 2.** G.S. 28A-18-2(a) reads as rewritten:

14 "**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

15 (a) When the death of a person is caused by a wrongful act, neglect or default of  
16 another, such as would, if the injured person had lived, have entitled him to an action  
17 for damages therefor, the person or corporation that would have been so liable, and his  
18 or their personal representatives or collectors, shall be liable to an action for damages, to  
19 be brought by the personal representative or collector of the decedent; and this  
20 notwithstanding the death, and although the wrongful act, neglect or default, causing the  
21 death, amounts in law to a felony. The personal representative or collector of the  
22 decedent who pursues an action under this section may pay from the assets of the estate  
23 the reasonable and necessary expenses, not including attorneys' fees, incurred in  
24 pursuing the action. At the termination of the action, any amount recovered shall be  
25 applied first to the reimbursement of the estate for the expenses incurred in pursuing the  
26 action, then to the payment of attorneys' fees, and shall then be distributed as provided  
27 in this section. The amount recovered in such action is not liable to be applied as assets,  
28 in the payment of debts or legacies, except as to burial expenses of the deceased, and  
29 reasonable hospital and medical expenses not exceeding four thousand five hundred  
30 dollars (\$4,500) incident to the injury resulting in death, except that the amount applied  
31 for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of  
32 damages recovered after deducting attorneys' fees, but shall be disposed of as provided  
33 in the Intestate Succession Act. The limitations on recovery for hospital and medical  
34 expenses under this subsection do not apply to subrogation rights exercised pursuant to  
35 G.S 135-40.13A. All claims filed for such services shall be approved by the clerk of the  
36 superior court and any party adversely affected by any decision of said clerk as to said  
37 claim may appeal to the superior court in term time."

38 **SECTION 3.** This act is effective when it becomes law and applies to  
39 actions to exercise rights of recovery under G.S. 135-40.13 or G.S. 135-40.13A  
40 commenced on and after that date.