

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H.B. 982  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH80300-TRa-2 (03/20)

Short Title: Modify Medicaid Subrogation Statute. (Public)

Sponsors: Representatives Burr and Avila (Primary Sponsors).

Referred to:

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, which shall be referred to in this section 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.

(b) 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.

(c) A medical assistance beneficiary may dispute the presumptions established in subsection (b) by applying to the superior court that has jurisdiction, or properly would have jurisdiction, over an action by the beneficiary against the third party for a determination of the portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim. An action under this subsection shall be filed 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 the date that judgment against the third party is entered. All of the following shall apply to the court's determination under this subsection:

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



1           (2)    In order to meet the burden of proof, a medical assistance beneficiary must  
2                    show, by clear and convincing evidence, that the beneficiary was unable to  
3                    recover the full amount of the Medicaid claim. Recovery of the Medicaid  
4                    claim is a priority over recovery of all other damages, and evidence that the  
5                    medical assistance beneficiary was not able to recover the full amount of all  
6                    claims does not constitute clear and convincing evidence that the beneficiary  
7                    was unable to recover the full amount of the Medicaid claim.

8           (3)    In determining whether the medical assistance beneficiary's burden has been  
9                    met, the court shall consider the estimated cost of future medical expenses,  
10                   including the likelihood that the Department will pay future benefits on  
11                   behalf of the beneficiary as a result of the claim against the third party.

12          (4)    The court may consider any other factors the court deems just and  
13                    reasonable in determining the portion of the recovery that represents  
14                    compensation for the Medicaid claim.

15          (5)    The court may determine based upon a preponderance of the evidence that  
16                    the portion of the recovery that represents compensation for the Medicaid  
17                    claim is greater than the portion presumed under subsection (b) of this  
18                    section.

19          (d)    ~~Any~~The medical assistance beneficiary or any attorney retained by the beneficiary  
20                    of the assistance shall, out of the proceeds obtained by or on behalf of the beneficiary by  
21                    settlement with, judgment against, or otherwise from a third party by reason of injury or death,  
22                    distribute to the Department the amount of assistance paid by the Department on behalf of or to  
23                    ~~the beneficiary, as prorated with the claims of all others having medical subrogation rights or~~  
24                    ~~medical liens against the amount received or recovered, but the amount paid to the Department~~  
25                    ~~shall not exceed one third of the gross amount obtained or recovered.~~portion presumptively  
26                    determined under subsection (b) or the portion judicially determined under subsection (c) of  
27                    this section.

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

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

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

39          (h)    The Department has the authority to enforce this section and may adopt  
40                    administrative rules for this purpose."

41                    **SECTION 2.** This act is effective when it becomes law.