

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 982  
Committee Substitute Favorable 5/15/13  
Senate Judiciary I Committee Substitute Adopted 6/25/13

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:



- 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.

1                    b. If the beneficiary fails to rebut the presumption arising under  
2                    subsection (a1) of this section, then the amount presumed pursuant to  
3                    subsection (a1) of this section, as prorated with the claims of all  
4                    others having medical subrogation rights or medical liens against the  
5                    amount received or recovered, shall be paid to the Department within  
6                    30 days of the entry of the court's order.

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

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

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

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

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

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