

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

1

HOUSE BILL 982

Short Title: Modify Medicaid Subrogation Statute. (Public)

Sponsors: Representatives Burr and Avila (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Health and Human Services.

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, which shall be referred to in this  
17 section as the Medicaid claim. Any personal injury or wrongful death claim brought by a  
18 medical assistance beneficiary against a third party that does not state the Medicaid claim shall  
19 be deemed to include the Medicaid claim.

20 (b) 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 (c) A medical assistance beneficiary may dispute the presumptions established in  
26 subsection (b) by applying to the superior court that has jurisdiction, or properly would have  
27 jurisdiction, over an action by the beneficiary against the third party for a determination of the  
28 portion of the beneficiary's gross recovery that represents compensation for the Medicaid claim.  
29 An action under this subsection shall be filed no later than 30 days after the date that the  
30 settlement agreement is executed by all parties and, if required, approved by the court, or the  
31 date that judgment against the third party is entered. All of the following shall apply to the  
32 court's determination under this subsection:

33 (1) The medical assistance beneficiary has the burden of proving by clear and  
34 convincing evidence that the portion of the beneficiary's gross recovery that



1 represents compensation for the Medicaid claim is less than the portion  
2 presumed under subsection (b) of this section.

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

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

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

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

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

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

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

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

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

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