

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2348

Short Title: Medicaid Subrogation/Funds Increased.

(Public)

Sponsors: Representatives Gardner; Gray, Stam, L. Etheridge, and Buchanan.

Referred to: Human Resources.

June 6, 1990

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGARDING MEDICAID SUBROGATION TO
3 CONFORM TO FEDERAL GUIDELINES AND INCREASE CASUALTY
4 RECOVERY FUNDS.

5 Whereas, G.S. 108A-57, dealing with Medicaid subrogation, needs to be
6 amended to meet federal guidelines; and

7 Whereas, G.S. 108A-57 also needs to be amended to give the Division of
8 Medical Assistance more leverage with insurance companies and attorneys in securing
9 Medicaid subrogation refunds; and

10 Whereas, these amendments will increase casualty recovery funds by
11 approximately seven hundred fifty thousand dollars (\$750,000); Now, therefore,
12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 108A-57 reads as rewritten:

14 "**§ 108A-57. Subrogation rights; withholding of information a misdemeanor.**

15 (a) Notwithstanding any other provisions of the law, to the extent of
16 payments under this Part, the State, or the county providing medical assistance
17 (Medicaid) benefits, shall be subrogated to all rights of recovery, contractual or
18 otherwise, of the beneficiary of such assistance, or of his personal representative, his
19 heirs, or the administrator or executor of his estate, against any person. It shall be the
20 responsibility of the county attorney or an attorney retained by the county and/or the
21 State or an attorney retained by the beneficiary of the assistance if such attorney has
22 actual notice of payments made under this Part to enforce this section, and said attorney
23 shall be compensated for his services in accordance with the attorneys' fee
24 arrangements approved by the Department; provided, however, that any attorney

1 retained by the beneficiary of the assistance shall be compensated for his services in
2 accordance with the following schedule and in the following order of priority from any
3 amount obtained on behalf of the beneficiary by settlement with, judgment against, or
4 otherwise from a third party by reason of such injury or death:

- 5 (1) First to the payment of any court costs taxed by the judgment;
- 6 (2) Second to the payment of the fee of the attorney representing the
7 beneficiary making the settlement or obtaining the judgment, but this
8 fee shall not exceed one-third of the amount obtained or recovered to
9 which the right of subrogation applies;
- 10 (3) Third to the payment of the amount of assistance received by the
11 beneficiary ~~as prorated with other claims against the amount obtained~~
12 ~~or received from the third party to which the right of subrogation~~
13 ~~applies, but the amount shall not exceed one third of the amount~~
14 ~~obtained or recovered to which the right of subrogation applies;~~
15 beneficiary; and
- 16 (4) Fourth to the payment of any amount remaining to the beneficiary or
17 his personal representative.

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

23 (b) No compromise, including but not limited to a settlement, waiver, or release,
24 of any claim to which the State is subrogated under this section shall defeat the State's
25 right of recovery.

26 The State shall be given notice of monetary claims against third parties as follows:

- 27 (1) Applicants for medical assistance shall notify the State or county
28 department of social services of any possible claim against third
29 parties upon submitting the application. Recipients of medical
30 assistance shall notify the State or county department of social services
31 of any possible claim when those claims arise.
- 32 (2) Any person who provides health care services to a person receiving
33 assistance through the medical assistance program shall notify the
34 State whenever the person has a reason to believe that third parties
35 may be liable for payment of the cost of those health care services.
- 36 (3) Any attorney representing an applicant for, or recipient of, assistance
37 on a claim to which the State is subrogated under this section shall
38 notify the State of the claim prior to commencing any action or
39 negotiating any settlement offer.
- 40 (4) The subrogation rights of the State shall be valid and binding on an
41 insurer or third party. Payment of benefits by an insurer or other third
42 party pursuant to the subrogation rights hereunder shall discharge that
43 insurer or third party from liability to the recipient, the recipient's

1 assignee, or personal representative, to the extent of these payments to
2 the State.

3 (~~b~~) (c) It shall be a misdemeanor for any person seeking or having obtained
4 assistance under this Part for himself or another to willfully fail to disclose to the county
5 department of social services or its attorney the identity of any person or organization
6 against whom the recipient of assistance has a right of recovery, contractual or
7 otherwise."

8 Sec. 2. This act shall become effective October 1, 1990, and applies to
9 assistance received on and after that date.