

Bill as
Introduced

HB 1259 - AS INTRODUCED

2010 SESSION

10-2257

06/03

HOUSE BILL **1259**

AN ACT relative to subrogation claims and liens in civil actions.

SPONSORS: Rep. Nixon, Hills 17; Rep. Rowe, Hills 6; Rep. Craig, Hills 9; Rep. McEachern, Rock 16

COMMITTEE: Judiciary

ANALYSIS

This bill requires the court to order a division of expenses and costs in subrogation claims and liens.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to subrogation claims and liens in civil actions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Subrogation Claims. Amend RSA 507 by inserting after section 7-i the following
2 new section:

3 507:7-j Subrogation Claims. Whenever a subrogation claim pursuant to a contract of insurance
4 or a Medicaid or statutory lien is asserted for reimbursement of medical expenses as to a plaintiff's
5 recovery against a third party, the court in which the action is pending shall order such division of
6 expenses and costs, including attorneys' fees, between the plaintiff and the insurance carrier, the
7 medical provider, or the state, as justice may require. Reimbursement shall not exceed 2/3 of the
8 amount claimed by the insurance carrier, the medical provider, or the state.

9 2 Effective Date. This act shall take effect January 1, 2011.

Amendments

Rep. Nixon, Hills. 17
February 16, 2010
2010-0777h
09/05

Amendment to HB 1259

1 Amend RSA 507:7-J as inserted by section 1 of the bill by replacing it with the following:

2

3 507:7-j Subrogation Claims. Whenever a subrogation claim pursuant to a contract of insurance
4 is asserted for reimbursement of medical expenses as to a plaintiff's recovery against a third party,
5 the court in which the action is pending shall order such division of expenses and costs, including
6 attorneys' fees, between the plaintiff and the insurance carrier and the medical provider, as justice
7 may require.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1259

BILL TITLE: relative to subrogation claims and liens in civil actions.
DATE: January 26, 2010
LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:10 pm
Time Adjourned: 2:35 pm

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, C. Weber, B. ~~Browne~~, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead and Lead.

Bill Sponsors: Rep. Nixon, Hills 17; Rep. Rowe, Hills 6; Rep. Craig, Hills 9; Rep. McEachern, Rock 16

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Janet Wall, introduces bill.

Rep. Paul McEachern, co-sponsor
This bill requires Medicaid to pay its fair share of costs.

Rep. William O'Brien: Are we permitted to prevent Medicaid from collecting the settlement without paying costs? Ans. Doesn't definitive answer, but we should put it into state law.

*Jennifer Jones, Dept of Health and Human Services - opposes

Francesca Hennesey, General Counsel
Reads (paraphrases) testimony.

Rep. Gary Richardson: Regarding HB 577, this bill is duplicative.

Rep. Nancy Elliott: Differences between HB 577 and HB1258? Ans. Not much.

Rep. William O'Brien: Any case law involving the United States Tax Code? Ans. In some limited cases, an action may be brought in Superior Court.

Rep. Gary Richardson: Recovery of a Medicaid lien. What is the policy with respect to recovery of general welfare support that was not related to injuries after an accident? Ans. We are prohibited from collecting for any portion of the Medicaid take-out that was not related to the injuries for which the patient recovered.

Jared Green, New Hampshire Association for Justice - supports
Represents injured persons. This bill does more than HB 577, deals with private insurance. Insurance companies increasingly demand 100%, but that is unfair. This 2/3rds comes from worker comp statute.

Rep. Gary Richardson: Amend to take out Medicaid? Ans. Depends on outcome of HB 577 in Senate.

Respectfully submitted,

A handwritten signature in black ink that reads "Philip Preston". The signature is written in a cursive style with a large, prominent initial "P".

Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1259

BILL TITLE: relative to subrogation claims and liens in civil actions.

DATE: JANUARY 26, 2010

LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:00 p.m.

Time Adjourned:

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Brown, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

Lead

Bill Sponsors: Rep. Nixon, Hills 17; Rep. Rowe, Hills 6; Rep. Craig, Hills 9; Rep. McEachern, Rock 16

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

FROM: Rep. Philip Preston, Clerk
DATE: Public hearing January 26, 2010
SUBJECT: Meeting minutes on HB 1259, relative to subrogation claims and liens in civil actions.

HB 1259 relative to subrogation claims and liens In civil actions 1:05 pm

Rep. Janet Wall, introduces bill

Rep. Paul McEachern, co-sponsor

This bill requires Medicaid to pay its fair share of costs.

Rep. William O'Brien: Are we permitted to prevent Medicaid from collecting the settlement without paying costs? Ans. Doesn't definitive answer, but we should put it into state law.

*Jennifer Jones, Dept of HHS - opposes

Francesca Hennesey, General Counsel

Reads (paraphrases) testimony

Rep. Gary Richardson: Regarding HB 577, this bill is duplicative.

Rep. Nancy Elliott: differences between 577 A& 1258? Ans. Not much.

Rep. William O'Brien: Any case law involving the US Tax Code? Ans. In some limited cases, an action may be brought in Superior Court.

Rep. Gary Richardson: Recovery of a Medicaid lien. What is the policy with respect to recovery of general welfare support that was not related to injuries after an accident?

Ans. We are prohibited from collecting for any portion of the Medicaid take-out that was not related to the injuries for which the patient recovered.

Jared Green, NH Assoc for Justice - supports

Represents injured persons. This bill does more than HB 577, deals with private insurance. Insurance companies increasingly demand 100%, but that is unfair. This 2/3rds comes from worker comp statute.

Rep. Gary Richardson: Amend to take out Medicaid? Ans. depends on outcome of HB 577 bill in Senate.

2:35 pm

Testimony

HB 1259

**DHHS, Testimony of Jennifer R. Jones
and
Francesca Hennessy**

January 26, 2010

Good afternoon, my name is Jennifer Jones and I am General Counsel to the Department of Health and Human Services, Division of Family Assistance. With me is Francesca Hennessy, General Counsel to the Third Party Liability Unit, the groups that actively pursues recovery for the State in circumstances where Medicaid recipients receive either monetary judgments or settlements for injuries sustained as a result of the fault of a third party.

For a number of reasons that we will address in this testimony, the Department opposes the passage of HB 1259.

In the first instance, by way of background, I would like to inform the Committee of a bit of information that governs the way that the Department currently recoups monies it has expended for the healthcare of individual who ultimately receive judgments or settlements and, ultimately, how this legislation change and affect that process.

The Department is required under Federal Law (42 U.S.C. 1396a(a)(25)(A)) to seek reimbursement from legally liable individuals, to the extent that payment has been made. This Federal statute was further clarified by the U.S. Supreme Court case of Ahlborn v. Arkansas Department of Health and Human Services, which stated that the ability to recoup Medicaid funds is limited to any portion of a judgment or settlement that is reasonably related to medical damages.

Routinely, Plaintiff's attorneys utilize the "commercial value" or "billed to rate" of medical costs to represent the medical injuries of the Plaintiff, which the Department considers legitimate. However, often times, because the Medicaid reimbursement rate is much lower than that "billed to rate", the portion of the settlement that can be reasonably apportioned to medical expenses equals or exceeds the Medicaid lien. In those circumstances, the Department is entitled to be reimbursed for 100 % of the funds that it expended for the care of the recipient. In circumstances where insurance coverage is inadequate to

For these reasons, the Department believes that the 2/3-cap set forth in this legislation violates the Department's Federal obligations under 42 U.S.C. 1396a and the standards set forth in Ahlborn.

There would also be a significant fiscal impact of this legislation in that the Department often times collects 100% of the Medicaid lien amount. For the calendar year 2009, the TPL unit settled approximately 200 claims directly totaling \$742,079.56 recovered. The average percentage of the lien amount recovered for that period was 88.89%. Had the recovery been capped at 2/3, the Department would have only recovered \$556,529.80, a loss of recovery in the amount of \$185,549.76. These tend to be the relatively smaller cases. For those referred to Legal, to Francesca, there has been recovery of

approximately \$727,806, many of which cases had a recovery of 100%. Again there would be the loss of funds recovered if there was a cap of 2/3.

Finally, the Department is concerned about the presumption that all cases would be overseen by the Courts. Currently only one case that Francesca has been involved with over the last year is involved in direct litigation. Requiring that all of the hundreds of cases handled by the Department would require Court pleadings would be unduly burdensome on the Department.

Thank you for your time regarding this matter, I would be happy to answer any questions from the Committee at this time.

Jennifer R. Jones
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Brown Building
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603-271-3013
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Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1259

BILL TITLE: relative to subrogation claims and liens in civil actions.

DATE: February 16, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. Nixon OLS Document #: 2010 0777h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/AITL, Interim Study (Please circle one.)

Moved by Rep. Nixon

Seconded by Rep. O'Brien

Vote: Voice Vote (Please attach record of roll call vote.)

Motions: OTP, OTP/AITL, Interim Study (Please circle one.)

Moved by Rep. Nixon

Seconded by Rep. Watrous

Vote: 13-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on 1259

BILL TITLE: relative to subrogation claims and liens in civil actions.

DATE: ~~(Type DATE)~~ February 16, 2010

LOB ROOM: 208

Amendments:

withdrawn

- Sponsor: Rep. Nixon, Potter
- Sponsor: Rep. Nixon, Potter
- Sponsor: Rep. Nixon, D'Brien

- OLS Document #: ~~0210-0741h~~
- OLS Document #: ~~strike, or the state~~
- OLS Document #: ~~from 0210-0741h~~
0210-~~0741h~~ voice
0777h UNANIMOUS

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Nixon

Seconded by Rep. Watrous

Vote: 13/0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Philip Preston
Rep. Philip Preston, Clerk

JUDICIARY

Bill #: B1259 Title: _____

PH Date: ____/____/____

Exec Session Date: 02/16/10

Motion: OTR/A

Amendment #: 0210-^{0777A}~~AD2604~~

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B		
Weber, Lucy M		
Browne, Brendon S		
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R		
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M		
Perkins, Lawrence B		
Silva, Peter L		
Smith, William B	Y	

TOTAL VOTE:
Printed: 12/18/2009

13Y

0N

Committee Report

CONSENT CALENDAR

February 18, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred

HB1259,

AN ACT relative to subrogation claims and liens in civil actions. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. David L Nixon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB1259
Title:	relative to subrogation claims and liens in civil actions.
Date:	February 18, 2010
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill, as amended, will place subrogation claims and liens provided for in insurance contracts on the same footing as statutory workers' compensation liens, in that if the injured claimant recovers damages from a wrong doing third party, the costs of the recovery will be fairly apportioned by the court as between and amongst the interested parties "as justice may require." It means that all who share in any such recovery will also share fairly in the costs and expenses relating to the recovery.

Vote 13-0.

Rep. David L Nixon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB 1259, relative to subrogation claims and liens in civil actions. **OUGHT TO PASS WITH AMENDMENT.**

Rep. David L. Nixon for JUDICIARY. This bill, as amended, will place subrogation claims and liens provided for in insurance contracts on the same footing as statutory workers' compensation liens, in that if the injured claimant recovers damages from a wrong doing third party, the costs of the recovery will be fairly apportioned by the court as between and amongst the interested parties "as justice may require." It means that all who share in any such recovery will also share fairly in the costs and expenses relating to the recovery. **Vote 13-0.**

HB 1259, relative to subrogation claims and liens in civil actions.

Consent calendar OTP/A Vote: 13-0

Rep. David L. Nixon

This bill, as amended, will place subrogation claims and liens provided for in insurance contracts on the same footing as statutory workers' compensation liens, in that if the injured claimant recovers damages from a wrong doing third party, the costs of the recovery will be fairly apportioned by the court as between and amongst the interested parties "as justice may require." It means that all who share in any such recovery will also share fairly in the costs and expenses relating to the recovery.