

# Bill as Introduced

HB 1443 - AS INTRODUCED

2010 SESSION

10-2677

05/01

HOUSE BILL **1443**

AN ACT relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

SPONSORS: Rep. Nixon, Hills 17; Rep. Craig, Hills 9; Rep. Leishman, Hills 3; Rep. T. Russell, Rock 13; Rep. Ramsey, Hills 8

COMMITTEE: Judiciary

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ANALYSIS

This bill provides that when a Medicaid, statutory or other lien or subrogation claim is asserted against a recipient's third-party settlement or award, the court shall apportion the award between the recipient and the state, lienholder, or subrogation claimant as justice may require, provided that reimbursement shall not exceed 2/3's of the amount claimed by the state, lienholder, or subrogation claimant, as the case may be.

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Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

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

1           1 Medicaid, Statutory and Other Liens or Subrogation Claims for Public Assistance or Medical  
2 Expenses. RSA 167:14-a, III-a is repealed and reenacted to read as follows:

3           III-a. Whenever a Medicaid, statutory, or other lien or subrogation claim is asserted for  
4 reimbursement for medical expenses as to a recipient's recovery against a third party, the court in  
5 which the action is pending shall order such division of expenses and costs, including attorneys' fees,  
6 between the recipient and the state or private entity asserting such lien or claim, as justice may  
7 require. Notwithstanding the foregoing, in no event shall such reimbursement exceed two-thirds of  
8 the amount claimed by the state or private entity.

9           2 Repeal. RSA 167:14-a, IV, relative to the procedure for disbursement of third-party  
10 settlements to medical assistance recipients, is repealed.

11          3 Effective Date. This act shall take effect January 1, 2011.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1443

**BILL TITLE:** relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

**DATE:** January 28, 2010

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

**Time Adjourned:** 2:53 p.m.

(please circle if present)

**Committee Members:** Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. 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. Craig, Hills 9; LRep. Leishman, Hills 3; Rep. T. Russell, Rock 13; Ramsey, Hills 8

TESTIMONY

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

**Rep. David Nixon, sponsor**

Under this bill Medicaid, statutory and subrogation claims etc (in addition to worker's comp) would be subject to a two-thirds limitation on the amount recoverable by the state or private entity (some of which insist upon 100%, and there are no guidelines as to what the payback should be). Would be agreeable to an amendment that would strike the last sentence in lines 7 and 8.

**Rep. Lucy Weber.** Confused. Thought purpose was to limit the recovery to a governmental unit. Is the process arbitrary? Ans. Historical amount for workers' comp is roughly 2/3rds. There may be situations where the court would think that more is justified. [Gives example of medical injury.]

**Rep. Gary Richardson.** Other types of subrogation claim: private insurance company.

**Jared Green, New Hampshire Association for Justice (NHAJ)- comments**

Agrees with Rep. David Nixon re: private health insurance lien. Has put a lot of input into HB 577 with NHAJ. He is in favor of the flexible approach recommended by Rep. Nixon for

private insurance, but agrees that HB 577 (which has passed the House) is better than this one. Prefers HB 577, if there is a conflict with HB1443.

**\*Jennifer Jones & Francesca Hennessy, Dept Health and Human Services (DHHS)**  
HB 1259, same testimony. This bill conflicts with federal regulations & law. DHHS can claim 100%, not two-thirds. Agrees that HB 577 is better than this one.

Respectfully submitted,

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

Philip Preston, Clerk



HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1443

**BILL TITLE:** relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

**DATE:** *January 28, 2010*

**LOB ROOM:** 208

**Time Public Hearing Called to Order:** *2:30 p.m.*

**Time Adjourned:** *2:53*

(please circle if present)

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

*Read*

**Bill Sponsors:** Rep. Nixon, Hills 17; Rep. ICraig, Hills 9; LRep. Leishman, Hills 3; Rep. T. Russell, Rock 13; Ramsey, Hills 8

TESTIMONY

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

FROM: Rep. Philip Preston, Clerk  
DATE: Public hearing January 28, 2010  
SUBJECT: Meeting minutes on HB 1443, relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

HB 1443 relative to Medicaid, statutory and other liens or subrogation claims for public assistance 2:30pm

Rep. David Nixon, sponsor

Under this bill Medicaid, statutory and subrogation claims etc (in addition to worker's comp) would be subject to a 2/3rds limitation on the amount recoverable by the state or private entity (some of which insist upon 100%, and there are no guidelines as to what the payback should be). Would be agreeable to an amendment that would strike the last sentence in lines 7&8.

Rep. Lucy Weber. Confused. Thought purpose was to limit the recovery to a governmental unit. Is the process arbitrary? Ans. Historical amount for workers' comp is roughly 2/3rds. There may be situations where the court would think that more is justified. [Gives example of medical injury.]

Rep. Gary Richardson. Other types of subrogation claim: private insurance company.

Jared Green, NH Asn for Justice - comments

Agree w/ Rep. David Nixon re: private health insurance lien. Has put a lot of input into HB 577 with NHAJ. He is in favor of the flexible approach recommended by Rep. Nixon for private insurance but agrees that HB 577 (which has passed the House) is better than this one. Prefers HB 577 if there is a conflict with HB1443.

\*Jennifer Jones & Francesca Hennessy, Dept HHS

HB 1259, same testimony. This bill conflicts with federal regulations & law. DHHS can claim 100%, not 2/3ds. Agrees that HB 577 is better than this one.

2:53

# Testimony

**HB 1443**

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

**January 28, 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 1443.

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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Concord, NH 03301  
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[jennifer.jones@dhhs.state.nh.us](mailto:jennifer.jones@dhhs.state.nh.us)

Francesca Hennessy  
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[francesca.stabile@dhhs.state.nh.us](mailto:francesca.stabile@dhhs.state.nh.us)

# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1443

**BILL TITLE:** relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

**DATE:** February 16, 2010

**LOB ROOM:** 208

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Nixon

Seconded by Rep. Thompson

Vote: 11-4 (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: NO**

(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 HB 1443

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Amendments:

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OLS Document #:

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OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Nixon

Seconded by Rep. Thompson

Vote: 11/4 (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,

Rep. Philip Preston, Clerk



JUDICIARY

Bill #: HB 1443 Title: \_\_\_\_\_

PH Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Exec Session Date: 02, 16, 10

Motion: ITL

Amendment #: \_\_\_\_\_

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	Y	
Weber, Lucy M	Y	
<del>Byrd, Brandon S</del> <u>Read, R</u>		
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H		N
Elliott, Nancy J		N
DiFruscia, Anthony R		
Mead, Robert D		N
O'Brien, William L		N
Hagan, Joseph M		
Perkins, Lawrence B		
Silva, Peter L		
Smith, William B	Y	

TOTAL VOTE:

Printed: 12/18/2009

11Y

4N

# Committee Report

REGULAR CALENDAR

February 17, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HB1443,

AN ACT relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. David L Nixon

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY  
COMMITTEE REPORT**

Committee: JUDICIARY  
Bill Number: HB1443  
Title: relative to Medicaid, statutory and other liens or  
subrogation claims for public assistance or medical  
expenses.  
Date: February 17, 2010  
Consent Calendar: NO  
Recommendation: INEXPEDIENT TO LEGISLATE

**STATEMENT OF INTENT**

The majority of the committee believes that the purposes of this bill are better pursued by other pending legislation, which does not involve the state's lien for Medicaid assistance provided.

Vote 11-4

Rep. David L Nixon  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB1443, relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses. **INEXPEDIENT TO LEGISLATE.**

Rep. David L Nixon for the **Majority** of JUDICIARY. The majority of the committee believes that the purposes of this bill are better pursued by other pending legislation, which does not involve the state's lien for Medicaid assistance provided. **Vote 11-4.**

Original: House Clerk  
Cc: Committee Bill File

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REGULAR CALENDAR

February 17, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred HB1443,

AN ACT relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses.

Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. William L O'Brien

FOR THE MINORITY OF THE COMMITTEE

**MINORITY  
COMMITTEE REPORT**

Committee: JUDICIARY  
Bill Number: HB1443  
Title: relative to Medicaid, statutory and other liens or  
subrogation claims for public assistance or medical  
expenses.  
Date: February 17, 2010  
Consent Calendar: NO  
Recommendation: OUGHT TO PASS

**STATEMENT OF INTENT**

When a government or private lien or a subrogation claim is asserted against an injured person's lawsuit recovery against a third party, it is appropriate that the expenses and costs of obtaining that recovery be shared among all those sharing in the recovery. It is not appropriate that the costs be paid entirely out of the amount the injured person receives. HB 1443 would allow the Court to adjust the payments to lien holders and claim subrogee to the extent necessary to obtain that fair result.

Rep. William L O'Brien  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

**HB1443**, relative to Medicaid, statutory and other liens or subrogation claims for public assistance or medical expenses. **OUGHT TO PASS.**

Rep. William L O'Brien for the **Minority** of JUDICIARY. When a government or private lien or a subrogation claim is asserted against an injured person's lawsuit recovery against a third party, it is appropriate that the expenses and costs of obtaining that recovery be shared among all those sharing in the recovery. It is not appropriate that the costs be paid entirely out of the amount the injured person receives. HB 1443 would allow the Court to adjust the payments to lien holders and claim subrogee to the extent necessary to obtain that fair result.

Original: House Clerk  
Cc: Committee Bill File