

FILED MAR 15 1978

SENATE FILE 2190

By COMMITTEE ON HUMAN RESOURCES

Passed Senate, Date 3-22-78 (p. 223) Passed House, Date 5-3-78 (p. 2184)

Vote: Ayes 47 Nays 0 Vote: Ayes 93 Nays 0

Approved

June 12, 1978

Repassed June 20 5-9-78 (p. 1345)

44 - 0

### A BILL FOR

1 An Act creating in the department of social services the  
2 right of subrogation to recover payments made under the  
3 medical assistance program.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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#### HOUSE AMENDMENT TO SENATE FILE 2190

S-5811

1 Amend Senate File 2190 as passed by the Senate  
2 as follows:

3 1. Page 1, by inserting after line 31 the follow-  
4 ing:

5 "3. The subrogation rights of the department shall  
6 be valid and binding on an insurer or other third  
7 party only upon notice by the department or unless  
8 the insurer or third party has actual notice that  
9 the recipient is receiving medical assistance from  
10 the department and only to the extent to which such  
11 insurer or third party has not made payment to the  
12 recipient or an assignee of the recipient prior to  
13 such notice. Payment of benefits by an insurer or  
14 third party pursuant to the subrogation rights  
15 hereunder shall discharge such insurer or third party  
16 from liability to the recipient or the recipient's  
17 assignee to the extent of such payment to the  
18 department."

19 2. By renumbering subsections to conform to this  
20 amendment.

S-5811 FILED  
MAY 5, 1978

RECEIVED FROM THE HOUSE

*Senate concurred 5/9 (p. 1345)*

1 Section 1. Chapter two hundred forty-nine A (249A), Code  
2 1977, is amended by adding the following new section:

3 NEW SECTION. SUBROGATION.

4 1. When payment is made by the department for medical  
5 care or expenses through the medical assistance program on  
6 behalf of any recipient, the department shall be subrogated,  
7 to the extent of those payments, to all monetary claims which  
8 the recipient may have against third parties as a result of  
9 the medical care or expenses received or incurred. No  
10 compromise, including but not limited to a settlement, waiver  
11 or release, of any claim to which the department is subrogated  
12 under this section shall defeat the department's right of  
13 recovery except pursuant to the written agreement of the  
14 commissioner or the commissioner's designee.

15 2. The department shall be given notice of monetary claims  
16 against third parties as follows:

17 a. Applicants for medical assistance shall notify the  
18 department of any possible claims against third parties upon  
19 submitting the application. Recipients of medical assistance  
20 shall notify the department of any possible claims when those  
21 claims arise.

22 b. Any person who provides health care services to a  
23 person receiving assistance through the medical assistance  
24 program shall notify the department whenever the person has  
25 reason to believe that third parties may be liable for payment  
26 of the costs of those health care services.

27 c. Any attorney representing an applicant for or reci-  
28 pient of assistance on a claim to which the department is  
29 subrogated under this section shall notify the department  
30 of the claim prior to filing any claim, commencing any action  
31 or negotiating any settlement offer.

6439

32 3. In the event a recipient of assistance through the  
33 medical assistance program incurs the obligation to pay attor-  
34 ney fees and court costs for the purpose of enforcing a  
35 monetary claim to which the department is subrogated under

1 this section, the amount which the department is entitled  
2 to recover under subsection one (1) of this section, or any  
3 lesser amount which the department may agree to accept in  
4 compromise of its claim, shall be reduced by an amount which  
5 bears the same relation to the total amount of attorney fees  
6 and court costs actually paid by the recipient as the amount  
7 actually recovered by the department, exclusive of the  
8 reduction for attorney fees and court costs, bears to the  
9 total amount paid by the third party to the recipient. An  
10 attorney acting on behalf of a recipient of medical assistance  
11 for the purpose of enforcing a claim to which the department  
12 is subrogated shall not collect from the recipient any amount  
13 as attorney fees which is in excess of the amount which the  
14 attorney customarily would collect on claims not subject to  
15 this section.

16 4. For purposes of this section the term "third party"  
17 includes any individual, institution, corporation, or public  
18 or private agency which is or may be liable to pay part or  
19 all of the medical costs incurred as a result of injury,  
20 disease or disability by or on behalf of an applicant for  
21 or recipient of assistance under the medical assistance  
22 program.

23 Sec. 2. This Act shall take effect January 1, 1979.

24 EXPLANATION

25 This bill provides that the department of social services  
26 shall have the right of subrogation to recover payments made  
27 on behalf of a recipient of assistance under the federal Title  
28 XIX medical assistance program from any person, including  
29 an insurance company, public or private agency, or tort feisor,  
30 who is liable to the recipient for losses incurred as a result  
31 of medical care or expenses. The bill provides that the  
32 department shall pay a proportionate share of any attorney  
33 fees incurred by the recipient in enforcing that liability.  
34 The bill also provides that applicants for or recipients of  
35 medical assistance, health care providers, and attorneys shall

1 notify the department of claims to which the department is  
2 subrogated.

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SENATE FILE 2190

H-6439

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1 Amend Senate File 2190 as passed by the Senate  
2 as follows:  
3 1. Page 1, by inserting after line 31 the follow-  
4 ing:  
5 "3. The subrogation rights of the department shall  
6 be valid and binding on an insurer or other third  
7 party only upon notice by the department or unless  
8 the insurer or third party has actual notice that  
9 the recipient is receiving medical assistance from  
10 the department and only to the extent to which such  
11 insurer or third party has not made payment to the  
12 recipient or an assignee of the recipient prior to  
13 such notice. Payment of benefits by an insurer or  
14 third party pursuant to the subrogation rights  
15 hereunder shall discharge such insurer or third party  
16 from liability to the recipient or the recipient's  
17 assignee to the extent of such payment to the  
18 department."  
19 2. By renumbering subsections to conform to this  
20 amendment.

H-6439 FILED *Adopted 5/3* BY WALTER of Pottawattamie  
MAY 1, 1978 *(p. 2190)* KREWSON of Polk

LSB 4064S

lb/jw/5

## SENATE FILE 2190

## FISCAL NOTE

Date: March 20, 1978  
 Requested by: Senator Charles Miller

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In compliance with a written request received March 14, 19 78, there is hereby submitted a Fiscal Note for Senate File 2190 pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

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Senate File 2190, An Act creating in the department of social services the right of subrogation to recover payments made under the medical assistance program.

This bill provides that the department of social services shall have the right of subrogation to recover payments made on behalf of a recipient of assistance under the federal Title XIX medical assistance program from any person, including an insurance company, public or private agency, or tort feisor, who is liable to the recipient for losses incurred as a result of medical care or expenses. The bill provides that the department shall pay a proportionate share of any attorney fees incurred by the recipient in enforcing that liability. The bill also provides that applicants for or recipients of medical assistance, health care providers, and attorneys shall notify the department of claims to which the department is subrogated.

Current annual recoveries for this type of third party resource is \$112,000. Assuming the amount of recoveries made would triple because of the mandatory reporting requirement, total annual recoveries would be \$336,000 or an increase of \$224,000.

Federal Share of Recovery	\$107,520	
State Share of Recovery	<u>116,480</u>	
Total Annual Recovery Increase		\$224,000

Assuming one additional clerical salary and support		<u>8,226</u>
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NET INCREASE IN ANNUAL RECOVERY		<u><u>\$215,774</u></u>
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SOURCE: DEPARTMENT OF SOCIAL SERVICES

FILED  
 MARCH 20, 1978

GERRY D. RANKIN-FISCAL DIRECTOR  
 LEGISLATIVE FISCAL BUREAU

SENATE FILE 2190

AN ACT

CREATING IN THE DEPARTMENT OF SOCIAL SERVICES THE RIGHT OF SUBROGATION TO RECOVER PAYMENTS MADE UNDER THE MEDICAL ASSISTANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter two hundred forty-nine A (249A), Code 1977, is amended by adding the following new section:

NEW SECTION. SUBROGATION.

1. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of any recipient, the department shall be subrogated, to the extent of those payments, to all monetary claims which the recipient may have against third parties as a result of the medical care or expenses received or incurred. No compromise, including but not limited to a settlement, waiver or release, of any claim to which the department is subrogated under this section shall defeat the department's right of recovery except pursuant to the written agreement of the commissioner or the commissioner's designee.

2. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. Any person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. Any attorney representing an applicant for or reci-

ipient of assistance on a claim to which the department is subrogated under this section shall notify the department of the claim prior to filing any claim, commencing any action or negotiating any settlement offer.

3. The subrogation rights of the department shall be valid and binding on an insurer or other third party only upon notice by the department or unless the insurer or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which such insurer or third party has not made payment to the recipient or an assignee of the recipient prior to such notice. Payment of benefits by an insurer or third party pursuant to the subrogation rights hereunder shall discharge such insurer or third party from liability to the recipient or the recipient's assignee to the extent of such payment to the department.

4. In the event a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department is subrogated under this section, the amount which the department is entitled to recover under subsection one (1) of this section, or any lesser amount which the department may agree to accept in compromise of its claim, shall be reduced by an amount which bears the same relation to the total amount of attorney fees and court costs actually paid by the recipient as the amount actually recovered by the department, exclusive of the reduction for attorney fees and court costs, bears to the total amount paid by the third party to the recipient. An attorney acting on behalf of a recipient of medical assistance for the purpose of enforcing a claim to which the department is subrogated shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

5. For purposes of this section the term "third party"

includes any individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

Sec. 2. This Act shall take effect January 1, 1979.

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ARTHUR A. NEU  
President of the Senate

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DALE M. COCHRAN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2190, Sixty-seventh General Assembly.

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KEVIN P. LIGHT  
Acting Secretary of the Senate

Approved 6/12, 1978

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ROBERT D. RAY  
Governor