

House Human Res.
DO PASS 4-5-89 (p. 1295)

FILED MAR 09 1989

SENATE FILE 412
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 297.1)

Passed Senate, Date 3-27-89 (p. 1014) Passed House, Date 4-12-89 (p. 1506)
Vote: Ayes 49 Nays 0 Vote: Ayes 92 Nays 0
Approved 5-4-89 (p. 1909)

A BILL FOR

1 An Act relating to the medical assistance subrogation rights of
2 the department of human services.

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

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SF 412

1 Section 1. Section 249A.6, subsection 1, Code 1989, is
2 amended to read as follows:

3 1. When payment is made by the department for medical care
4 or expenses through the medical assistance program on behalf
5 of a recipient, the department is subrogated, to the extent of
6 those payments, to all monetary claims which the recipient may
7 have against third parties ~~as-a-result-of-the-medical-care-or~~
8 ~~expenses-received-or-incurred~~. A compromise, including but
9 not limited to a settlement, waiver or release, of a claim to
10 which the department is subrogated under this section does not
11 defeat the department's right of recovery except pursuant to
12 the written agreement of the director or the director's
13 designee or except as provided in this section. A settlement,
14 award, or judgment structured in any manner not to include
15 medical expenses or an action brought by a recipient or on
16 behalf of a recipient which fails to state a claim for
17 recovery of medical expenses does not defeat the department's
18 right of subrogation if there is any recovery on the
19 recipient's claim unless the claim for recovery of medical
20 expenses is barred by an applicable statute of limitation, or
21 the legal representative of the medical assistance recipient
22 does not represent the person or persons who have legal
23 standing to bring the claim for recovery of medical expenses.
24 In such situations, the legal representative shall notify the
25 department of the situation; the department may then notify
26 the person or persons having legal standing to bring the claim
27 of the right to proceed with the claim against the third-party
28 tort-feasor. Should the person or persons elect not to
29 proceed, the department may then proceed in a separate action
30 with a claim to recover its subrogation interest.

31 Sec. 2. Section 633.336, Code 1989, is amended to read as
32 follows:

33 633.336 DAMAGES FOR WRONGFUL DEATH.

34 When a wrongful act produces death, damages recovered
35 therefor as a result of the wrongful act shall be disposed of

1 as personal property belonging to the estate of the deceased,
2 however, if the damages include damages for loss of services
3 and support of a deceased spouse and parent, such the damages
4 shall be apportioned by the court among the surviving spouse
5 and children of the decedent in such a manner as the court may
6 deem equitable consistent with the loss of services and
7 support sustained by the surviving spouse and children
8 respectively. If the decedent leaves a spouse, child, or
9 parent, damages for wrongful death shall not be subject to
10 debts and charges of the decedent's estate, except for amounts
11 to be paid to the department of human services for payments
12 made for medical assistance pursuant to chapter 249A, paid on
13 behalf of the decedent from the time of the injury which gives
14 rise to the decedent's death up until the date of the
15 decedent's death.

16 EXPLANATION

17 This bill relates to the ability of the department of human
18 services to recover amounts paid for medical assistance under
19 Iowa Code chapter 249A and Title XIX of the federal Social
20 Security Act. The department is permitted recovery from a
21 personal injury case settlement, award, or judgment to the
22 recipient of the medical assistance payments as well as awards
23 to other persons acting on behalf of the recipient, regardless
24 of whether the settlement, award, or judgment specifically
25 provides for amounts related to medical expenses.

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**SENATE FILE 412
FISCAL NOTE**

A fiscal note for **SENATE FILE 412** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 412 expands the ability of the Department of Human Services to recover amounts paid for medical assistance, by allowing the Department to recover funds from a settlement, award, or judgment in personal injury cases for payments made by the Medical Assistance program.

Assumptions Used

1. Currently, DHS is not allowed to be repaid out of some personal injury suits for payments made by Medical Assistance. There is a case before the Iowa Supreme Court in which DHS claimed \$258,000 in expenses, and the recipient's attorneys have allocated DHS only \$88,000, or a loss of \$170,000. Situations similar to this are assumed to increase in FY 1990, for a total estimated loss in revenue of \$1,000,000 assuming current law.

Fiscal Estimate

(dollars in thousands)

| | Fiscal Year 1989 | | | Fiscal Year 1990 | | |
|----------------|-------------------|-----------------|------------------------|-------------------|-----------------|------------------------|
| | Current Law | Proposed Law | Increase (Decrease) | Current Law | Proposed Law | Increase (Decrease) |
| <u>REVENUE</u> | | | | | | |
| Other | | | | | | |
| To GF | (374) | 0 | 374 | (374) | 0 | 374 |
| To Fed | (629) | 0 | 629 | (629) | 0 | 629 |
| TOTAL | \$ (1,000) | \$ 0 | \$ 1,000 | \$ (1,000) | \$ 0 | \$ 1,000 |

Sources: Department of Human Services
Department of Inspections and Appeals

(LSB 2448sv, CAR)

FILED MARCH 22, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

SSB 297.1
HUMAN RESOURCES

SENATE FILE 412
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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2 amended to read as follows:

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4 or expenses through the medical assistance program on behalf
5 of a recipient, the department is subrogated, to the extent of
6 those payments, to all monetary claims which the recipient may
7 have against third parties ~~as-a-result-of-the-medical-care-or~~
8 ~~expenses-received-or-incurred~~. A compromise, including but
9 not limited to a settlement, waiver or release, of a claim to
10 which the department is subrogated under this section does not
11 defeat the department's right of recovery except pursuant to
12 the written agreement of the director or the director's
13 designee or except as provided in this section. A settlement,
14 award, or judgment structured in any manner not to include
15 medical expenses or an action brought by a recipient or on
16 behalf of a recipient which fails to state a claim for
17 recovery of medical expenses does not defeat the department's
18 right of subrogation if there is any recovery on the
19 recipient's claim unless the claim for recovery of medical
20 expenses is barred by an applicable statute of limitation, or
21 the legal representative of the medical assistance recipient
22 does not represent the person or persons who have legal
23 standing to bring the claim for recovery of medical expenses.
24 In such situations, the legal representative shall notify the
25 department of the situation; the department may then notify
26 the person or persons having legal standing to bring the claim
27 of the right to proceed with the claim against the third-party
28 tort-feasor. Should the person or persons elect not to
29 proceed, the department may then proceed in a separate action
30 with a claim to recover its subrogation interest.

31 Sec. 2. Section 633.336, Code 1989, is amended to read as
32 follows:

33 633.336 DAMAGES FOR WRONGFUL DEATH.

34 When a wrongful act produces death, damages recovered
35 therefor as a result of the wrongful act shall be disposed of

1 as personal property belonging to the estate of the deceased,
2 however, if the damages include damages for loss of services
3 and support of a deceased spouse and parent, such the damages
4 shall be apportioned by the court among the surviving spouse
5 and children of the decedent in such a manner as the court may
6 deem equitable consistent with the loss of services and
7 support sustained by the surviving spouse and children
8 respectively. If the decedent leaves a spouse, child, or
9 parent, damages for wrongful death shall not be subject to
10 debts and charges of the decedent's estate, except for amounts
11 to be paid to the department of human services for payments
12 made for medical assistance pursuant to chapter 249A, paid on
13 behalf of the decedent from the time of the injury which gives
14 rise to the decedent's death up until the date of the
15 decedent's death.

16 EXPLANATION

17 This bill relates to the ability of the department of human
18 services to recover amounts paid for medical assistance under
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RICKSAN, CH.
HANNON
TINSMAN

SSB 297
HUMAN RESOURCES

SENATE FILE 412
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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9 not limited to a settlement, waiver or release, of a claim to
10 which the department is subrogated under this section does not
11 defeat the department's right of recovery except pursuant to
12 the written agreement of the director or the director's
13 designee or except as provided in this section. A settlement,
14 award, or judgment structured in any manner not to include
15 medical expenses or an action brought by a recipient which
16 fails to state a claim for recovery of medical expenses does
17 not defeat the department's right of subrogation if there is
18 any recovery on the recipient's claim. The department is not
19 required to accept payments over an extended time period
20 pursuant to any settlement, award, or judgment, but is
21 entitled to a lump-sum payment, except pursuant to the written
22 agreement of the director or the director's designee.
23 However, the department's right of subrogation does not apply
24 to a claim for recovery or a claim for medical expenses which
25 is barred by a statute of limitation. Counsel for a recipient
26 who does not have standing to bring a claim for recovery of
27 medical expenses shall notify a person who has standing of the
28 person's right to proceed with a claim. If the person does
29 not proceed, the department may proceed with a separate action
30 to recover on the subrogated claim.

31 Sec. 2. Section 633.336, Code 1989, is amended to read as
32 follows:

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35 therefor as a result of the wrongful act shall be disposed of

1 as personal property belonging to the estate of the deceased,
2 however, if the damages include damages for loss of services
3 and support of a deceased spouse and parent, such the damages
4 shall be apportioned by the court among the surviving spouse
5 and children of the decedent in such a manner as the court may
6 deem equitable consistent with the loss of services and
7 support sustained by the surviving spouse and children
8 respectively. If the decedent leaves a spouse, child, or
9 parent, damages for wrongful death shall not be subject to
10 debts and charges of the decedent's estate, except for amounts
11 to be paid to the department of human services for medical
12 assistance payments made pursuant to chapter 249A by the
13 department for the decedent which relate to the wrongful act.

14 EXPLANATION

15 This bill relates to the ability of the department of human
16 services to recover amounts paid for medical assistance under
17 Iowa Code chapter 249A and Title XIX of the federal Social
18 Security Act. The department is permitted recovery from a
19 personal injury case settlement, award, or judgment to the
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SENATE FILE 412

AN ACT

RELATING TO THE MEDICAL ASSISTANCE SUBROGATION RIGHTS OF
THE DEPARTMENT OF HUMAN SERVICES.

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

Section 1. Section 249A.6, subsection 1, Code 1989, is amended to read as follows:

1. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department is 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~~. A compromise, including but not limited to a settlement, waiver or release, of a claim to which the department is subrogated under this section does not defeat the department's right of recovery except pursuant to the written agreement of the director or the director's designee or except as provided in this section. A settlement,

award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's right of subrogation if there is any recovery on the recipient's claim unless the claim for recovery of medical expenses is barred by an applicable statute of limitation, or the legal representative of the medical assistance recipient does not represent the person or persons who have legal standing to bring the claim for recovery of medical expenses. In such situations, the legal representative shall notify the department of the situation; the department may then notify the person or persons having legal standing to bring the claim of the right to proceed with the claim against the third-party tort-feasor. Should the person or persons elect not to proceed, the department may then proceed in a separate action with a claim to recover its subrogation interest.

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When a wrongful act produces death, damages recovered therefor as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased, however, if the damages include damages for loss of services and support of a deceased spouse and parent, such the damages shall be apportioned by the court among the surviving spouse and children of the decedent in such a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse and children respectively. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursuant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives

rise to the decedent's death up until the date of the
decedent's death.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 412, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved 5/4, 1989

TERRY E. BRANSTAD
Governor

SF 412