

**§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.**

(a) The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery against any third party who was overpaid. If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. If, prior to the Plan exercising its rights under this section, a Plan member utilizes or otherwise disposes of any amounts that were recovered from a liable third party to which the Plan is entitled under this section, then the Plan may pursue alternative judicial remedies against the Plan member to recover the amount to which the Plan is entitled, including the pursuit of a judgment and lien against real property.

(c1) The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered by a Plan member against any liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

(e) The priority of any lien held by the State Health Plan for Teachers and State Employees shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. (2004-124, s. 31.25; 2006-264, s. 66(a); 2008-168, ss. 1(a), 3(a), (t); 2011-85, ss. 2.6(j), 2.10; 2018-52, ss. 3, 5(a).)