

# HOUSE . . . . . No. 4362

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, February 12, 2024.

The committee on The Judiciary to whom was referred the petition (accompanied by bill, House, No. 1750) of Jeffrey N. Roy, Margaret R. Scarsdale and John Barrett, III relative to equitable allocation of recovery proceeds for certain subrogation claims, reports recommending that the accompanying bill (House, No. 4362) ought to pass.

For the committee,

MICHAEL S. DAY.

**HOUSE . . . . . No. 4362**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act concerning equitable allocation of recovery proceeds for subrogation claims.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 70A of chapter 111 of the General Laws, as appearing in the 2022  
2 Official Edition, is hereby amended by inserting after the first sentence the following sentences:-

3           Any attorney’s fees and costs incurred in enforcing liability and obtaining such judgment,  
4 settlement or compromise shall be divided between the health maintenance organization,  
5 hospital, medical or dental service corporation and the injured person in proportion to the amount  
6 received by them from any such judgment, settlement or compromise. If the settlement or  
7 judgment, or funds available to satisfy the judgment, are less than the amount of the injured  
8 person’s total damages, the court may, after a hearing and evaluation of the injured party’s total  
9 damages, reduce the amount of the lien.

10           SECTION 2. Said chapter 111, as so appearing, is hereby further amended by inserting  
11 after section 70D the following section:-

12           Section 70D ½. Notwithstanding the provisions of sections 70A to 70D, inclusive, and  
13 any contractual term to the contrary, no health maintenance organization or group or individual

14 medical or disability insurer that has provided benefits for covered services to an injured person  
15 shall have a lien, right of reimbursement, subrogation claim or claim of recoupment upon any  
16 recovery or sum had, collected or to be collected, whether by judgment, settlement or  
17 compromise, from another person as damages on account of such injuries for more than the  
18 proportionate share of said recovery or sum subject to its lien, right of reimbursement,  
19 subrogation claim or claim of recoupment which the amount of benefits so provided for covered  
20 services bears to the total value of the injured person's damages.

21           The entity which provided benefits or the injured person may petition the court in which  
22 any case seeking damages on account of such injuries is pending, or in a court in which such  
23 case could be properly filed had settlement not been attained before commencement of suit, for a  
24 determination of the reasonableness of the settlement and the fair allocation of amounts payable  
25 thereunder, including any attorneys' fees or costs incurred obtaining any recovery or sum from a  
26 third party as damages on account of such injuries. A hearing on such petition shall adhere to the  
27 same procedural requirement as provided in section 15 of chapter 152.

28           SECTION 3. Chapter 231 of the General Laws, as so appearing, is hereby amended by  
29 inserting after section 140C½ the following section:-

30           Section 140D. In any action in which an injured person enters into a settlement with or  
31 obtains a judgment from a third party, and benefits for such person's injuries have been paid  
32 under chapter 152, and the injured person and the insurer paying said benefits do not agree to the  
33 amount each is entitled to recover out of such settlement or judgment, the court or authority  
34 authorized to approve settlements under section 15 of chapter 152 shall determine a just and  
35 reasonable apportionment thereof in accordance with this section; provided, however, if the

36 settlement or judgment, or funds available to satisfy the judgment, are less than the amount of the  
37 injured person's total damages, the court or other authority authorized to approve settlements  
38 under section 15 of chapter 152 may after hearing and evaluation of the injured party's total  
39 damages reduce the amount of the lien. Except in the case of a final judgment, the injured party  
40 may withdraw consent to settlement if dissatisfied with the apportionment by the court.