

SUBJECT: Using subrogation to recover Medicaid payments

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Naishtat, Chavez, Christian, Davila, Maxey, McReynolds, Wohlgemuth

0 nays

1 absent — Krusee

SENATE VOTE: On final passage, March 5 — 31-0

WITNESSES: For — None

Against — None

On — Phyllis Coombes, Comptroller's Office

BACKGROUND : Applicants filing for medical assistance under the state Medicaid program assign to the state their right of recovery from personal insurance and other sources, including another person whose negligence or wrong caused the personal injury. The Health and Human Services Commission (HHSC) is authorized to designate agents to collect funds that the commission is entitled to recover from third parties under these claims. Such assumption of another's legal right to collect a debt or damages is called subrogation.

DIGEST: CSSB 534 would require HHSC to contract for recovering money under a subrogation or third-party reimbursement right held by the commission or a health and human services agency because of state payment of medical expenses. Other state agencies could be parties to the contract. Compensation would be based on a percentage of the amount recovered by the contractor. The contractor could represent the commission in court to recover money if such representation would be cost-effective and was specifically authorized.

If no contractor could be identified, the commission would have to develop and implement alternative policies to ensure the collection of money under a

subrogation right. It also would be required to develop a claims identification process to assist in recovering subrogated claims.

The bill would allow hospital providers as well to recover funds from third parties to which the HHSC had a right. Hospitals could file liens to recover their charges but would have to reimburse HHSC or other agency for any amount previously paid by the commission. The combined amounts received by the hospital provider from HHSC or a third party could not exceed the amount charged by the hospital for the recipient's first 100 days of hospitalization.

HHSC would have to enter into an initial contract or implement the alternative policies by February 1, 1998. It would have to report on progress and results achieved to the governor, the lieutenant governor, the speaker of the House and standing legislative committees overseeing human services by September 1, 1998.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

CSSB 534 would implement a Texas Performance Review recommendation to enhance collected of subrogated claims arising from Medicaid payments. The use of subrogation is a common practice in the insurance industry, and several state agencies already successfully use subrogation. The Texas Worker's Compensation Commission, for example, assumes the injured worker's right to sue the responsible party up to the amount of the board's payments. The Office of the Attorney General, in its role as administrator of the crime victims fund, assumes its clients' right of recovery from personal insurance or any other source to defray its costs.

State Medicaid collections from third-party reimbursements of accident cases average about \$5,500 per case. Through July 1996, 651 cases had been identified that involved accidents in which the person at fault had no liability insurance. A collection rate of \$2,000 per case would allow Texas to recover \$200,000 if at least 100 cases were identified, and this rate of recovery would save \$1.6 million over the next biennium.

CSSB 534 would in no way affect an injured person's right to be made whole by a negligent person or to retain money from a settlement that was above the amount paid by the state Medicaid program. The bill would simply allow the state to go after an award to recover money paid through Medicaid or the state rehabilitation fund and make sure that it was reimbursed for monies expended if the client receives a settlement.

OPPONENTS
SAY:

CSSB 534 could allow a private contractor to cut a deal with the negligent third party that was against the interest of the client. In addition, the provision allowing hospital providers to recover funds from a third party to which the HHSC was entitled could conflict with both federal Medicaid law and case law.

NOTES:

The committee substitute added the section allowing hospitals to collect costs of treating a Medicaid client if a private cause of action resulted in an award and requiring reimbursement to the state.

Rep. Maxey plans to offer a floor amendment that would correct a drafting error by removing language relating to a hospital recovering funds to which HHSC had a right of recovery.