

BILL ANALYSIS

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S.B. 1339
By: Duncan
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties report that health insurance carriers nationwide have become very aggressive about collecting under subrogation agreements when such a practice is legal. With respect to health insurance carriers, interested parties report that subrogation agreements most commonly become an issue when the health insurance carrier pays an injured claimant's medical bills and then assumes the right to any remedies the claimant has against the injuring party as a means of recovering for itself the amount of the claim paid to the insured for the loss. The parties contend that inequities arise when the party responsible for an injury does not have adequate assets or insurance to make the injured party whole. The interested parties also report that there are circumstances where subrogation carriers recover the amount of benefits they paid without contributing to the injured party's legal fees or expenses to achieve that recovery.

S.B. 1339 seeks to take a balanced approach to the issue of subrogation that addresses all parties to a health insurance transaction. S.B. 1339 clarifies that workers' compensation, Medicare, and Medicaid are excluded from this bill.

As proposed, S.B. 1339 amends current law relating to contractual subrogation rights of certain insurers and benefit plan issuers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140, as follows:

CHAPTER 140. CONTRACTUAL SUBROGATION RIGHTS OF PAYORS OF CERTAIN BENEFITS

Sec. 140.001. DEFINITIONS. Defines "covered individual" and "payor of benefits" or "payor" in this chapter.

Sec. 140.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies to an issuer of a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, a disability benefit plan, or an employee welfare benefit plan, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document, including:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 842 (Group Hospital Service Corporations), Insurance Code;

- (3) a fraternal benefit society operating under Chapter 885 (Fraternal Benefit Societies), Insurance Code;
- (4) a stipulated premium insurance company operating under Chapter 884 (Stipulated Premium Insurance Companies), Insurance Code;
- (5) a reciprocal exchange operating under Chapter 942 (Reciprocal and Interinsurance Exchanges), Insurance Code;
- (6) a health maintenance organization operating under Chapter 843 (Health Maintenance Organizations), Insurance Code;
- (7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846 (Multiple Employer Welfare Arrangements), Insurance Code; or
- (8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844 (Certification of Certain Nonprofit Health Corporations), Insurance Code.

(b) Provides that, notwithstanding Section 172.014 (Application of Certain Laws), Local Government Code, or any other law, this chapter applies to a risk pool providing health and accident coverage under Chapter 172 (Texas Political Subdivisions Uniform Group Benefits Program), Local Government Code.

(c) Provides that, notwithstanding any provision in Chapter 1551 (Texas Employees Group Benefits Act), 1575 (Texas Public School Employees Group Benefits Program), 1579 (Texas School Employees Uniform Group Health Coverage), or 1601 (Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System), Insurance Code, or any other law, this chapter applies to an issuer of:

- (1) a basic coverage plan under Chapter 1551, Insurance Code;
- (2) a basic plan under Chapter 1575, Insurance Code;
- (3) a primary care coverage plan under Chapter 1579, Insurance Code; and
- (4) basic coverage under Chapter 1601, Insurance Code.

(d) Provides that, notwithstanding any other law, this chapter applies to any self-funded issuer of a plan that provides a benefit described by Subsection (a).

(e) Provides that this chapter applies to any policy, evidence of coverage, or contract under which a benefit described by Subsection (a) is provided and that is delivered, issued for delivery, or entered into in this state or under which an individual or group in this state is entitled to benefits.

Sec. 140.003. **CONFLICTS WITH OTHER LAW.** Provides that, in the event of a conflict between this chapter and another law, including a rule of procedure or evidence, this chapter controls to the extent of the conflict.

Sec. 140.004. **CONTRACTUAL SUBROGATION RIGHTS AUTHORIZED.** Authorizes an issuer of a plan that provides benefits described by Section 140.002 under which the policy or plan issuer may make payments to or on behalf of a covered individual as a result of a personal injury to the individual caused by the tortious conduct of a third party to contract to be subrogated to and have a right of reimbursement from the individual's recovery for that injury, subject to this chapter.

Sec. 140.005. PAYOR'S RECOVERY LIMITED. (a) Provides that if an injured covered individual to whose rights a payor of benefits is subrogated is not able to realize a complete and adequate recovery for an injury sustained as a result of the actionable tortious conduct of a third party, the payor is entitled to recover as provided by Subsection (b).

(b) Provides that, subject to Subsections (c), (d), and (e), a payor's share under Subsection (a) of a covered individual's recovery is an amount that is equal to the lesser of one-third of the covered individual's total recovery or the total cost of benefits paid by the payor as a direct result of the tortious conduct of the third party.

(c) Authorizes a covered individual to bring a declaratory judgment action to limit the amount of a payor's recovery under this section to an amount that is less than the amount otherwise payable under Subsection (b), as provided by Subsections (d) and (e).

(d) Provides that if, in an action under Subsection (c), the covered individual proves by a preponderance of the evidence that the covered individual's total recovery is less than 50 percent of the value of the covered person's underlying claim for damages, the payor's total recovery under this section is limited to an amount that is not less than 15 percent of and not more than one-third of the covered individual's total recovery.

(e) Provides that if, in an action under Subsection (c), the covered individual shows by clear and convincing evidence that the payor's recovery of an amount otherwise payable under this section would result in a recognized injustice, the payor's total recovery under this section is limited to an amount that is less than 15 percent of and equal to or greater than five percent of the covered individual's total recovery.

(f) Provides that a common law doctrine that requires an injured party to be made whole before a subrogee makes a recovery does not apply to the recovery of a payor under this section.

Sec. 140.006. ATTORNEY'S FEES IN ACTION TO LIMIT SUBROGEE'S RECOVERY. Prohibits the court, notwithstanding Section 37.009 (Costs) or any other law, in an action brought under Section 140.005(c), from awarding costs or attorney's fees to any party in the action.

Sec. 140.007. ATTORNEY'S FEES IN THIRD-PARTY ACTION. (a) Requires a payor of benefits whose interest is not actively represented by an attorney in a third-party action to recover for a personal injury to a covered individual, except as provided by Subsection (c), to pay to an attorney representing the covered individual a fee in an amount determined under an agreement entered into between the attorney and the payor plus a pro rata share of expenses incurred in connection with the recovery.

(b) Requires the court, except as provided by Subsection (c), in the absence of an agreement described by Subsection (a), to award to the attorney, payable out of the payor's share of the total recovery, a reasonable fee for recovery of the payor's share, not to exceed one-third of the payor's recovery.

(c) Prohibits a payor, notwithstanding Subsection (a) or (b), from being assessed out of a recovery limited under Section 140.005(d) or (e) any attorney's fees under any theory or rule of law, including the common fund doctrine.

Sec. 140.008. FIRST PARTY RECOVERY. Prohibits a payor of benefits from pursuing a recovery against a covered individual's first party recovery.

Sec. 140.009. CONSTRUCTION OF CHAPTER. Provides that, except as provided by Section 140.005(c), this chapter does not create a cause of action.

SECTION 2. Provides that the change in law made by this Act applies only to a contractual right of subrogation in an insurance policy or evidence of coverage delivered, issued for delivery, or renewed on or after the effective date of this Act or a contract entered into or renewed on or after the effective date of this Act

SECTION 3. Effective date: January 1, 2014.