

## **BILL ANALYSIS**

Senate Research Center

H.B. 1869  
By: Price et al. (Duncan)  
State Affairs  
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Engrossed

### **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 parties legal fees or expenses to achieve that recovery.

H.B. 1869 seeks to take a balanced approach to the issue of subrogation that addresses all parties to a health insurance transaction.

H.B. 1869 amends current law relating to contractual subrogation and other recovery 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" for 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 other law, this chapter applies to an issuer of a plan or coverage under 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.

(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.

(f) Provides that this chapter does not apply to:

(1) a workers' compensation insurance policy or any other source of medical benefits under Title 5 (Workers' Compensation), Labor Code;

(2) Medicare;

(3) the Medicaid program under Chapter 32 (Medical Assistance Program), Human Resources Code;

(4) a Medicaid managed care program operated under Chapter 533 (Public Disclosure), Government Code;

(5) the state child health plan or any other program operated under Chapter 62 (Child Health Plan for Certain Low-Income Children) or 63 (Health Benefits Plan for Certain Children), Health and Safety Code; or

(6) a self-funded plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

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 be obligated to make payments or provide medical or surgical benefits 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 for payments made or costs of benefits provided from the individual's recovery for that injury, subject to this chapter.

Sec. 140.005. PAYORS' RECOVERY LIMITED. (a) Entitles all payors, if an injured covered individual is entitled by law to seek a recovery from the third-party tortfeasor for benefits paid or provided by a subrogee as described by Section 140.004, to recover as provided by Subsection (b) or (c).

(b) Provides that this subsection applies when a covered individual is not represented by an attorney in obtaining a recovery. Provides that all payors' share under Subsection (a) of a covered individual's recovery is an amount that is equal to the lesser of one-half of the covered individual's gross recovery or the total cost of benefits paid, provided, or assumed by the payor as a direct result of the tortious conduct of the third party.

(c) Provides that this subsection applies when a covered individual is represented by an attorney in obtaining a recovery. Provides that all payors' share under Subsection (a) of a covered individual's recovery is an amount that is equal to the lesser of one-half of the covered individual's gross recovery less attorney's fees and procurement costs as provided by Section 140.007 or the total cost of benefits paid, provided, or assumed by the payor as a direct result of the tortious conduct of the third party less attorney's fees and procurement costs as provided by Section 140.007.

(d) 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 DECLARATORY JUDGMENT ACTION. Prohibits the court, notwithstanding Section 37.009 (Costs) or any other law, if a declaratory judgment action is brought under this chapter, from awarding costs or attorney's fees to any party in the action.

Sec. 140.007. ATTORNEY'S FEES IN RECOVERY ACTION. (a) Requires a payor of benefits whose interest is not actively represented by an attorney in an 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 gross recovery, a reasonable fee for recovery of the payor's share, not to exceed one-third of the payor's recovery.

(c) Requires the court, if an attorney representing the payor's interest actively participates in obtaining a recovery, to award and apportion between the covered individual's and the payor's attorneys a fee payable out of the payor's subrogation recovery. Requires the court, in apportioning the award, to consider the benefit accruing to the payor as a result of each attorney's service. Prohibits the total attorney's fees from exceeding one-third of the payor's recovery.

Sec. 140.008. FIRST-PARTY RECOVERY. (a) Prohibits a payor of benefits, except as provided by Subsection (b), from pursuing a recovery against a covered individual's first-party recovery.

(b) Authorizes a payor of benefits to pursue recovery against uninsured/underinsured motorist coverage or medical payments coverage only if the covered individual or the covered individual's immediate family did not pay the premiums for the coverage.

Sec. 140.009. CONSTRUCTION OF CHAPTER. Provides that this chapter does not create a cause of action. Requires that nothing in this chapter be construed to prevent a payor of benefits from waiving, negotiating, or not pursuing any claim or recovery described by Section 140.004 or 140.005.

SECTION 2. Repealer: Section 172.015 (Subrogation; Adequate Recovery), Local Government Code.

SECTION 3. Provides that it is the intent of the legislature that if any provision, section, subsection, sentence, clause, phrase, or word of this Act or the application thereof to any person or circumstance is found to be unconstitutional, the provision, section, subsection, sentence, clause, phrase, or word is hereby declared to be severable and the balance of this Act remains effective notwithstanding such unconstitutionality. Provides that, moreover, the legislature declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or any of their applications, were to be declared unconstitutional.

SECTION 4. Provides that the change in law made by this Act applies only to a contractual right of subrogation in a cause of action that accrues on or after the effective date of this Act to assert a contractual right of subrogation or recovery described by Section 140.004, Civil Practice and Remedies Code, as added by this Act.

SECTION 5. Effective date: January 1, 2014.