BILL ANALYSIS

C.S.H.B. 4095
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Subrogation is defined as the assumption by a third party of another's legal right to collect a debt or damages. In the civil lawsuit context, subrogation usually becomes an issue when one insurance company, usually health insurance, has paid claims on behalf of its insured and the insured then recovers a settlement or judgment from another party for causing the injury that resulted in the claims. The insurance company that initially paid the claims then has a subrogation right against this recovery paid to its insured and will exercise this right to be paid back the amount it has paid in claims for its insured.

Since 1915, these subrogation rights were secondary to the right of the injured person to be fully compensated for his or her injuries, in other words, to be "made whole." This has become known in common law as the "made whole doctrine." However, in the *Fortis v. Cantu* case in 2007, the Texas Supreme Court destroyed that doctrine. Now, a health insurance company can assert its subrogation right and take all of an injured person's recovery, without regard to the amount of damages the injured person suffered and sometimes leaving nothing for lost earnings or other damages when the recovery is only enough to satisfy the subrogation right.

C.S.H.B. 4095 requires a health benefit plan that provides that the plan issuer has a right of recovery from a third party for injury suffered by a covered individual to provide that the right of recovery is subordinate to the covered individual's right to be fully compensated for damages incurred and to obligate the plan issuer to share in the legal expenses incurred by the covered individual in obtaining recovery to the same extent that the issuer shares in any recovery.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4095 amends the Insurance Code to require a health benefit plan that provides that the plan issuer has a right of recovery from a third party for injury suffered by a covered individual, whether by subrogation, reassignment, or reimbursement, to provide that the right of recovery is subordinate to the covered individual's right to be fully compensated for damages incurred and to obligate the plan issuer to share in the legal expenses incurred by the covered individual in obtaining recovery from a third party to the same extent that the issuer shares in any recovery from the third party. The bill prohibits a health benefit plan issuer from pursuing a right of subrogation against a covered individual's first party coverage. The bill applies its provisions to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2010.

C.S.H.B. 4095 defines "health benefit plan" to mean a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, 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.

The bill establishes that the term includes a benefit plan under the federal Employee Retirement Income Security Act of 1974 to the extent allowed by other law.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4095 differs from the original by adding a chapter in a different title of the Insurance Code than the original, and by revising the provisions relating to a health benefit plan issuer's recovery from third parties to reflect standard bill drafting conventions. The substitute differs form the original by defining "health benefit plan" for purposes of the substitute's provisions, whereas the original specifies the plans to which the chapter applies. The substitute differs from the original by applying its provisions to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2010, whereas the original applies its provisions to an action commenced on or after the effective date of the bill. The substitute differs from the original by making its provisions effective September 1, 2009, whereas the original provides for immediate effect if the required two-thirds vote is received, and September 1, 2009, otherwise.