CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 140. CONTRACTUAL SUBROGATION RIGHTS OF PAYORS OF CERTAIN BENEFITS

Sec. 140.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means an individual entitled to benefits described by Section 140.002.

(2) "Payor of benefits" or "payor" means an issuer of a plan providing benefits described by Section 140.002 that:

(A) pays benefits to or on behalf of a covered individual as a result of personal injuries to the covered individual caused by the tortious conduct of a third party; and

(B) has a contractual right of subrogation described by Section 140.004.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.002. APPLICABILITY OF CHAPTER. (a) 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, Insurance Code;

(3) a fraternal benefit society operating under Chapter 885, Insurance Code;

(4) a stipulated premium insurance company operating under Chapter 884, Insurance Code;

(5) a reciprocal exchange operating under Chapter 942, Insurance Code;

(6) a health maintenance organization operating under Chapter 843, Insurance Code;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846, Insurance Code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844, Insurance Code.

(b) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to a risk pool providing health and accident coverage under Chapter 172, Local Government Code.

(c) Notwithstanding any other law, this chapter applies to an issuer of a plan or coverage under Chapter 1551, 1575, 1579, or 1601, Insurance Code.

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

(e) This chapter applies to any policy, evidence of coverage, or contract under which a benefit described by Subsection (a) is provided and:

(1) that is delivered, issued for delivery, or entered into in this state; or

(2) under which an individual or group in this state is entitled to benefits.

Text of subsection effective until April 01, 2025

(f) This chapter does not apply to:

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

(2) Medicare;

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

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

(5) the state child health plan or any other program operated under Chapter 62 or 63, 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.).

Text of subsection effective on April 01, 2025

(f) This chapter does not apply to:

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

(2) Medicare;

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

(4) a Medicaid managed care program operated under Chapter 540 or Chapter 540A, Government Code, as applicable;

(5) the state child health plan or any other program operated under Chapter 62 or 63, 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.).

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.02, eff. April 1, 2025.

Sec. 140.003. CONFLICTS WITH OTHER LAW. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.004. CONTRACTUAL SUBROGATION RIGHTS AUTHORIZED. 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 may 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.005. PAYORS' RECOVERY LIMITED. (a) 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, then all payors are entitled to recover as provided by Subsection (b) or (c).

(b) This subsection applies when a covered individual is not represented by an attorney in obtaining a recovery. All payors' share under Subsection (a) of a covered individual's recovery is an amount that is equal to the lesser of:

(1) one-half of the covered individual's gross recovery; or

(2) 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) This subsection applies when a covered individual is represented by an attorney in obtaining a recovery. All payors' share under Subsection (a) of a covered individual's recovery is an amount that is equal to the lesser of:

(1) one-half of the covered individual's gross recovery less attorney's fees and procurement costs as provided by Section 140.007; or

(2) 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) 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.006. ATTORNEY'S FEES IN DECLARATORY JUDGMENT ACTION. Notwithstanding Section 37.009 or any other law, if a declaratory judgment action is brought under this chapter, the court may not award costs or attorney's fees to any party in the action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.007. ATTORNEY'S FEES IN RECOVERY ACTION. (a) Except as provided by Subsection (c), 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 shall 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) Except as provided by Subsection (c), in the absence of an agreement described by Subsection (a), the court shall 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) If an attorney representing the payor's interest actively participates in obtaining a recovery, the court shall award and apportion between the covered individual's and the payor's attorneys a fee payable out of the payor's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the payor as a result of each attorney's service. The total attorney's fees may not exceed one-third of the payor's recovery.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.008. FIRST-PARTY RECOVERY. (a) Except as provided by Subsection (b), a payor of benefits may not pursue a recovery against a covered individual's first-party recovery.

(b) A payor of benefits may 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.

Sec. 140.009. CONSTRUCTION OF CHAPTER. This chapter does not create a cause of action. Nothing in this chapter shall 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 180 (H.B. 1869), Sec. 1, eff. January 1, 2014.