

## SENATE BILL No. 437

By Senator Journey

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9 AN ACT concerning insurance; relating to subrogation and reimburse-  
10 ment rights under health insurance policies.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this act:

14 (a) "Health care insurer" means any insurer, self-insurer, insurance  
15 arrangement or health maintenance organization providing health insur-  
16 ance or health care services or benefits.

17 (b) "Health care services" means the same as provided in K.S.A. 40-  
18 3202, and amendments thereto.

19 (c) "Health insurance" means the same as provided in K.S.A. 40-  
20 2118, and amendments thereto.

21 (d) "Health maintenance organization" means the same as provided  
22 in K.S.A. 40-3202, and amendments thereto.

23 (e) "Injured person" means any person suffering injury who has  
24 health insurance or is entitled to health care services or benefits through  
25 an insurance arrangement, and if the injured person is a minor, incapac-  
26 itated or deceased, the injured person's legal representative.

27 (f) "Injury" means bodily harm, sickness, disease or death.

28 (g) "Insurance arrangement" means the same as provided in K.S.A.  
29 40-2118, and amendments thereto, and all government and church em-  
30 ployment benefit plans which are exempt from the employee retirement  
31 income security act of 1974 under 29 U.S.C. 1003(b) or other applicable  
32 law.

33 (h) "Insurer" means the same as provided in K.S.A. 40-2118, and  
34 amendments thereto.

35 Sec. 2. (a) Any policy, contract or plan of health insurance issued or  
36 delivered in this state, or insuring any resident of or person in this state,  
37 or insurance arrangement providing health care services or benefits in  
38 this state or to any resident of this state, may include or incorporate a  
39 provision authorizing the policy, contract, plan or arrangement to assert  
40 and enforce the subrogation or reimbursement interest and lien created  
41 by this act, provided such provision is consistent with and authorized by  
42 this act.

43 (b) If health care services or benefits are paid or provided by a health

1 care insurer for an injury creating a legal liability against a tortfeasor and  
2 if there is recovery from such tort-feasor by the injured person, the health  
3 care insurer shall have a right of subrogation or reimbursement to the  
4 extent of duplicative health care services or benefits provided to the date  
5 of such recovery to or from the injured person's tort recovery. In such  
6 case, the health insurer shall have a lien therefor against such recovery  
7 and may intervene in any action to protect and enforce such lien.

8 (c) In the event an injured person, the injured person's dependents  
9 or personal representative fails to commence an action against such tort-  
10 feasor within 18 months after the date of the accident resulting in the  
11 injury, such failure shall operate to permit the health care insurer to file  
12 any cause of action in tort which the injured person may have against  
13 such tortfeasor for the purpose and to the extent of recovery of all dam-  
14 ages caused by the alleged tortfeasor. Such health care insurer may en-  
15 force same in the health care insurer's own name or in the name of the  
16 injured person as their interest may appear by proper action in any court  
17 of competent jurisdiction.

18 (d) (1) In the event of a recovery, the health care insurer's right of  
19 subrogation or reimbursement shall only be enforceable to the extent that  
20 its enforcement constitutes an equitable distribution of the settlement or  
21 judgment under the circumstances. An equitable distribution is one:

22 (A) Which allows subrogation or reimbursement only if the total  
23 amount of the subrogation or reimbursement claim is duplicative of  
24 amounts actually recovered by the injured person;

25 (B) in which the subrogation or reimbursement recovery is reduced  
26 by the percentage of negligence attributable to the injured person under  
27 K.S.A. 60-258a, and amendments thereto; and

28 (C) which takes into account such other equitable factors as are  
29 deemed relevant by the trial court.

30 (2) In the event the injured person and the health care insurer cannot  
31 agree to an equitable distribution of a proposed or actual settlement or  
32 judgment, the matter shall be submitted to the court having jurisdiction  
33 of the injury claim, for determination of an equitable distribution of the  
34 proposed or actual settlement or judgment under the circumstances.

35 (e) Attorney fees and claim expenses shall be paid proportionately by  
36 the health care insurer and the injured person, and the attorney shall  
37 have a lien therefor against any such tort recovery.

38 (f) No health care insurer may assert a right of subrogation or reim-  
39 bursement under this act which does not reasonably take into account  
40 subrogation or reimbursement recoveries in determining its premiums or  
41 charges.

42 (g) To the extent a subrogation or reimbursement recovery is allowed  
43 under this act, the health care insurer shall credit any lifetime cap or limit

1 under the injured person's insurance policy, plan or arrangement in an  
2 amount equal to such recovery.

3 (h) Nothing in this act shall be interpreted as creating a legal cause  
4 of action for subrogation or reimbursement in favor of any entity or plan  
5 against whom a legal action for damages for negligence or bad faith in  
6 connection with the handling of claims for health care services or benefits  
7 is prohibited by federal law.

8 Sec. 3. In order to enforce the subrogation or reimbursement rights  
9 created and authorized by this act, the holder of such rights must provide  
10 written notice which must be received prior to the settlement of or the  
11 commencement of trial of the tort cause of action in question. Such writ-  
12 ten notice shall be sent by certified mail, return receipt requested, to the  
13 injured person at such person's last known address with a copy sent by  
14 certified mail, return receipt requested, to the attorney, if any, repre-  
15 senting the injured person, advising such person and such person's attor-  
16 ney of the assertion of such subrogation or reimbursement rights. Such  
17 notice shall include an itemized statement of the medical charges in ques-  
18 tion and a copy of the policy, contract, plan or arrangement provision  
19 upon which the subrogation or reimbursement rights are based. Failure  
20 to timely provide the required notice is a waiver of the subrogation or  
21 reimbursement rights in question.

22 Sec. 4. The provisions of this act shall apply only to causes of action  
23 accruing on or after January 1, 2007.

24 Sec. 5. If any provision or clause of this act or application thereof to  
25 any person or circumstance is held invalid, such invalidity shall not affect  
26 other provisions or applications of the act which can be given effect with-  
27 out the invalid provision or application, and to this end the provisions of  
28 this act are declared to be severable.

29 Sec. 6. This act shall take effect and be in force from and after Jan-  
30 uary 1, 2007, and its publication in the statute book.