Subject: NASP Amicus Committee Update ? Florida & Kansas

NASP Amicus Committee Update:
Florida & Kansas

August 1, 2007

Amicus Update:

Two items of interest to the subrogation industry have surfaced. The first is a bill in Kansas, if enacted into law, would allow health care insurers the right of subrogation for benefits paid. The second is the repeal of the Florida's no-fault personal injury protection law, which is set to take effect on October 1, 2007.

Kansas Bill 44: Subrogation and Reimbursement Rights under Health Insurance Policies

The Kansas bill seeks to allow the right of subrogation or reimbursement for benefits paid or provided by a health care insurer. Under the current version of the bill, the health insurer shall have a lien against any recovery and may intervene in an action to protect their lien. If the injured party or claimant fails to file an action within 18 months after the date of the accident, the health insurer may file suit to recover damages. The health insurer's right of subrogation or reimbursement is only enforceable to the extent that an "equitable distribution" of the recovery exists. An equitable distribution is defined in the

bill as (1) a duplicative amount has been recovered by the injured person; (2) subrogation recovery has been reduced by the percentage of negligence attributable to the injured person; and (3) other equitable factors have been taken into account. The bill requires attorneys' fees and expenses to be shared proportionately between the injured person and the insurer. To the extent a subrogation recovery is allowed, the health insurer shall credit any lifetime cap or limit under the injured person's insurance policy, plan or arrangement. Additionally, no carrier may assert a claim for subrogation or reimbursement, if they do not reasonably take into account subrogation or reimbursement recoveries in determining premiums or charges. Notice requirements are also expressed in the bill, which, if passed, would apply to causes of action accruing after January 1, 2008.

Florida No Fault Law: Set to expire on October 1, 2007

Florida Statute 1627.730, Florida Motor Vehicle No-Fault Law, Sections 627.730-627.7405 is set to expire on October 1, 2007, unless reenacted by the Florida Legislature. The Florida legislature is not currently in session. The governor and legislative leaders are considering whether or not to call a special legislative session to extend or reform the No-Fault Law. If the law sunsets, Florida would move from a No-Fault PIP system to a tort system.

NASP wanted to make sure its membership is aware of both bills which may affect or alter subrogation rights. StateNet and Amicus committees will attempt to keep you informed as matters change in both states.

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