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Topic for the Month:

Reimbursement Agreements

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What is a REIMBURSEMENT AGREEMENT? Most health, auto and disability insurance policies have subrogation and/or reimbursement provisions. While the specific language may differ from policy to policy, the intent is to provide the insurer with a right to be reimbursed for medical bills or disability payments made when injuries are caused by the negligence of a third-party. In most personal injury cases, one of the claims asserted is that of medical expense. Most of the medical bills are typically paid by insurance. The theory of allowing reimbursement or subrogation, is to prevent the injured person from receiving a double recovery.

Subrogation rights of insurers are governed by the policy language and existing case law. In an attempt to strengthen recovery rights, many insurers and union health and welfare plans are requesting an insured to complete a questionnaire and sign a Reimbursement Agreement, before processing outstanding medical bills. When confronted with a Reimbursement Agreement, it is important to obtain a copy of the insurance policy or Plan document. The subrogation language in the policy needs to be compared with the Reimbursement Agreement. If there is a difference in the language, beware.

Self-Funded ERISA Plans: There are many employers who are "self-funded" for health insurance purposes. This means that the employer is liable to pay covered hospital and medical expense on behalf of its employees. Many employers then hire a third-party administrator to process the bills and to determine which bills should be paid etc. When dealing with a self-funded ERISA plan, there are additional protections afforded to the insured. For example, a self-funded plan must designate a plan administrator. ERISA imposes duties upon people who are responsible for the operation of the employee benefit plan. The people who operate the Plan are called "fiduciaries" of the Plan. These fiduciaries have a duty to operate the Plan prudently and in the interest of Plan participants and beneficiaries. If the fiduciaries breach this duty, they can be held accountable under federal law.

Why are Reimbursement Agreements Needed? Good question. If the rights of the insurer are set forth in the insurance policy or Plan, why does the insurer need an additional document to be signed by the participant? The answer is simple—the insurers want to make their claim for reimbursement as strong as possible. This is because Wisconsin law has a long-standing policy of protecting injured consumers at the expense of insurance companies.

"Made Whole" Doctrine: Under Wisconsin law, if an injured person is not "made whole," or fully compensated from a settlement or judgment, the health or disability insurer is not entitled to any reimbursement from the settlement proceeds. This theory makes sense. The health or disability insurer has received premiums in exchange for its promise to pay medical bills and disability claims. If there is not enough money to fully compensate the injured person, the insurer should not receive any reimbursement. There are many situations where there is not enough insurance coverage to make an injured person "whole." For example, a person is severely injured in a car accident involving a drunk driver. The medical bills exceed \$100,000. The drunk driver has insurance coverage of \$25,000. In this situation, payment of the \$25,000 to the injured person will not make him/her whole. On the other hand, if the drunk driver had \$1,000,000 in coverage and a jury determined that the injured person's claim was worth \$500,000—the injured person is made whole and the health insurer is entitled to be reimbursed for payments made.

Be Careful and Protect Your Rights: If you are trying to settle an injury claim on your own, you need to assess the strengths or weaknesses of any subrogation claim. In addition to the "made whole" argument, other relevant issues are: do you have any negligence for causing the accident; and are all of the medical bills related solely to the accident (i.e. did you have a prior injury)?

KNOW YOUR RIGHTS: Feel free to call any attorney at our firm to discuss a reimbursement agreement and your rights. Knowledge is Power.

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