
DIGEST

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HB 440 Original

2025 Regular Session

Henry

Abstract: Requires an insured claimant to first file a medical claim with his personal medical coverage provider and authorizes the provider's subrogation for the claim.

Present law prohibits insurers of automobile liability insurance policies from limiting the time period during which an insured is entitled to payment or reimbursement for medical expenses as a result of injuries caused by a covered accident. Present law applies when a policy provides coverage for medical payments and the insured's injuries are diagnosed within 1 year of the accident and reported to the insurer within 3 years of the accident.

Proposed law retains present law and provides that if a person sustains a medical injury, disease, or sickness covered by an automobile liability insurance policy and the person has private health insurance or Medicare or Medicaid coverage, the person is required to first file a medical claim with his private health insurer or Medicare or Medicaid provider.

Proposed law authorizes the person's private health insurer or Medicare or Medicaid provider to subsequently subrogate against the automobile liability insurer.

Proposed law provides that a claimant's failure to use available health insurance to pay for medical expenses for injury or damages creates a rebuttable presumption that the claimant failed to mitigate damages.

Proposed law authorizes a claimant to rebut the presumption through evidence showing that the claimant's failure to utilize health insurance was reasonable under certain circumstances.

Proposed law provides that a party alleging that the claimant failed to mitigate damages with use of health insurance has the burden of providing evidence to support the presumption of the claimant's failure to mitigate.

Proposed law provides that if the claimant does not refute the presumption, the trier of fact may reduce the claimant's damage award by an amount equal to what the claimant's available health insurance would have covered for medical expenses related to the injury or damages in question. Further provides that the reduction applies only to medical expenses for which the claimant did not utilize available health insurance. Requires the trier of fact to determine the appropriate reduction based on the evidence presented regarding the claimant's insurance coverage in application with proposed law.

Proposed law does not apply to cases brought for claims pertaining to medical malpractice (R.S. 40:1231.1 et seq.) or malpractice liability for state services (R.S. 40:1237.1 et seq). and provides only for prospective application.

Effective January 1, 2026.

(Amends R.S. 22:1891)