

# The Value of Subrogation



## The Story: Winner Takes \$1,000,000

We represented a health plan that had paid a little over \$1,000,000 for treatment related to a motor vehicle accident. The member died, and his estate abandoned any interest in the \$1,000,000 the at-fault's auto liability policy was paying. That left only the health plan and a large medical provider that also had a sizeable lien. The medical provider had an assignment of benefits provision purporting to give it the deceased member's claims against the \$1,000,000 payout. If the medical provider's lien was given priority over the health plan's lien, the health plan would have recovered \$0.

## Client Success

The plan prevailed and recovered the full \$1,000,000 because we successfully argued that the health plan's language was superior to the medical provider's in that: (1) the health plan's rights preempted the state laws on which the medical provider was relying on to enforce its assignments rights; (2) the health plan's language had clear "first to recover" language and the medical provider's assignment did not; (3) the health plan's assignment provision was executed prior in time than was the medical provider's assignment provision; and (4) the member lacked the capacity to truly execute the assignment form that took place in the emergency room context.

## Action Items

- Make sure your plan language contains the strongest possible language to protect the plan.
- Make sure everyone knows your lien is "at the party."
- Cases can move fast, and speed is important when there is a competing claim. Make sure you can identify cases quickly and you are represented by competent legal professionals.
- Elect a subrogation partner that can guide you through sensitive cases such as those involving a death.
- Contact Benefit Recovery Group to manage your subrogation recoveries or to seek a second opinion.

*"Typically, your TPA manages subrogation and there are some problems with that. In my experience, they are not as efficient. They only work select claims. They are only looking at claims over a certain percentage. **Benefit Recovery Group** is different."*

- Vice President, Benefits, Fortune 500 Healthcare Delivery Company

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