ADVISORY NO. 434
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TOPIC: CARRIERS WIN STOP-LOSS CASE AT THE COURT OF APPEALS

This morning, the Third Court of Appeals reversed the trial court (and the SOAH En Banc Panel's decision) in the stop loss appeal. The Court rendered judgment that a hospital, in applying the "stop-loss" exception to the per diem payments allowed under Rule 134.401, must demonstrate that total audited charges exceed $40,000 and that the admission involved unusually costly and unusually extensive services (the so-called "two prong test"). The "Staff Report" which applied the two prong test had been invalidated by the trial court. The Court of Appeals reverses those findings as well.

The Court wrote:

> For these reasons, we conclude that the trial court's interpretation is contrary to the plain language of the rule, renders portions of the rule meaningless, and leads to results inconsistent with the intent of the statutory structure. A more reasonable interpretation of the rule is that to be eligible for reimbursement under the stop loss exception, a hospital must demonstrate that total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services. This interpretation is consistent with the plain language of the rule, which states that the stop loss method was established to ensure fair and reasonable compensation to the hospital for unusually costly and unusually extensive services. . . . It is likewise consistent with the interpretation urged by the Division in the 2005 Staff Report, which we address more fully below. And it is consistent with the basic structure of the rule, which calls for reimbursement under the standard per diem method except as allowed on a case-by-case basis under the stop-loss exception. Accordingly, we sustain the carrier's challenge, reverse the trial court's declaration, and render judgment that the stop-loss exception requires a hospital to demonstrate that total audited charges exceed $40,000 and that the admission involved unusually costly and unusually extensive services to receive reimbursement under the stop-loss method.

Because the Court interprets the stop-loss rule in a way that validates it, the Court rejected some carriers' arguments that the Rule was invalid for a number of reasons. The Court also agreed with the hospitals that in determining audited charges, the carriers could not reduce implantables to cost plus 10%. This latter argument was not one FOL had ever recommended.

The decision is subject to a Motion for Rehearing, and can be appealed to the Supreme Court. But in the meantime, it is the law and puts the carriers back in the driver's seat in respect to these disputes. We will press the Division to begin issuing decisions consistent with the Court's ruling. The Division has been issuing decisions consistent with the SOAH *En Banc* Panel decision and the hospitals' position since January 2007.

This also completely changes the dynamic if you are in negotiations with hospitals on any of these pending disputes. Many hospitals, besides Vista, have been making proposals for settlement. This case gives the carrier much more leverage.

Note that this decision applies to the prior Rule 134.401 that was applicable to acute care inpatient hospital admissions from September 1, 1997 through February 29, 2008. The new inpatient fee guideline, Rule 134.404, effective March 1, 2008, does not contain this stop-loss provision and is unaffected by this decision.

FOL is proud to have represented Zurich American Insurance Company at the appellate level in this case. We will, of course, continue to monitor this dispute for all as it proceeds through the appellate courts.