



ADVISORY NO. 459

TOPIC: TEXAS SUPREME COURT DENIES HOSPITALS' PETITION IN STOP LOSS TEST CASE

This morning, May 28, 2010, the Texas Supreme Court denied the hospitals' petition for review in Cause No. 09-0162, Vista Community Medical Center, LLP and Christus Health Gulf Coast v. Texas Mutual Insurance Company, et al., the so-called Stop Loss Test Case. Justice O'Neill and Justice Guzman did not participate in the decision. In doing so, the Court has let stand the Austin Court of Appeals' decision at 275 S.W.3d 538.

The case involves the application of an exception to the default *per diem* method of reimbursement under the Acute Care Inpatient Fee Guideline (former DWC Rule 134.401), effective for admissions from August 1, 1997 through February 29, 2008. The Court of Appeals decision below authorizes the Division (and subsequent fact finders at SOAH or district court) to require the hospitals to show the total audited charges are \$40,000 or more, AND that the admission involved unusually costly and unusually extensive services (the so-called "two-prong test") in order to be entitled to reimbursement under the stop loss exception (75% of audited charges).

It is expected that the hospitals will file a motion for rehearing at the Texas Supreme Court. It may take several months for the Court to dispose of that motion. It is unlikely the Court would grant such a motion as the case has been very thoroughly briefed by both sides. However, the mandate from the Austin Court of Appeals will not be issued until the Supreme Court does rule on the motion for rehearing.

The expected outcome is that the stop loss cases now pending in district court that were decided under the so-called "one-prong test" will likely be remanded to the DWC for application of the two-prong test. Others may be re-tried at SOAH which mostly applied the one-prong test. In that event, the DWC can also move to decide those stop loss cases that have been abated by the DWC pending final resolution of the Test Case. In any event, the Court's action today is a giant step to resolving these disputes based upon a true application of the intent of the Rule.

FO&L will, of course, be involved in and keep you advised of the events of this dispute as it proceeds to its final resting place. Please contact Steve Tipton at smt1@fol.com or (512) 435-2162 if you have any questions.

FLAHIVE, OGDEN & LATSON