ADVISORY NO. 465

TOPIC: THE TEXAS SUPREME COURT DENIES HOSPITALS' MOTION FOR REHEARING OF ITS PETITION FOR REVIEW IN THE STOP-LOSS TEST CASE

By Order dated December 3, 2010, the Texas Supreme Court has denied the hospitals' motion for rehearing of 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. We had reported the initial denial in Advisory No. 459. This was the last appellate step for the hospitals. In doing so, the Court has let stand the Austin Court of Appeals' decision at 275 S.W.3d 538. The Court of Appeals may now issue its mandate reversing the trial court judgment. This decision in the carriers' favor affects several thousand hospital fee disputes.

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).

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. We expect the trial court to which these cases have been consolidated to begin consulting with the parties and determine how to dispose of the pending cases depending on the history of how each case made it to the trial court.

The DWC can also now move to decide those stop loss cases that have been abated by the DWC pending final resolution of the Test Case. Those cases, some abated for years, may now be decided by the Medical Review Department based upon the two-prong test.

The Court's action is a giant step to resolving these disputes (some over 10 years old) 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 these disputes as they proceed. Please contact Steve Tipton at smt1@fol.com or (512) 435-2162, if you have any questions.