ADVISORY NO. 472

TOPIC: THE STOP-LOSS CASES TURN THE CORNER

The stop-loss disputes pending in the Travis County District Courts and at the Medical Review Division have been abated for years, pending final resolution of the Stop-Loss Test Case. The hospitals' appeals of the Court of Appeals judgment in that Test Case came to a halt earlier this year. The Texas Supreme Court denied the Hospitals' Petition for Review. So, the Court of Appeals has now issued its mandate to the District Court that to be entitled to the extraordinary stop-loss reimbursement, the hospitals must prove the admission required unusually costly and unusually extensive services, in addition to audited charges exceeding $40,000 (the so-called "two-prong test").

This disposes of most of the legal issues. The hospitals' still maintain there are evidentiary issues to resolve. In any event, the Court of Appeals mandate provides the opportunity for the trial court and the Division to begin resolving these cases.

For those cases still pending at the agency, the Medical Review Division has indicated it expects to begin issuing decisions later this year, using the two-prong test. Some of the hospitals have indicated they plan on appealing to SOAH any losses.

The cases pending at District Court raised other legal issues. The carriers alleged the hospitals have to return the money carriers paid under the SOAH decisions based upon the now-incorrect one-prong test, pending retrial of the fee dispute before the Division/SOAH. The hospitals claimed entitlement to judgments in their favor in spite of the Court of Appeals mandate.

Those issues were tried to the court on June 13th in a group of test cases. We are happy to announce that the Trial Court agreed with the carriers' positions in 47 test cases prosecuted by Texas Mutual Insurance Company. The hospitals must, pending any new SOAH decision to the contrary, return the money paid by the carriers, and that the carriers are entitled to a remand of the cases to the Division for reconsideration of the fee disputes under the two-prong test. The Trial Court also rejected the hospitals' claims of entitlement to judgments in their favor on other grounds in two cases defended by FOL.

This now sets the procedural and legal grounds for (1) the remand of all the stop-loss cases back

to the Division; and (2) refunds of the payments made by carriers on the SOAH orders. Eventually, these cases will make their way back to MRD or SOAH as appropriate.

There is also a group of stop-loss cases, the so-called “Direct Appeal” cases, which made their way to the District Court directly from MRD during the two-year period the statute did not provide for an interim SOAH *de novo* hearing. These decisions above, coupled with another constitutional test-case brought by the hospitals (which they also lost), set the stage for remand of the “Direct Appeal” cases to MRD/SOAH for determinations using the two-prong test.

These important and favorable court decisions do not end the individual disputes. They do, however, give us the tools to force the hospitals to prove what they should have all along. With tens of millions of dollars at stake for the industry, these decisions are great news. We can at least now see a favorable end to the Stop-Loss saga.