TEXAS CIVIL JUSTICE LEAGUE

Court Watch

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To: TCJL Board of Directors

From: George Christian

Date: June 6, 2018

Re: *In Re North Cypress Medical Center Operating Co., Ltd.* (No. 16-0851; decided April 27, 2018)

By a 6-3 majority, the Texas Supreme Court has ruled that a hospital seeking to enforce a hospital lien for services rendered to an uninsured patient may be compelled to produce information pertaining to reimbursement rates from third-party payers, including private insurers, Medicare, and Medicaid.

In Re North Cypress Medical Center Operating Co., Ltd. (No. 16-0851; decided April 27, 2018) arose from hospital treatment received by the uninsured claimant as the result of a traffic accident. The hospital performed x-rays, CT scans, lab tests, and other emergency services, for which it billed the claimant the list, or so-called "chargemaster" prices, amounting to more than $11,000. At the same time, the hospital filed a lien for the amount under §55.002, Property Code, which grants the hospital a lien on a cause of action or claim of an individual who receives services for injuries caused by an accident attributed to another's negligence. In this case, the parties were unable to negotiate an agreement on the hospital's bill. Consequently, the claimant sought a declaratory judgment that the hospital's charges were unreasonable and the lien invalid to the extent it exceeded the reasonable and regular rate for the rendered services.

As part of the declaratory judgment action, the claimant sought discovery of the hospital's contracts with private insurers that provided for reduced or negotiated rates for the services provided to the claimant, the Medicare and Medicaid reimbursement rates for those same services, and the hospital's annual cost reports to the federal Medicare office for several prior years. The hospital objected on the basis that negotiated and reduced reimbursement rates were irrelevant to the amounts charged to an uninsured patient. It also objected that the disclosure of confidential and proprietary information would cause irreparable harm. The trial court denied the objections and ordered discovery of the requested information. The court of appeals denied the hospital's petition for mandamus, and the hospital appealed to the Texas Supreme Court.

Writing for the majority, Justice Debra Lehrmann analyzed the language of the hospital-lien statute and the court's prior opinions, finding that although the hospital is entitled to recover the full amount of its lien, the claimant maintains the right to query the reasonableness of the charges that constitute the lien. Here the claimant argued that the requested discovery would show that the hospital accepts significantly less than the full list prices for the same services, which bears on the reasonableness of the charges. The court agreed, citing the vast difference between billed charges and actual third-party payments (upwards of 255%) and the fact that most hospital revenue is derived from third-party reimbursement, not private pay at full prices. The court acknowledged the existence of other factors involved in rate negotiations, particularly volume discounts and the

prospect of prompt payment, and that government rates may in fact be unreasonably low. Still, the court found that "[I]t defies logic to conclude that those payments have nothing to do with the reasonableness of charges to the small number of patients who pay directly."

In dissent, Justice Hecht, joined by Justices Green and Guzman, argued that what hospitals negotiate with third parties or the government are not relevant to amounts billed to uninsured patients for the same services. The majority responded by pointing out that in most cases hospitals do not expect to collect the full billed amount in the first place, so the amounts they actually collect are more relevant than those they do not.

We expect a motion for rehearing in this case, which is due on June 13. If the original decision stands, it could very well provoke a legislative response, possibly to clarify that the full billed amount is presumptively "reasonable" or that negotiated or government-reimbursed rates are not relevant to the reasonableness of charges billed to uninsured patients. On the other hand, the ruling may strengthen the "paid or incurred" rule by specifically allowing discovery of reimbursement or negotiated rates to determine the reasonableness of billed charges for health care services.

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