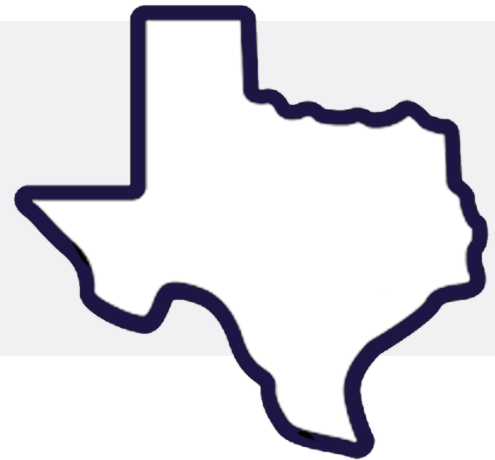


LIEN AMOUNTS FOR THE UNINSURED AND DETERMINING A REASONABLE RATE



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The Texas Supreme Court recently made a decision that has caught the attention of hospitals and personal injury attorneys both statewide and nationally. As standard procedure, hospitals often file liens to ensure payment upon the settlement of serious auto accident and other personal injury claims. In regards to a case with North Cypress Medical Center Operating Co., the Texas Supreme Court had to determine whether the providers insurance reimbursement rates were relevant on a lien for services performed on a patient with no private or public insurance. The outcome of this case has left the healthcare community wondering if the confidentiality of their financial information is worth the burden of proving reasonable lien amounts.

On April 27, 2018, the Texas Supreme Court denied North Cypress Medical Center's (North Cypress) petition to block a lower court ruling that ordered the provider to reveal how much the hospital is reimbursed for services by private and public insurance companies. This case stems from an auto accident involving an injured motorist with no health insurance coverage. The

patient, and plaintiff in this case, was transported to North Cypress and was treated in an outpatient setting for three hours. During those three hours a series of tests were performed that totaled \$11,037.35. Naturally, North Cypress filed a lien to protect the hospital's interest. The personal injury case settled for \$17,380.00 and the patient tried to negotiate the lien with the hospital but neither party could agree to an acceptable reduction. The patient subsequently sued on the basis that the charges were unreasonable, arguing that the lien should be invalidated due to the charges exceeding a reasonable and regular rate for services rendered.

To support the patient's case, the provider's financial information was requested, including annual cost reports, Medicare and Medicaid reimbursement rates for similar services rendered, as well as the negotiated contract rates from Aetna, First Care, United Healthcare, Blue Cross Blue Shield, Medicare, and Medicaid. North Cypress argued that the reimbursement rates were irrelevant to the case and the payer contract negotiations are confidential. The trial court found in favor of the patient but narrowed the scope of information to only include contracts that cover the time period at issue in this case. The trial court ruled against the provider and found that the requested financial information was relevant to determine whether the amount of the lien exceeded a reasonable and regular rate for the care provided. North Cypress then moved for reconsideration on the grounds that disclosure of this confidential and proprietary information would cause irreparable harm. The trial court denied the petition, leading North Cypress to seek relief from the Texas Supreme Court.

Lien Amounts for the Uninsured and Determining a Reasonable Rate

The vast majority of hospital reimbursements are determined through contract negotiations with public (managed Medicare and Medicaid carriers) and private insurances. Contracted insurance companies, while they are billed for total incurred charges, pay a lesser amount based on a negotiated reimbursement schedule. When providers file liens on non-contracted receivables, the lien is typically filed for total incurred charges, the same charge amount that would be billed to an insurance company. The lower trial court held that in settling the lien, to determine what reimbursement rate would apply, the provider should supply reimbursement rate information from other payers. The patient argued that the lien amount should reflect reasonable reimbursable charges not the total billed charge amount. The lower court order further required the provider to supply supporting documentation to justify what they defined as reasonable rate of reimbursement.

In this case, the Texas Supreme Court was tasked with deciding if the lien amount should be incurred charges as defined by chargemaster pricing or if the rate accepted from contracted public and private payers is the reasonably expected reimbursement amount. Then also, if reasonable charges are to be used in setting the lien amount, what documentation is the provider required to make available that justifies the reasonable rate of reimbursement for delivered services.

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insurers is relevant in defining the reasonable charges for an uninsured patient. They denied North Cypress' request for relief from the trial courts requirement that contracted reimbursement rate information be supplied in deciding what reimbursement is reasonable and left that determination to the trial court. If North

Cypress should continue to litigate this case, they would need to prove what reimbursement rate is reasonable and be required to supply reimbursement rates from contracted payers to support their lien amount. It is clear in their decision that the supreme court does not believe chargemaster pricing is a reasonable expected reimbursement amount for uninsured patients.

Now the question remains: Should North Cypress settle the claim out of court to protect confidential reimbursement rates or should the hospital fight for the amount of the filed lien but be forced to disclose its reimbursement rates? This is the dilemma that providers may face in future hospital lien cases.

The impact of this decision may very well be that in the future providers will need to re-consider the amount of their liens. If they choose to file based on what is reimbursed under their private and public payer contracts the disbursement of monies will likely be sped up but in defining the lien amount they will be required to disclose what many now consider as confidential information. On the other hand, if they continue filing total billed charge liens for personal injury cases and refuse to settle with uninsured patients, they are likely to find themselves in litigation. Does the risk outweigh the reward? Only time will tell.

The Texas Supreme Court found that hospital chargemaster pricing is over inflated and is not the reimbursement the provider expects to receive. They further held that while not dispositive of what is reasonable, the reimbursement rate paid by public and private

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