FLETCHER | FARLEY
CONFLICT RESOLVED

Client Alert

June 2, 2021

New Texas Supreme Court Decision on Discoverable Medical Rates

In 2018, the Texas Supreme Court held in *In re North Cypress Med. Ctr. Operating Co.* that the negotiated rates a medical provider charges to patients' private insurers and public-entity payors were relevant and discoverable on the issue of the reasonableness of the "full" rates the provider charged to an uninsured patient for the same services. The *In re North Cypress* case involved a plaintiff suing her medical provider over a hospital lien. In light of the *In re North Cypress* case, we started seeking similar information from Plaintiffs' medical providers. Plaintiffs' counsel, and medical providers, frequently argued in response to these requests that the *In re North Cypress* decision was inapplicable because it did not involve discovery requests in a personal injury claim.

On May 28, 2021, the Texas Supreme Court addressed this issue in its opinion in *In re K&L Auto Crushers*, holding that discovery to medical providers for rates they charge under insurance agreements and federal programs is permissible in a personal injury suit. This suit arose out of a personal injury matter in which the plaintiff, Kevin Walker, was allegedly injured in a motor vehicle collision. The Defendant, K&L Auto, served subpoenas on Walker's healthcare providers, requesting production of information related to their billing practices and rates over a period of several years. Walker and the healthcare providers moved for a protective order and to quash the subpoenas, arguing that the requests sought information which was irrelevant, confidential, proprietary, and protected as trade secrets. The trial court quashed the subpoenas with no explanation. K&L Auto, in its motion for reconsideration, limited the requests significantly, to include (1) the amounts the providers charged insurance companies, federal insurance programs, and in-network healthcare providers for the services, materials, devices, and equipment billed to Walker as of the date of Walker's treatment, (2) the amounts the providers paid for the devices and equipment billed to Walker, and (3) the providers' chargemaster (full) rates for the devices and equipment billed to Walker and how the providers determined those rates. The trial court denied the motion for reconsideration, and K&L sought mandamus relief.

Justice Boyd, delivering the opinion, stated that as in *In re North* Cypress, the negotiated rates, "[w]hile not dispositive," were "at least relevant" to whether the chargemaster rates the providers billed Walker for the same services and devices were reasonable. The Court explained that it "defies logic" to conclude that negotiated rates have nothing to do with the reasonableness of charges to the small number of patients who pay directly.

The Court also disagreed with the providers' argument that, as they were not parties to the suit, the requests were unduly burdensome. The Court stated that the providers who treated Walker pursuant to letters of protection invested themselves in the outcome of the case, and as such, forfeited a degree of the protection the rules afford disinterested third parties who are subjected to third-party discovery. The Texas Supreme Court held that the trial court abused its discretion by denying the requested discovery, as narrowed in K&L Auto's Motion for Reconsideration.

However, the Court noted that it did not hold that all communications or documents regarding those topics are automatically discoverable, and that proportionality must control the extent to which a trial court orders such relevant information discoverable. Based on this decision, Plaintiffs and their providers should no longer be allowed to argue that appropriately narrowly tailored requests seeking discovery of the amounts the providers receive from private insurers and public payors for the same services provided to plaintiffs are irrelevant. Rather, the Texas Supreme Court has made it clear that such information is clearly relevant to whether the amounts charged are reasonable. Accordingly, we should now be able to obtain more discovery regarding the amounts actually received by Plaintiffs' providers in order to counter the grossly exorbitant billing we typically encounter for treatment provided under letters of protection.

ABOUT THE AUTHOR:

Matthew Skidmore focuses his practice on commercial litigation, personal injury defense and premises liability. He was born and raised in Dallas, Texas and became an Eagle Scout in 2007. Outside of work, he enjoys spending time with his wife and family and rooting for his alma mater's team, the Texas Longhorns.

ABOUT THE FIRM:

Fletcher, Farley, Shipman & Salinas LLP is a dedicated business defense firm with offices in Dallas and Austin. The firm's attorneys leverage their extensive experience and skills as trial and appellate attorneys to achieve resolution both inside and outside of the courthouse in matters including the defense of tort litigation, business and commercial litigation, construction, insurance, employment and dispute resolution. The firm's unique Rapid Response Team™ provides a legal forensic service that can be deployed nationwide around the clock, within moments, to assist clients in responding to catastrophic losses.
