

# Recovery of Medical Expenses

14<sup>th</sup> Annual Construction Symposium  
January 25, 2019

R. Brent Cooper  
Diana L. Faust  
Gordon K. Wright

Cooper & Scully  
A Professional Corporation

# Topics

- The Problem
- Implications
  - CPRC 41.0105
  - Claimant Submits to Health Insurer
  - Claimant Has No Health Insurance
  - Claimant's Health Insurance Not Used
  - Health Insurer Delays Submission of Claim

## TEX. CIV. PRAC. & REM. CODE 41.0105

- Evidence Relating to Amount of Economic Damages
- In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

# Claimant Submits to Health Insurer

- Chapter 18, Civil Practice & Remedies Code
- *Gunn v. McCoy*

# Claimant Submits to Health Insurer

- TEX. CIV. PRAC. & REM. CODE Ch. 18
- 18.001: Affidavit Concerning Cost & Necessity
- 18.002: Form for Affidavit

# Claimant Submits to Health Insurer

- *Gunn v. McCoy*, 554 S.W.3d 645 (Tex. 2018)
  - Affidavits from subrogation agents for health insurers who paid claimant's medical expenses, reflecting amounts actually paid
  - Medical providers and their records custodians do not have to sponsor evidence sufficient to support awards at trial as reasonableness and necessity of expenses (plain language of 18.001 does not limit proper affiant)
  - Affidavit is legally sufficient evidence of reasonableness and necessity of past meds

# Claimant Has No Health Insurance

- *In re North Cypress Med. Ctr.*
- *Big Bird Tree Services v. Gallegos*

# Claimant Has No Health Insurance

- *In re North Cypress Med. Ctr.*,  
559 S.W.3d 128 (Tex. 2018)
  - Issue: production of reimbursement rates from private insurers and public payers for services provided to uninsured patient
  - Patient sent demand letter to tortfeasor's liability insurer listing \$11,000 (amount charged) as reasonable medical bills
  - Hospital files medical lien; patient settles with tortfeasor
  - Tries to reach agreement on lien



# Claimant Has No Health Insurance

## *North Cypress*

- Production Ordered
  - Hospital's negotiated rates with Aetna, First Care, United Healthcare, BCBS, Medicare & Medicaid
  - Lien issue – reasonableness of charges comprising hospital lien (reasonable and regular rate)
  - Hospital's reimbursements from private insurers and public payers are relevant to the reasonableness of its charges to other patients for the same services

## Claimant Has No Health Insurance

- *Big Bird Tree Services v. Gallegos*,
  - 365 S.W.3d 173 (Tex. App.—Dallas 2012, pet. denied)
  - Medical services provided gratuitously to patient are recoverable from tortfeasor in the amount billed
  - Not limited by CPRC 41.0105

## Claimant's Health Insurance Not Used

- *In re Travis County*, No. 03-17-00619-CV, 2017 WL 5078006 (Nov. 2, 2017, orig. proceeding)
  - Whether Private Payer Information is Discoverable to Support Failure to Mitigate Defense
  - P has private insurance, but does not seek benefits for treatment and provider bills unadjusted rates
  - In lawsuit, D seeks payment agreements/provider contracts reflecting amounts P would have paid or incurred had he acted reasonably and mitigated
  - Mandamus Denied

## Delayed Submission to Health Insurer

- Tex. Civ. Prac. & Rem. Code Ch. 146: Certain Claims by Health Care Service Providers Barred

# Legislation

# Thank You!

- R. Brent Cooper
- [brent.cooper@cooperscully.com](mailto:brent.cooper@cooperscully.com)
- Diana L. Faust
- [diana.faust@cooperscully.com](mailto:diana.faust@cooperscully.com)
- Gordon K. Wright
- [gordon.wright@cooperscully.com](mailto:gordon.wright@cooperscully.com)