

Developments Concerning the Applicability of State Medicaid Lien Statutes

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Overview

Medicaid is the joint federal/state program that pays for long-term health care in a nursing home. A Medicaid recipient must meet numerous eligibility requirements but, in short, must have a very minimal level of income and assets. State law typically allows the state Medicaid agency to file a claim in a deceased Medicaid recipient's estate to recoup Medicaid benefits paid during the recipient's lifetime, and also authorizes a statutory lien to the extent of Medicaid benefits paid. Under Iowa law, for example, the lien applies to all monetary claims which the Medicaid recipient may have against third parties (Iowa Code §249A.6). But, while federal law authorizes such state liens on monetary claims the Medicaid recipient may have, it bars placing a lien on a Medicaid recipient's property (42 U.S.C. §1396k(a)(1)). The state agency must take reasonable steps to determine the legal liability of third parties to pay for the medical care of the Medicaid recipient, and the lien attaches to that obligation. But, a question has existed as to whether a state's lien is limited to just those portions of any payments a Medicaid recipient is entitled to that are designated as being for medical expenses, or whether the lien applies to all third party payments a recipient is entitled to the extent of Medicaid benefits paid. In 2006, the U.S. Supreme Court answered that question "by holding that a state can recover Medicaid costs from a recipient's full personal injury settlement or award." In 2013, the U.S.

Supreme Court again held the same way. Since that time other courts have decided similar cases with some interesting outcomes.

The Ahlborn² Case

The plaintiff was permanently disabled in an automobile accident. During her medical care the plaintiff received benefits under the Arkansas Medicaid program. State law required the plaintiff to assign to the state Medicaid agency her "right to any settlement, judgment, or award" she may receive from third parties, "to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant." The plaintiff received \$215,645.30 in Medicaid benefits. A few years later, the plaintiff received \$550,000 as the result of a settlement of the litigation involving the auto accident. That total included amounts for past and future pain and suffering, medical claims, loss of earnings and working time, and the plaintiff's permanent inability to earn income in the future. Only \$35,581 of the settlement proceeds were for medical expenses, but the state Medicaid agency asserted a lien against the proceeds for \$215,645.30 - the full amount it had paid for the plaintiff's care.

The plaintiff sought a declaratory judgment that the state Medicaid agency could only recover \$35,581, the portion of the settlement that represented her claim to medical expenses. The plaintiff reasoned that the state's Medicaid recovery was limited to third-party payments for health care services. To do otherwise, the

plaintiff claimed, would violate federal Medicaid law, which ensures that a Medicaid recipient's property will not be depleted during the recipient's life by a state seeking reimbursement for its medical assistance. The state Medicaid agency argued that its lien did not conflict with the federal law, because the plaintiff's third party settlement was not her "property" until the state was fully reimbursed for all funds expended on medical care. The trial court agreed with the state, but the United States Court of Appeals for the Eighth Circuit reversed. According to the Eighth Circuit, while the federal statutory scheme required the plaintiff to assign her rights to recover from third parties for the costs of medical care and services incurred as a result of the accident, it also protected her other property from recovery by the state. The Eighth Circuit sent the case back to the trial court with directions to enter a judgment for the state in the amount of \$35,581.47, the amount of the settlement allocated for medical care.

The state asked the U.S. Supreme Court to hear the case. They agreed to do so and unanimously agreed with the Eighth Circuit, holding that the federal Medicaid law did not authorize the state to assert a lien on the plaintiff's settlement in an amount exceeding the \$35,000 for medical care, and that the federal anti-lien provision actually barred the state from doing so.

The Iowa Provision

What is the impact on the Iowa statute? While the Iowa statute (Iowa Code §249A.6(1)) appears to limit the state's lien to claims a Medicaid recipient has against third parties to the extent of Medicaid benefits paid to the recipient - "... the department shall have a lien, to the extent of those payments [i.e., Medicaid benefits paid to the recipient], upon all monetary claims which the recipient may have against third parties....", additional language in the same statute providing that, "...A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat

the department's lien if there is any recovery on the recipient's claim.", would appear to extend the state's lien to amounts a Medicaid beneficiary is entitled to that are not for medical care. If that is the case, the statute is invalid to the extent it gives the state a right to assert a lien on third party payments that are not for medical care.

Later Cases

In mid 2009, the Federal District Court for the Western District of Pennsylvania has held that liens imposed by the state for medical expenses violate the anti-lien and anti-recovery provisions of the federal Medicaid law. While the court noted that *Ahlborn* found that the state may not recover against amounts for non-medical expenses, the court reasoned that the Supreme Court left open the question as to whether the state could recover amounts paid for medical expenses. Thus, the court held that the state can intervene in cases or directly represent its own interests, but having not done so in the cases before it, it could not impose liens on settlement proceeds.³

In late 2009, a New York trial court determined that *Ahlborn* was not applicable in a situation involving the state's Medicaid lien law in an estate recovery setting.⁴ Under the facts of the case, the decedent had resided in a nursing home during the later years of his life until the time of his death in 2003 at age 85. In 1996 and while residing in the nursing home, the decedent suffered injuries allegedly as a result of the nursing home's negligence. The nursing home eventually agreed to settle the matter for \$200,000, with that amount (after costs and expenses) being split in thirds – one-third to pay attorneys' fees, one-third to the county Department of Social Services (DSS) for its claim against the estate for Medicaid payments to the decedent during his life, and one-third to be split equally among the decedent's distributes. The court also directed that the settlement be allocated 50 percent to wrongful death and 50 percent to pain and suffering. The Guardian ad Litem, however, objected to the amount DSS was to receive under the proposed distribution. The Guardian ad Litem

argued that the DSS could only reach the proceeds allocated to conscious pain and suffering (i.e., the cost of medical care provided). As a result, according to the Guardian ad Litem, DSS was only entitled to receive 1/3 of \$ 100,000.00 (less disbursements and fees). That had the effect of reducing the DSS share by about one-half (the total amount of Medicaid paid on behalf of the decedent exceeded \$400,000).

Under state law, the DSS was required to seek recovery from the estate of a decedent of all Medicaid assistance provided to the decedent after the decedent turned 55. So, DSS argued that it wasn't asserting a lien against the decedent's property (e.g., right to recover medical costs), but was merely seeking estate recovery against the decedent's estate as required by state law. As such, DSS claimed its lien was not limited to the cost of medical care provided to the decedent. The court agreed. But, based on the willingness of DSS to compromise its claim, DSS was ultimately entitled to \$169,531.31. In so holding, the court followed an earlier opinion by another New York county trial court – In re Ramirez.⁵ In that case, the decedent was injured in an auto accident and later died at age 87. A no-fault insurance carrier covered the costs of the decedent's care resulting from the accident, but Medicaid provided assistance to the decedent totaling \$ 109,269.69 until the time the decedent died. The court ruled that if DSS had based its claim on an assignment to it of the decedents' right to recover medical costs, Ahlborn would have controlled. But, because the claim was based upon the state estate recovery statute the claim was not limited to the cost of medical care.

In a 2011 opinion, the federal district court for Colorado held that the state's Medicaid agency could recover the cost of a Medicaid beneficiary's medical care from the portion of a personal injury settlement that was allocated to medical expenses.⁶ That result was predictable, but the court also determined that it did not matter whether the settlement funds were allocated to past *or future* medical care. Under the facts of the case, the plaintiff was injured at

birth and a medical malpractice case was eventually settled against the doctor for an undisclosed amount. The settlement did not allocate specific funds to past or future medical expenses or any specific amount for pain or suffering. The hospital also settled, and the state Medicaid agency filed a claim for \$736,673.71 in past-due medical expenses. But, the plaintiff countered that the state's claim was limited to only the portion of the settlement allocated to past medical expenses. The plaintiff asserted that to allow the state's lien to apply against future medical expenses would violate the anti-lien provisions of the federal Medicaid statute.

But, the court viewed the state's lien as the equivalent of a forced assignment of the right to recover that portion of the settlement representing all payments for medical care. Thus, the court construed the *Ahlborn* decision as not limiting the state's claim to funds allocated for past medical expenses. The court noted that 42 U.S.C. §1396p did not place a statutory bar on a state's recovery of Medicaid benefits from the total award of damages for medical care – past, present or future.

In 2013, the U.S. Supreme Court again held that the federal Medicaid statute⁷ requires participating states to implement the third-party liability provision. That provision requires states to seek reimbursement from third parties to the extent those third parties are legally liable to pay for Medicaid-funded services.8 Under the provision, a state is considered to have acquired the rights of the Medicaid recipient to payment by any third party for health care items or services. In addition, the Court noted that to be Medicaid eligible, a person must assign to the state any rights the person has to payment for medical care from a third party. The Court noted that there is no federal statutory right allowing subrogation or liens to recover directly from the Medicaid recipient. While most states allow a Medicaid recipient to recover from third parties and then seek reimbursement, the Court held that the federal anti-lien statute bars reimbursement until after the recipient's death. Under the facts of the case, the plaintiff suffered injuries at

birth, and a medical malpractice suit resulting in a settlement of \$2.8 million; Medicaid paid \$1.9 million for the plaintiff's care and the state asserted a lien against the settlement proceeds of \$1.9 million. The state statute mandated that one-third of the settlement payment would go to satisfy the lien. The plaintiff filed a declaratory judgment action claiming that the Supreme Court's 2006 Ahlborn decision limited the state's recovery to the portion of the settlement representing compensation for medical expenses and that the state statute mandating one-third payment violated federal law. While the action was pending, the state supreme court ruled that the state statute complied with the Ahlborn decision. The trial court ruled against the plaintiff and the U.S. Circuit Court of Appeals for the Fourth Circuit reversed. 10 The U.S. Supreme Court affirmed. The Court held that the state is assigned the rights of the Medicaid recipient to payment by a third party, but the anti-lien statute bars the encumbrance of the balance of the settlement not designated as compensating the plaintiff for payments made by Medicaid. As such, the state's conclusive presumption that one-third of the settlement represented medical care violated the anti-lien statute and was preempted as arbitrary."

Bipartisan Budget Act of 2013 (Act)¹¹

Section 202 of the Act, effective October 1, 2014, gives the states the right to recover from the entire settlement that a Medicaid beneficiary receives. That has the effect of abrogating the U.S. Supreme Court opinions in *Ahlborn* and *Woos*. In addition, the states can put a lien on any settlement or other award that a Medicaid recipient might receive. Section 202(b) states as follows:

RECOVERY OF MEDICAID EXPENDITURES FROM BENEFICIARY LIABILITY SETTLEMENTS (b)(1) STATE PLAN REQUIREMENTS. – Section 2 1902(a)(25) of the Social Security Act (42 U.S.C. 3 1396a(a)(25) is amended - (A) In subparagraph (B), by striking "to the extent of such legal liability; and (B) in subparagraph (H), by striking "payment by any other party for such health care items or services" and inserting "any payments by such third party".

(b)(2) ASSIGNMENT OF RIGHTS OF PAYMENT. – Section 1912(a)(1)(A) of such Act (42 U.S.C. 1396k(a)(1)(A)) is amended by striking "payment for medical care from any third party" and inserting "any payment from a third party that has a legal liability to pay for care and services available under the plan".

(b)(3) LIENS. – Section 1917(a)(1)(A) of such Act (42 U.S.C. 1396p(a)(1)(A)) is amended to read as follows: "(A) pursuant to

"(i) the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or "(ii) rights acquired by or assigned to the State in accordance with section 1902(a)(25)(H) or section 1912(a)(1)(A), or".

(c) EFFECTIVE DATE. – The amendments made by this section shall take effect on October 1, 2014.

As noted, the amendments made by the Act are prospective only as of October 1, 2014. That could raise a question of whether states can seek recovery against settlements occurring after October 1, 2014, or just simply against Medicaid beneficiaries that assigned their Medicaid recovery rights after that date.

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¹ Wos v. E.M.A., 133 S. Ct. 1391 (2013).

² Arkansas Department of Human Services v. Ahlborn, 547 U.S. 268 (2006).

³ Tristani v. Richman, 609 F. Supp. 2d 423 (W.D. Pa. 2009).

⁴ In re Estate of Heard, No. 2004-2039/A, 2009 N.Y. Misc. LEXIS 3258 (Monroe Cty. Sur. Ct. Nov. 30, 2009).

⁵ No. 283-M/06, 14 Misc. 3d 480, 826 N.Y.S.2d 553 (Bronx Cty, Sur. Ct. 2006). ⁶ Perez v. Henneberry, No. 09-cv-01681, 2011 U.S.

Dist. LEXIS 45063 (D. Colo. Apr. 26, 2011). ⁷ 42 U.S.C. Sec. 1396a(A)(25).

⁸ Wos v. E.M.A., 133 S. Ct. 1391 (2013).

^{9 42} U.S.C. Sec. 1396k(a)(1)(A). 10 E.M.A. v. Cansler, 674 F.3d 290 (4th Cir. 2012). 11 P.L. 113-67, signed into law on Dec. 26, 2013.