

TO: Local District Commissioners, Medicaid Directors, Legal Staff, Recovery Staff, Staff Development Coordinators

FROM: Linda LeClair, Director, Bureau of Medicaid Eligibility Operations & Family Health Plus, Division of Consumer & Local District Relations

SUBJECT: Ahlborn Court Decision - Recovery from a Third Party for Medicaid Recipient's Personal Injuries ("104-b liens")

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Liaison
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This is to advise social services districts of the adverse decision of the United States Supreme Court in the case of Arkansas Department of Health and Human Services v. Ahlborn, holding that a State Medicaid program's right of recovery against a Medicaid recipient's personal injury settlement or award is restricted to only that portion of the proceeds specifically allocated to past medical expenses.

Summary of the Decision

The Court found that federal Medicaid law, which requires that a Medicaid recipient assign to the state any right to payment from a third party who is liable for the recipient's medical expenses, does not entitle the state to full reimbursement from personal injury settlements or awards if a lesser amount has been designated as compensation for medical care.

The Court rejected the reasoning that recovery of the entire Medicaid lien is permissible because the personal injury proceeds are the property of the liable third party tortfeasor, and not the Medicaid recipient. That argument had been the basis for Department policy that social services districts recover their Medicaid liens against the entire settlement amount. Although this policy had been upheld by the New York Court of Appeals in Calvanese v. Calvanese, 93 NY2d 111 (1999), and Gold v. United Health Services Hospitals, 95 NY2d 683 (2001), it has now been effectively reversed by Ahlborn.

The Supreme Court's analysis of federal Medicaid law focused on the plain meaning of "payment for medical care" in 42 U.S.C. §1396k(a). That language was interpreted by the Court to mandate a Medicaid recipient's assignment of only the rights to "payment for medical care" from a third party as a condition of Medicaid eligibility, and not any other payments from the third party within the context of the personal injury settlement. Examples of such other payments included in a personal injury settlement are compensation for lost wages or pain and suffering. The Court found further support for this interpretation within the other federal Medicaid recovery provisions which operate in conjunction with §1396k(a)'s mandate. Those statutes were found by the Court to specifically refer to the third party liability only insofar as payment for Medicaid services is concerned.

§1396a(a)(25)(B) requires states to seek reimbursement for Medicaid to the extent of such legal liability, namely §1396a(a)(25)(A)'s primary mandate that states "ascertain the legal liability of third parties . . . to pay for care and services available under the [Medicaid] plan." §1396a(a)(25)(H) likewise requires a state to have laws, like N.Y. Social Services Law §104-b, under which "the State is considered to have acquired the [Medicaid recipient's] rights of such individual to payment by any other party" for Medicaid payments for health care items or services." Consequently, Ahlborn limits a social services district's §104-b lien recovery to only the amount paid by the defendant-tortfeasor in compensation for Medicaid-covered health care items or services.

Because Ahlborn holds that a Medicaid recipient has only assigned to a state amounts the recipient receives as payment for medical care, any part of a personal injury settlement which is not specifically designated as repayment of medical expenses must be treated as the Medicaid recipient's personal property. The Court authorized a state's Medicaid program to retain the specific damages paid by a third party tortfeasor for past medical expenses to the extent of its lien amount, with reimbursement of federal financial participation, under 42 U.S.C. §1396k(b). It directed that any amounts beyond that specific allocation for medical expenses must be paid to the Medicaid recipient because they are the Medicaid recipient's personal property, exempt from recovery pursuant to 42 U.S.C. §1396p. To the extent that some medical expenses incurred by the plaintiff may not have been covered by the Medicaid program, Ahlborn applied §1396k(b) to require that the state be paid first out of any damages allocated to payment for medical care.

Requirements for Recoveries from Personal Injury Settlements/Awards

Effective immediately, as a result of the Ahlborn case, when a local department of social services (LDSS) pursues recovery of Medicaid paid on behalf of a recipient who has a lawsuit or other action against a third party as a result of a personal injury, by imposing and enforcing a lien pursuant to SSL §104-b, the LDSS must observe the following requirements:

1. Only the portion of the personal injury settlement or award specifically allocated to compensate the plaintiff Medicaid recipient for past medical expenses arising out of the personal injury is available to satisfy a §104-b lien. Any portion allocated to compensate the plaintiff Medicaid recipient for pain and suffering, lost wages, and other non-medical damages is not available to satisfy a §104-b lien. A minor's personal injury settlement or award also is subject to this policy.
2. Districts should continue to assert a lien for the full amount of Medicaid expenditures, minus any amounts paid for school-based medical care and services provided to a disabled child under the Federal Individuals with Disabilities Education Act (IDEA). However, to the extent that the lien amount exceeds the portion of the personal injury settlement or award specifically allocated to repayment of past medical expenses, the district's recovery of the lien consequently will be reduced.

3. The district is still entitled to have its §104-b lien paid before those funds may be transferred to a supplemental needs trust for the benefit of the Medicaid recipient, insofar as the lien is partially or fully satisfiable out of the portion of the personal injury settlement or award specifically allocated to compensate the plaintiff Medicaid recipient for past medical expenses. Any other amounts of the settlement or award are the Medicaid recipient's personal property and should be evaluated by the district in accordance with resource and supplemental needs trust policies.

The instructions in this GIS apply to any recovery made on or after May 1, 2006 against a Medicaid recipient's personal injury settlement or award.