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States Now Limited in their Authority to Recover Settlement Proceeds to Satisfy Medicaid Liens* Bernard A. Krooks, Esq.

On January 2, 1996, 19-year old Heidi Ahlborn, an Arkansas college student, was driving across her college campus on her way to see her sister nearby. Snow began to fall heavily. Without warning, an SUV coming from a side street smashed into the left side of her car. Seriously injured, Heidi was rushed to a nearby hospital. Although she survived, the car accident left her with extensive bodily and brain injuries. As a result of those injuries, she was unable to continue her college education and was left permanently disabled.

Her family realized that Heidi's road to recovery would be a long and difficult one. But they could hardly have imagined that her case would be at the forefront of a legal battle that would make it's way to the United States Supreme Court, one which would ultimately carve out the extent of a state's authority to recover against settlement proceeds in a lawsuit.

To understand the legal significance of Heidi's case, some background is necessary. While an individual's disability can be the result of genetics or other factors outside anyone's control, at other times, as in Heidi's case, individuals become disabled as a result of an act that is somebody else's fault, such as an automobile accident or medical malpractice. When this happens, the law provides a remedy for such individuals. They are able to seek legal recourse by bringing a lawsuit against the person or entity that committed the act which caused their disability.

Unfortunately, the wheels of justice often grind slowly. It can take several years for a legal case to be resolved, either by settlement or jury verdict after trial. While the case is working its way through the courts, the injured individual may require substantial medical care. It is not uncommon for the cost of this care to exceed the amount of benefits the individual has under his or her personal health care insurance plan. Once these benefits are exhausted, the individual's health-care expenses are typically covered by Medicaid.

In order to qualify for Medicaid, the individual must, among other things, meet strict income and asset guidelines. Each state receives a significant portion of it's Medicaid dollars spent on it's residents as reimbursement from the federal government so long as it's rules and regulations are not inconsistent with the federal Medicaid laws.

One such law is Title XIX of the Social Security Act, which requires states to pursue claims against any person who is or may be legally responsible for the medical expenses of a Medicaid recipient. The state must have laws in effect providing that the state agency acquires the rights of the recipient against the third party to the extent of the state's payments for services rendered to the recipient. This process by which the state acquires the rights of the Medicaid recipient against third parties is known as "subrogation."

Thus, as a condition of receiving Medicaid benefits, the applicant has to assign to the state his or her rights to any monies recovered from the individual who caused the disability. This creates a Medicaid lien. Once the Medicaid application is approved, the amount of benefits paid for by Medicaid will continue to grow until the legal case is ultimately resolved and the Medical lien is paid off or satisfied.

There used to be a legal question as to how much of a financial recovery was subject to the Medicaid lien. Furthermore, this varied according to state law, so that the treatment of how Medicaid liens were applied to financial recoveries depended in many cases on which state you resided in. These questions were answered last year by the United States Supreme Court in *Arkansas Department of Health and Human Services et al v. Ahlborn*. Since the decision is from the highest court in the country, it applies to all fifty states.

Here's what happened in Heidi's case: While being treated for her injuries, Heidi applied for and received Medicaid benefits to pay for the cost of her care. Arkansas law required Medicaid applicants to assign to the Arkansas Department of Health and Human Services ("ADHHS") their "right to any settlement, judgment, or award" they receive from third parties "to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant." Pursuant to this subrogation law and as a condition of approving Heidi's Medicaid application, ADHHS required Heidi to assign to them her rights to any settlement she might receive from the persons allegedly responsible for her injuries.

In 2002, an out-of-court settlement was reached and Heidi subsequently received \$550,000 in a lump-sum from the party at fault in the crash. The amount was to cover not just medical expenses, but also lost wages, impairment of her future ability to work, pain and suffering, mental anxiety, and permanent disability. The parties stipulated that approximately \$35,000 of the settlement proceeds represented the portion of the settlement allocable to past medical expenses. ADHHS placed a lien on Heidi's settlement for the total amount of Medicaid benefits it had provided her, which amounted to approximately \$216,000.

Heidi sued, arguing that Arkansas' recovery was limited to \$35,000, the portion of her settlement representing payment for past medical expenses.



The lower court ruled against Heidi, finding that ADHHS could recover from Heidi the total amount of Medicaid benefits it had provided, regardless of whether the settlement funds were to repay the cost of past medical expenses.

Heidi appealed this decision to the U.S. Court of Appeals for the Eighth Circuit, which reversed the lower court. The Eighth Circuit held that Heidi's right to a settlement was considered her "property" and that the anti-lien statute prevented the state from taking any more than what was for past medical expenses.

The state of Arkansas appealed this decision to the United States Supreme Court. In a unanimous opinion written by Justice Stevens, the Supreme Court affirmed the Eighth Circuit decision in the case, holding that the federal anti-lien statute prohibits the ADHHS from asserting a lien on the portion of the settlement not meant to cover past medical expenses. It found that the federal anti-lien statute prohibits states from imposing a lien on a person's property prior to his or her death as repayment for Medicaid benefits. Thus, although federal law requires the states' Medicaid programs to collect against the portion of a settlement attributable to payments for past medical expenses, it does not allow a Medicaid program to place a lien on a recipient's property. In so holding, the U.S. Supreme Court said that Arkansas went too far in trying to recoup Medicaid benefits expended and struck down the Arkansas statute in question as being inconsistent with federal law.

This decision has significant ramifications since many states had previously followed the Arkansas approach requiring a Medicaid pay-back even out of the portion of a personal injury award not allocable to past medical expenses. The Ahlborn case is a victory for those with disabilities due to another person's fault, and could affect anyone who is injured, subsequently forced to receive Medicaid for health coverage, and then wins a legal award or settlement as a result of the injury. This case will allow individuals with disabilities to utilize a significant

portion of funds recovered in a lawsuit to enhance the quality of their lives instead of having to repay Medicaid with those funds upon settlement of their lawsuit.

Nevertheless, Special Needs Trust attorneys and their clients need to be careful when allocating settlements among the various causes of action. States may still challenge the reasonableness of the amount of the settlement allocated to past medical expenses. States, of course, may protect their interests by actively participating in the settlement negotiations or by asking the court to modify or approve the settlement allocations. Thus, it may be prudent to obtain the state's prior consent to such allocation or, if necessary, submit the allocation to the appropriate court for a ruling. In the Ahlborn case this was not an issue since the ADHHS had stipulated on the portion of the settlement proceeds attributable to past medical expenses.

It is important to note that the allocation of the settlement proceeds should not be done in a vacuum. As discussed in prior articles in *Exceptional Parent*, there are tax considerations which must be addressed with respect to the settlement money received. In addition, the receipt of these funds will have an impact on the recipient's continued eligibility for government entitlement programs such as Medicaid and SSI. Depending on your individual circumstances, it might make sense to establish a Special Needs Trust in order to protect those funds, while preserving government benefits. These decisions should only be made after careful analysis of all relevant issues and the laws applicable thereto.

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1. 42 U.S.C. Section 1396a (a)(25)(A).
2. 42 U.S.C. Section 1396a (a)(25)(B) and (H).
3. 42 USC Section 1396k(a)(1) and (b)
4. 126 S.Ct. 1752 (2006).

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