

# DO STATE MEDICAID AGENCIES HAVE THE RIGHT TO FULL REIMBURSEMENT FOR MEDICAL PAYMENTS MADE ON BEHALF OF A MEDICAID RECIPIENT? THE U.S. SUPREME COURT HAS WEIGHED IN

BY RANDALL O. SORRELS & JOHNNY N. GARZA, JR.

**H**AVE YOU EVER HAD DIFFICULTY RESOLVING a case where the plaintiff's claims are valued at \$100,000, and with a \$80,000 Medicaid lien, which cannot be reasonably reduced? This situation occurs on a regular basis, and if the plaintiff cannot make a meaningful recovery, it makes it difficult for attorneys on both sides of the bar to resolve the case. Fortunately, the United States Supreme Court may have provided attorneys an avenue that could lead to more settlements.

On May 1, 2006, the United States Supreme Court unanimously held that a state's assertion of a statutory lien on a recipient's tort settlement is limited only to that portion of the settlement representing the recipient's past medical expenses.<sup>1</sup> Specifically, a lien attaching to settlement proceeds related to damages other than medical costs is not authorized by the federal Medicaid law and is also prohibited by the federal Medicaid anti-lien provision. A state's Medicaid agency cannot claim any part of the settlement that is allocated for non-medical damages, including pain and suffering and lost wages, etc. Limiting the state Medicaid agency's claim for reimbursement to only medical expenses will likely create more settlement opportunities because the ultimate recovery by an injured victim often dictates their willingness to settle.

## A. Heidi Ahlborn Set The Stage

In 1996, 19-year-old Heidi Ahlborn was seriously injured in a car accident, resulting in permanent disability. As Ahlborn could not pay for her extensive medical care, Arkansas' Medicaid agency the Arkansas Department of Human Services ("ADHS") paid medical providers \$215,645.30 on her behalf under the Medicaid plan. In 1997, Ahlborn filed suit against the alleged tortfeasors, seeking to recover for her injuries. In 1998, ADHS intervened in Ahlborn's lawsuit in order to assert a lien for the medical payments made on her behalf on any recovery obtained by Ahlborn. In 2002, Ahlborn settled her

lawsuit for \$550,000. ADHS did not participate in the settlement negotiations, nor did it ask to participate. Nonetheless, ADHS asserted a lien against the settlement funds, seeking the entire amount of the lien, \$215,645.30.

Ahlborn subsequently filed suit in the United States District Court for the Eastern District of Arkansas, seeking a declaration that ADHS could only recover the portion of the settlement that was allocated for medical expenses. Ahlborn and ADHS reached a stipulation: (1) her claim was valued at \$3,040,708.12; (2) that the settlement amounted to one-sixth of this sum; and (3) if Ahlborn's construction of the federal Medicaid law was correct, then ADHS would be entitled to the portion of the settlement that represented Ahlborn's medical costs, that being \$35,581.47 (ADHS would recover \$215,645.38 if it prevailed on its statutory construction).

The District Court ruled that Arkansas' Medicaid law did not conflict with the federal Medicaid law, and therefore ADHS could recover the full amount of the medical payments made on behalf of Ahlborn, \$215,645.30. The Eighth Circuit reversed the District Court and held that ADHS could only recover that portion of the settlement that represented payments for medical care. The United States Supreme Court affirmed.<sup>2</sup>

## B. THE INTERPLAY BETWEEN THE FEDERAL AND STATE MEDICAID LAWS

Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, established the Medicaid program, which helps pay medical costs for those that have limited resources. Although not required, every state participates in the Medicaid program - the Federal Government pays a percentage of the medical costs and in turn, the state must comply with the federal Medicaid law, which includes administering the program within the state.

Specifically, federal Medicaid law requires participating states to do the following:

1. [A]scertain the legal liability of third parties . . . to pay for [a recipient's] care and services available under the [state's] plan.<sup>3</sup>
2. [To] seek reimbursement for [medical] assistance to the extent of such legal liability.<sup>4</sup>
3. [T]o the extent that payment has been made . . . for medical assistance for health care items or services furnished to an individual, the state is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.<sup>5</sup>
4. [To] provide that, as a condition of [Medicaid] eligibility . . . the individual is required--(A) to assign the state any rights . . . to payment for medical care from any third party; (B) to cooperate with the state . . . in obtaining [such] payments[]; and (C) to cooperate with the state in identifying, and providing information to assist the state in pursuing, any third party who may be liable[].<sup>6</sup>
5. [A]ny amount collected by the state under an assignment made . . . shall be retained by the state as is necessary to reimburse it for [Medicaid] payments made on behalf of [the recipient], and the remainder of such amount collected shall be paid to [the recipient].<sup>7</sup>

In Arkansas, the law provided that when a recipient obtained a settlement, a lien was automatically imposed on the settlement in an amount equal to the medical payments made by the Medicaid plan.<sup>8</sup> Arkansas claimed a right to recover the full amount of the benefits paid, which also meant it was entitled to more than just the portion of the settlement or judgment that represented the medical expenses, such as pain and suffering, lost wages, and loss of future earnings.

#### C. THE U.S. SUPREME COURT HELD THAT THE STATE COULD NOT RECOVER THE SETTLEMENT PROCEEDS ALLOCATED FOR NON-MEDICAL PAYMENTS

The matter was one of statutory construction: whether the federal Medicaid law limited ADHS' recovery to the portion of the settlement allocated for medical expenses. In a unanimous decision, the United States Supreme Court held that the state Medicaid agency's claim for reimbursement out of tort settlements is limited to only that portion of the settlement

representing medical expenses. This holding means that state agencies may not seek to recover any portion of a plaintiff's recovery for lost wages, pain and suffering, permanent disability, or other non-medical damages.

First, the Court held that the federal Medicaid law focuses on recovery of payments for medical care.<sup>9</sup> Specifically, 42 U.S.C. § 1396k(a)(1)(A) states that Medicaid recipients must "assign the state any rights . . . to payment for medical care from any third party." Thus, the federal Medicaid law does not provide the state any rights to seek settlement funds allocated to non-medical damages.

Second, the federal Medical law's anti-lien provision, § 1396p(a)(1), precludes liens "against the property of an individual prior to his death on account of medical assistance paid . . . on his behalf under the state [Medicaid] plan." Accordingly, the Court held that the anti-lien provision prohibits the state from attaching the settlement funds designated for non-medical damages, which is property belonging to the individual.<sup>10</sup>

#### D. THE AFTERMATH

The fallout and spin-off issues from this decision are just beginning. In fact, it has been intimated that *Ahlborn* had a unique set of facts and that the attorney general may look for an opportunity to test *Ahlborn* with a different set of facts.

Until that time comes, attorneys should consider several issues, including:

1. Should the *Ahlborn* logic control repayment claims made by other federal programs, such as those asserted by the Medical Care Recovery Act or the Medicare Secondary Payer Act?

Medicaid is not the only federal health care program that has asserted a right to priority repayment of tort settlements. While the basic structure of a repayment obligation is the same under all three federal statutes, each statute contains different language. Regardless of the statutory language, the arguments for allocation should remain consistent, that a claim for reimbursement cannot take priority over the settlement funds allocated to non-medical expenses. Alternatively, the statutes could possibly be challenged under the Administrative Procedures Act against the Centers for Medicare and Medicaid Services.

2. The parties in *Ahlborn* stipulated as to the value of Heidi Ahlborn's claims as well as the proportional value of the

Medicaid-funded health care costs. State Medicaid agencies do not have to agree to the allocations of values assigned to the various elements of damages. In the instances that an allocation cannot be reached, what will be the procedure to make this determination?

In *Ahlborn*, the Court indicated that the government retained the right to challenge the reasonableness of a settlement allocation as to past medical expenses. One option to resolve an allocation disagreement is for the matter to be submitted to a court to decide whether to approve or modify the settlement allocation. This could occur either in the original trial court or in a separate declaratory judgment action. In fact, post-settlement hearings involving allocation have taken place in Minnesota and Wisconsin.<sup>11</sup>

3. What duty does the plaintiff have to cooperate with the state's agency? When should the state agency be notified?

In *Ahlborn*, the Court stated that the "duty to cooperate arises principally, if not exclusively, in proceedings initiated by the state to recover from third parties" and that "[m]ost of the accompanying federal regulations simply echo this basic duty."<sup>12</sup> Hence, the recipient's duty to cooperate is undefined under the federal Medicaid law. However, it is probably prudent to provide early written notification to the relevant state agency that recovery for tort damages is being sought, possibly including the repayment of the state's medical expenses. If the state agency does not get involved, then it should at least be invited to participate in the settlement negotiations or participate in a post-settlement hearing. Inviting the state agency to participate in the lawsuit and securing an accounting of the state's medical costs may

lead to an equitable settlement allocation agreed to by all parties involved.

#### E. CONCLUSION

The *Ahlborn* holding appears to be an effective tool to encourage settlements by ensuring that the injured victim is more equitably compensated. It benefits defendants who may be able to settle for a lesser gross amount, while assuring the injured claimant receives a greater net amount. Awareness of this decision and understanding the spin-off issues that are sure to arise may help attorneys settle their case, leaving both sides more satisfied.

*Randall O. Sorrels is a partner at Abraham, Watkins, Nichols, Sorrels, Matthews & Friend in Houston. Mr. Sorrels is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization and is the immediate past President of the Houston Bar Association. Johnny N. Garza, Jr. is an associate at the Firm. ★*

<sup>1</sup> *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 126 S.Ct. 1752 (2006).

<sup>2</sup> *Id.* at 1758.

<sup>3</sup> 42 U.S.C. § 1396a(a)(25)(A).

<sup>4</sup> *Id.* § 1396a(a)(25)(B).

<sup>5</sup> *Id.* § 1396a(a)(25)(H).

<sup>6</sup> *Id.* § 1396k(a)(1).

<sup>7</sup> *Id.* § 1396k(b).

<sup>8</sup> *Ahlborn*, 126 S.Ct. at 1759-1760.

<sup>9</sup> *Id.* at 1761.

<sup>10</sup> *Id.* at 1763.

<sup>11</sup> See *Henning v. Wineman*, 306 N.W.2d 550 (Minn. 1981); *Rimes v. State Farm Mut. Auto. Ins. Co.*, 316 N.W.2d 348 (Wisc. 1982).

<sup>12</sup> *Ahlborn*, 126 S.Ct. at 1765.