

## Medicaid

### Florida Blocked From Enforcing Medicaid Reimbursement Law

Florida can't enforce a state law that allowed the state's Medicaid agency to seek reimbursement from patients who received third-party settlements (*Gallardo v. Dudek*, 2017 BL 128992, N.D. Fla., No. 4:16-cv-116, 4/18/17).

Judge Mark E. Walker of the U.S. District Court for the Northern District of Florida ruled that Florida's Medicaid reimbursement statute was preempted by the federal Medicaid Act. The court barred the state from using the statute to satisfy any payment lien against a Medicaid patient whose settlement includes payment for both past and future medical bills.

The court's decision represents a tension that many states face when dealing with Medicaid reimbursement. The Medicaid Act requires the state to attempt to recover money paid for medical expenses to patients whose injuries are caused by third parties. However, the states are prevented from seeking to obtain the entire amount of a third party settlement and are limited to the amounts set aside for medical expenses.

The court cited a U.S. Supreme Court decision from 2006, *Ark. Dept. of Health & Human Servs. v. Ahlborn*, 547 U.S. 268 (U.S. 2006), which interpreted the anti-lien provisions of the Medicaid Act as limiting a state to a proportional reimbursement, representing that portion of any settlement or judgment that represents past medical bills. However the provision that the supreme court interpreted in that case and that the court relied on in this case could be changing as of Oct. 1.

At least one practitioner told Bloomberg BNA that the change, which has been delayed repeatedly, could result in this Florida statute suddenly becoming legal.

**One Size Doesn't Fit All** At issue in this case was Florida's recovery law, which established a formula for determining how much of a third party settlement can be sought by the state Agency for Health Care Administration. Under that law, the AHCA can seek either 37.5 percent of the settlement, or the actual amount paid for medical expenses, whichever is less.

The case was brought by the family of Gianinna Gallardo, a 13-year-old girl who was hit by a car and ended up in a persistent vegetative state as a result of her injuries. The AHCA paid about \$800,000 for her medical treatments. Gallardo's parents sued the individual responsible for her injuries in a suit that they valued at \$20 million. They settled for 4 percent of the estimated value of the suit, or \$800,000

Following its formula, the AHCA instituted a lien on the settlement of \$300,000, which represented 37.5 percent of the total amount. The Gallardos challenged the lien, claiming it didn't reflect a proportional reimbursement and it accessed funds in the settlement, which had been set aside for Gianinna's future medical bills.

The court agreed with the Gallardos. According to the court, the law's "one-size-fits-all" formula didn't match with the supreme court's decision in *Ahlborn* and was thus improper. The court said the Medicaid Act only permitted the AHCA to recoup a portion of a settlement that had been designated to cover past medical bills.

Floyd Faglie of Staunton & Faglie in Monticello, Fla., who represented the Gallardo family in the litigation, said his clients were very pleased with the court's ruling.

"This is a tremendous benefit to the Gallardo family, to Gianinna Gallardo in particular," he told Bloomberg BNA. "What the court has done is leveled the playing field for people to challenge Medicaid liens asserted against tort settlements and made it fair."

A representative for the AHCA declined to comment on the ongoing litigation.

**Change in Law Could Be Coming** Geoffrey M. Trachtenberg, a personal injury and litigation attorney for Levenbaum Trachtenberg in Phoenix, told Bloomberg BNA that the challenged statute was representative of state efforts to get around the Medicaid Act's constraints on settlement or judgment liens.

"A lot of states, through their Medicaid agencies, have tried to get around this in various ways, but they haven't been successful," he said.

However, Trachtenberg warned amendments to the Medicaid Act, which would eliminate the constraints on reimbursement, are poised to take effect Oct. 1.

"Congress has given a temporary reprieve by delaying those amendments a number of times, but if they do actually take effect, they would nullify *Ahlborn* and make statutes like the Florida one legal for the first time," he said.

"Unless Congress acts to delay the amendments again or repeal them, the effect would be such that states could demand much more than their fair share of settlement and judgment proceeds," he added.

The Gallardos are represented by Staunton & Faglie PL in Monticello, Fla., and Mills & Carlin PA in Jacksonville, Fla. The AHCA is represented by Conduent in Tallahassee, Fla.

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*The court's opinion is at <http://src.bna.com/n8F>.*

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