

# Navigating Uncharted Territory: How to Avoid Danger Zones in the Evolving Landscape of Medicaid Liens

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The United States Supreme Court recently decided a Medicaid lien case that could have significant implications for injury-related settlements throughout the country. It also serves as a reminder that Medicaid, which is sometimes forgotten in the shadow of Medicare, has interests that must also be considered before a settlement.

In *Gallardo v. Marstiller*, the issue before the Supreme Court was whether states can recover the portion of a settlement that was allocated for future medical expenses. Prior to this decision, a line of cases had interpreted Medicaid's anti-lien provisions as allowing Medicaid to recover from the medical expense portion of a settlement, but not from proceeds allocated to pain and suffering, lost wages, and other "property" rights that were recovered. However, the Supreme Court had never addressed whether the Medicaid Act permits states to recover from proceeds allocated for future medical treatment.

The plaintiff in *Gallardo* suffered catastrophic injuries as a result of being struck by a truck while exiting a school bus. Due to the nature of her injuries, the plaintiff will suffer from life-long disability. Following the incident, Florida's Medicaid program paid

\$862,688.77 to cover the plaintiff's medical expenses, and the plaintiff continued to receive Medicaid benefits. The plaintiff went on to sue the truck's owner, driver, and the Lee County School Board, and the case eventually settled for \$800,000.00, with \$35,367.52 expressly designated as compensation for past medical expenses. The settlement did not specifically allocate any amount for future medical treatment, though it acknowledged that a portion of the settlement could represent compensation for future medical expenses.

The Medicaid Act requires participating states to make reasonable efforts to recoup the costs of medical care from liable third parties. Under Florida's Medicaid program, as is also the case in many other states, beneficiaries that receive assistance from Medicaid automatically assign the right to third-party payments for medical care. Thus, in *Gallardo*, the state was entitled to a presumptive \$300,000 for past and future medical expenses, absent clear and convincing rebuttal evidence that the state should be entitled to less. Rather than accept the presumptive formula calculations, which produce a result similar to many other formulas throughout the United States, the plaintiff challenged the allocation through an administrative process established by

Florida's Medicaid Act. In order to prevail, a recipient in Florida has to prove, by clear and convincing evidence, that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount that is provided for by the presumptive formula. During the administrative challenge, the plaintiff essentially argued that she recovered only a fraction of the overall damages that she sustained, and that Medicaid should recover no more than that same fraction applied to the medical expenses that were incurred, which resulted in the reduced allocation of \$35,367.52.

In addition to the administrative challenge, the plaintiff brought lawsuits in state and federal court alleging that Florida was violating the Medicaid Act by trying to recover from the portion of the settlement that was allocated for future medical expenses. The Florida Supreme Court ruled in the plaintiff's favor, but the 11<sup>th</sup> Circuit Court ruled that the Medicaid Act did not prohibit a state from seeking reimbursement from proceeds allocated for future medical treatment. Due to the conflict, the U.S. Supreme Court agreed to hear the case. In heavy reliance upon the express language of the Medicaid Act, the Supreme Court declared that the Act did not limit states' recoveries to allocations for past medical expenses.

The implications of the ruling and the response of state legislatures across the country could have far-reaching implications on injury-related settlements. This is particularly relevant in states that have administrative and judicial procedures to ensure a fair allocation of damages, as is the case in Florida, and where a case settles for far less than the alleged damages. Cases

often settle for significantly less than the damages that are alleged for a multitude of reasons, such as weakness in theories of liability, as well as policy limits of the defendants.

Under those circumstances, plaintiffs can no longer argue that their reduced suggested allocation for past medical expenses is fair, and that Medicaid is unable to seek reimbursement for past medical expenses from what was allocated for future medical treatment. Even if a plaintiff can convince a judge to accept his reduced allocation for past medical expenses, Medicaid can take the position that the allocation represents only a portion of the medical recovery to which it is entitled.

The effects of the ruling are not limited to those states with specific administrative proceedings for Medicaid challenges, however. Even in states that do not expressly provide for judicial hearings to challenge their statutory formulas, reducing or waiving a portion of Medicaid's statutory right to reimbursement is a fairly common practice. If an agreement cannot be reached between a plaintiff and Medicaid, the plaintiff may still find himself back in court to argue over a fair allocation in front of a judge. Therefore, regardless of the specific frameworks that are utilized among the states, the *Gallardo* ruling is likely to embolden Medicaid to seek the maximum reimbursement to which it could be entitled, and it clearly weakens the arguments for Medicaid lien reductions.

More generally, this ruling serves as a reminder that the interests of both Medicare and Medicaid must always be taken into account when settling an injury case, a sentiment that does not just apply in

the context of personal injury claims and for past medical treatment. Medicaid may have similar interests in the settlement of other injury-related matters, such as workers' compensation claims.

Parties should consider allocating a portion of workers' compensation settlements for future medical treatment in states that allow claimants to settle future medical benefits. For instance, Pennsylvania is one state that enables claimants and their insurers to settle future medical benefits. If such a settlement is approved by a workers' compensation judge, the insurer's liability is fully extinguished and the insurer will deny

any future treatment, regardless of the degree of an individual's treatment needs. Before entering into such a settlement, it is prudent to fully investigate the existence of any Medicaid liens, and to resolve these outstanding liens between the parties involved in the settlement.



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