

Course & Scope

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Changes To Medicaid's Right To Recovery From Injury Settlements Are Drawing Near

By Shannon Metcalf

As a brief background, Medicaid's recovery rights from tortious settlements and judgments are set forth in federal and state statutes and, at times, have conflicted. In 2006, the United States Supreme Court issued a decision, **Arkansas Department of Human Services v. Ahlborn**, 547 U.S. 268 (2006), finding that only the portion of a settlement designated as payment for past medical expenses could be claimed by a state Medicaid program.

North Carolina's Medicaid subrogation statute, N.C.G.S. § 108A-57, requires up to one-third of damages recovered by a beneficiary to be paid to Medicaid, regardless of any allocation of damages. In 2013, a North Carolina medical malpractice case, **Wos v. ex. rel. E.M.A.**, 568 U.S. 290 (2013), was heard by the United States Supreme Court on the issue of whether North Carolina's statute mandating automatic reimbursement of up to one-third was reasonable. The Supreme Court cited **Ahlborn** and noted federal Medicaid subrogation law preempted all states from taking any portion of a tortious judgment or settlement that is not specifically designated as payment for medical care, so North Carolina's statutory mandate that Medicaid recover up to one-third of a settlement is incompatible with federal anti-lien provisions. After the **Ahlborn** and **Wos** decisions, the government decided to make legislative changes to Medicaid recovery rights.

On Dec. 6, 2013, President Obama signed the Bipartisan Budget Act of 2013. The intent of Section 202 of the Act, "Strengthening Medicaid Third-Party Liability," was to amend portions of the federal Medicaid Act that limited Medicaid recovery. The Act was initially supposed to take effect on Oct. 1, 2014. That date has been pushed back several times and the Act will now take effect on **Oct. 1, 2017**. The Act allows state Medicaid agencies to recover funds paid for medical treatment from any tortious settlement or judgment proceeds received by a Medicaid beneficiary. **The states will be permitted to recover from the entire settlement proceeds, not just funds designated as payment for medical care.**

Sound familiar? Sound a bit like Medicare's right to recover conditional payments made from the entire settlement amount? This change will certainly impact the ability to resolve claims on and after Oct. 1, 2017. Until then, **Ahlborn** and **Wos** still control, so dig some of those cases with Medicaid beneficiaries out of your file drawers and settle!

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