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Sent: Friday, June 26, 2009 6:10 AM
Subject: THE BEGLEY LAWYER ALERT - ARE MEDICAID LIENS VALID?

THE BEGLEY LAWYER ALERT

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ARE MEDICAID LIENS VALID:?

By Thomas D. Begley, Jr., Esquire

In personal injury cases, Medicaid seeks to assert a lien over all or a portion of the proceeds of the recovery, if medical assistance payments have been made on behalf of the injured plaintiff. A recent Federal District Court decision significantly limits Medicaid lien recovery. In the case of *Tristani v. Richman*, Slip Copy 2009 WL 799747, W.D. Pa. 2009, March 25, 2009, the Federal District Court held that the State Medicaid Agency has no claim to ANY of the settlement proceeds once in the hands of the beneficiary, to enforce a lien. The State Medicaid Agency must actually intervene in the underlying lawsuit. This is an issue that the U.S. Supreme Court in *Ahlborn* expressly “left for another day.” The *Ahlborn* court said, “Read literally and in isolation, the anti-lien prohibition contained in §1396p(a) would appear to **preclude** even a lien on that portion of the settlement proceeds that represents payments for medical care. *Ahlborn* does not ask us to go this far, though...”.

The *Tristani* case involved a very thorough analysis of federal Medicaid law including the tension between the assignment of rights against third parties by a Medicaid applicant and the Federal Medicaid Anti-Lien statute. Thus, the holding the *Tristani* case is that the Federal Medicaid Anti-Lien statute precludes a State Medicaid Agency from obtaining a lien against the proceeds of a personal injury settlement or award. If the State Medicaid Agency wants to recover the medical

assistance paid on behalf of the injured plaintiff, the Attorney General must intervene in the action to enforce the assignment of rights made by the Medicaid applicant at the time of Medicaid application.

The good news is that this should make it harder for a State Medicaid Agency to recover an unfair portion of a settlement or award. The bad news is that State Medicaid Agencies now may be participants in personal injury lawsuits and may attempt to have more of a say as to when and under what terms the litigation can be settled.

This Tristani decision also may mean that the State AG should be invited to participate in a mediation to ensure that any settlement resulting from the mediation is acceptable to the State Medicaid Agency.

Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley, Begley, & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

Begley, Begley & Bookbinder

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The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley, Begley & Bookbinder at 800-533-7227.

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