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What Recipients of Tort Recoveries Need to Know about Medicaid

By

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The Omnibus Budget Reconciliation Act of 1993 at 42 U.S.C. 1396p(a) clearly imposes a duty on the states to seek reimbursement from the estates of deceased Medicaid recipients. This section withholds authority from the states to impose a lien prior to the death of a Medicaid recipient. At 42 U.S.C. 1396p(a) (1), it is set forth that “no lien may be imposed on the property of any individual prior to his death as a result of medical assistance paid or to be paid on the person’s behalf.”

However, there are certain notable exceptions. For instance, the courts require Medicaid recipients to utilize certain tort recoveries to reimburse the states for Medicaid benefits that had been paid out on their behalf. In other words, if an individual becomes injured and then receives a legal recovery or settlement from the suit against his tortfeasor, he must use a portion of his settlement to reimburse the State for any Medicaid benefits paid out on his behalf subsequent to the occurrence of his injury. This requirement stems from federal law at 42 U.S.C. 1396a, which imposes a duty upon the states or local agencies to “take all reasonable measures to ascertain the legal liability of third parties... to pay for care and services available under the plan.” This section provides that the states or local agencies will seek reimbursement in cases “where such a legal liability is found to exist.”

This situation was addressed in the New Jersey Superior Court case of Waldman v. Candia. The case specifically concerns itself with reimbursing the State from tort recoveries where those recoveries are proffered from third party payors which are liable for the medical support of the Medicaid recipients. The court states, “Pursuant to N.J.S.A. 30:4D-7, the State may recover payments made on behalf of a Medicaid recipient either through its right of subrogation to the recipient’s claims or through an independent action against the third party tortfeasor.” In fact, the court reasoned that the state’s subrogation right applied because the claimant recovered damages via the settlement of a cause of action for personal injuries the treatment of which had been paid

for by Medicaid funds. This is consistent with the legal premise that states are only entitled to be reimbursed for medical expenses paid in connection with the injury which resulted from the tort for which the third party payor has been held responsible. In cases where a developmental disabled individual is subsequently injured and the tortfeasor sued, even if that individual had been receiving Medicaid benefits prior to the injury, none of the benefits paid out prior to the injury may be recovered by the State from the tortfeasor.

Fortunately, even individuals who receive a monetary recovery from a lawsuit have the opportunity to engage in legal planning so that their assets are considered noncountable by Medicaid. Through a special needs trust, assets can be used for the benefit of the individual while not interfering with Medicaid eligibility. Such trusts are provided for by federal law at 42 U.S.C. 1396p(d)(4)A. While the requirements surrounding the establishment of special needs trusts can be complex, especially since being revised in our state through regulations issued in June 2001, the financial benefits to these trusts are substantial. Designed to enhance the lives of their beneficiaries, the trusts routinely make a tremendous difference in the lives of not only the Medicaid recipients, but their families, who have received peace of mind.

The prospect of state liens coupled with the potential to protect large sums through trusts should encourage any disabled individual who receives a tort recovery to seek professional advice to ensure financial security and compliance with the law.



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