

**What You Don't Know
Will Hurt You: *Ahlborn, Ezell &
Medicaid***



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Arkansas v. Ahlborn

- *Arkansas Dept. of Health and Human Services v. Ahlborn*, 126 S.Ct. 1752 (2006)
- Heidi Ahlborn, 19 yrs old
 - Disabled, Car Wreck and college student
 - Medicaid paid \$215,000 for medical treatment
- Settlement of \$550,000
- Medicaid did not participate in suit but intervened to get paid after settlement

Medicaid Stipulated

- \$550,000 Settlement (1/6 of value)
- Actual Value of \$3,040,708.18
- Lien of either \$215,000 or \$35,000
- Note: All medical costs are related

Ahlborn Overall

- ADHS cannot claim more than the portion of Ahlborn's settlement that represents medical expenses (42 U. S. C. §1396a(a)(25)(A)
 - §1396k(a)(1)(A), which requires that Medicaid recipients, as a condition of eligibility, “assign the State any rights . . . to payment for medical care from any third party” (emphasis added), not their rights to payment for, e.g., lost wages.

Holding: Reimbursement of Meds Only

- States may only “seek reimbursement for [medical] assistance to the extent of such legal liability” refers to “the legal liability of third parties . . . to pay for care and services available under the plan,”
 - the tortfeasors accepted liability for only one-sixth of Ahlborn’s overall damages
 - Thus, Medicaid gets “prorata share”

Holding: only rights assigned from medical care

- Medicaid is given the right to recover from liable third parties “to the extent [it made] payment . . . for medical assistance for health care items or services furnished to an individual”
- This does not limit the State’s recovery only by the amount it paid out on the recipient’s behalf, since the rest of the provision makes clear that the State must be assigned “the rights of [the recipient] to payment by any other party for such health care items or services.”

Holding: Pay first from Medical Damages

- Finally, §1396k(b)'s requirement that, where the State actively pursues recovery from the third party, Medicaid be reimbursed fully from "any amount collected by the State under an assignment" before "the remainder of such amount collected" is remitted to the recipient does not show that the State must be paid in full from any settlement.
- Because the State's assigned rights extend only to recovery of medical payments, what §1396k(b) requires is that the State be paid first out of any damages for medical care before the recipient can recover any of her own medical costs.

Holding: No liens on “property”

- Arkansas’ statute squarely conflicts with the federal Medicaid law’s anti-lien provision, §1396p(a)(1), which prohibits States from imposing liens “against the property of any individual prior to his death on account of medical assistance paid . . . on his behalf under the State plan.”

Holding: Allocate with Court

- The risk that parties to a tort suit will allocate away the State's interest can be avoided either by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision.

Practical Considerations

- Notice to Medicaid
 - Suit Filed
 - Mediation
 - Settlement
- Cause of Action/Parties
 - Minor v. Parent
 - Medicals or other damages
 - Forced intervention

NCDHS (NC Medicaid)

- What we know now
 - Not “recognizing Ahlborn”
 - 1/3 limit still in effect
 - Intervening in cases post settlement
 - Claiming they get the medicals first
- Pending cases
 - Ezell case (Supreme Court)
 - DJ action Federal Court
 - State case waiting

How to get an “Ahlborn Hearing”

- Minor Settlement
 - Notice in Medicaid
 - Allocate damages in settlement
- Motion in the Cause/Special proceeding
 - Notice Medicaid
 - Intervention response
- Declaratory Judgment Action
 - State v. Federal
 - Good facts

Ahlborn Formula

- Value of ALL Damages
 - Objective are better
 - Life Care Plan
 - Medications (but be careful)
 - Subjective Damages

Medicaid lien / total damages = ratio

Ratio x Medicaid Lien = Final Lien

Other Ahlborn Considerations

- Medicare
- Federal Liens (Champus, Fed. Employees)
- <http://www.youtube.com/watch?v=DmaX6UUSyDo&eurl=>

Helpful Opinion

- Nyisha Lugo, An Infant by her Parent and Natural Guardian Cindy Lugo, and Cindy Lugo, Individually v. Beth Israel Medical Center and Orli Langer M.D., 107656/2004
- SUPREME COURT OF NEW YORK, NEW YORK COUNTY
- 2006 NY Slip Op 26340; 2006 N.Y. Misc. LEXIS 2258

Ezell, DHHS v. Grace Hospital

- The decision of the Court of Appeals in this case is reversed for the reason stated in the dissenting opinion that the Division of Medical Assistance (DMA) is subrogated to the entire amount of plaintiff's \$100,000 settlement with a pediatrician for medical malpractice pursuant to its statutory Medicaid lien for payments made on plaintiff's behalf, not just to the amount the DMA paid for medical treatment that corresponded to defendant pediatrician's alleged negligence. Therefore, the DMA is entitled to receive one-third of the \$100,000 settlement as partial payment of its \$86,540 Medicaid lien. N.C.G.S. § 108A-57(a).

Steelman's Dissent

- Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to **all rights of recovery, contractual or otherwise**, of the beneficiary of this assistance, or of the beneficiary's personal representative, heirs, or the administrator or executor of the estate, against any person. . . .
N.C. Gen. Stat. § 108A-57(a) (2005)

Steelman Dissent, Con't

- a broad right of subrogation, which is indicated by the reference to "all rights of recovery." Subrogation is not limited to tort recovery, as the statute expressly covers contractual rights or "otherwise."
- The causation language discussed by the majority is from the portion of the statute dealing with the duty of a plaintiff's attorney to distribute settlement proceeds to DMA, not from the portion of the statute defining the scope of DMA's right of subrogation, which is set forth *verbatim* above.

Ezell Causation

- I agree with the majority that no DMA lien would attach to proceeds of a settlement from an automobile accident for Medicaid payments for unrelated cancer treatments. However, that is not the case before this Court.
- Plaintiff's complaint alleged: a single claim for medical negligence resulting in plaintiff suffering cerebral palsy
- The \$100,000.00 settlement with Dr. Whalley is a direct result of that lawsuit.
- This conclusion is unaltered by the fact that during discovery plaintiff realized Dr. Whalley was not as negligent as was originally believed.
- Any causal connection required for purposes of this statute was satisfied when plaintiff obtained a settlement as a direct result of filing the medical negligence action against Dr. Whalley.

Considerations

- Notice
- Pleadings
 - Minor v. Parent
 - SOL considerations of minor
 - Cause of action
 - Alternative pleadings
 - Dismissal of Actions/Refiling
 - No suit filed