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PROPER PLANNING MAY CREATE PEACE OF MIND



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## The Medicaid Third-Party Lien

**T**he Medicaid Third Party Liability (TPL) statute (F.S. 409.910) provides that when a third party is liable for payment of medical assistance (i.e. hospital, physician, nursing home) paid for by Medicaid, Medicaid has an automatic lien for the full amount of medical assistance provided. The lien is against the third party such as the defendant or his insurance carrier. A third party benefit is "any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for personal injury or for death of the recipient . . . . The term includes . . . health insurance, any benefit under a health maintenance organization, . . . liability insurance, uninsured motorist insurance or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to pro-

vide medical support.

### How the TPL Affects Attorney's

Fees: The First District Court of Appeal ruled in State of Florida, Agency for Health Care Administration v.

Teresa Lynn Wilson, Fla. L. Weekly D1014 (April 12, 2001) that the Medicaid TPL may not be reduced to reflect a pro rata share of attorneys' fees and costs attributable to recovery of the lien amount from a third party tortfeasor. The opinion reaffirms the legislative intent behind Florida Statutes § 409.910, which is that Medicaid be the payor of last resort and be repaid in full prior to any other person or entity. The opinion also clarifies that the attorneys' fee calculated at 25% of the judgment reduces the portion of the judgment that is subject to repayment of the Medicaid third-party lien. It does not reduce the Medicaid lien by 25% or limit the attorney fee.

***"The Medicaid Third-Party Lien may not be reduced to reflect a pro rata share of attorney's fees and costs attributable to recovery of the lien amount from a third party tortfeasor."***

### Identifying the Liens:

Health Management Systems ("HMS") is now handling collection of TPLs for the Agency for Health Care Administration. Contact them at: 2002 Old St. Augustine Road, Bldg. B, Suite B-16, Tallahassee, FL 32301, (800)446-7868 or (850)656-9179; Fax (850)656-9271.

### Reviewing The Lien Information:

Review the printout of claimed lien items (with codes) to determine if they are related to the accident. If an item is not related, it is not part of the TPL and there's no right to pay-back. Provide written support to HMS and request it correct the amount of the TPL claim.

## Meet The Staff

### Rose Skinner - CLA

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home Resident Rights
- Estate Planning

### Karen Verna - CLA

- Guardianship
- Probate
- Trust Administration
- Court Appointments

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