



PROPER PLANNING MAY CREATE PEACE OF MIND



August 2006

MEDICAID CASUALTY LIENS POST AHLBORN

When I attended the Academy of Florida Trial Attorney's Annual Convention in June, the buzz was "what happens now in Florida to Medicaid's ability to collect its lien after the U.S. Supreme Court's ruling in Ahlborn?" In discussing the opinion with several esteemed colleagues of the trial bar, we talked about implementing the Court's recommended approach of parties stipulating to an allocation of the case value and expenses for past medical care. In a case where the lawsuit is not settled prior to going to trial the allocation could be made by a jury. Would the state agency agree to enter into the stipulation? That remained to be seen. Notice of the motion to approve the stipulation, and the hearing, would of course need to be given to the state agency.

The Court's approach is one of common sense: there must be a reliable source to support the amount of the settlement that is allocated for past medical care. Otherwise, the plaintiff or the trial attorney could become the subject of a state claim that the allocation has been manipulated to avoid payment of the Medicaid lien. It may also be necessary to pre-

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sent credible evidence of the value of the case.

Since then I have had an opportunity to speak with Floyd Faglie, Esquire of Health Management Systems. HMS currently has the contract to collect the various Medicaid liens for the State of Florida. I inquired as to how AHCA was reacting to the Ahlborn decision. Mr. Faglie advised me that his client, the Agency for Health Care Administration (AHCA), has not authorized HMS to enter into any stipulations of fact. HMS has been instructed by AHCA to require that the parties to a settlement set the matter for an evidentiary hearing.

Mr. Faglie further explained that in cases where the plaintiff is a minor or, an incapacitated adult with a guardian a guardian ad litem may have been appointed by the Court. The guardian ad litem, in their report, could address the issue of allocation and serve as a reliable source. In addition, an economic report (i.e. life care plan) could serve as credible evidence. AHCA is willing to apply the old formula if it is more advantageous to the plaintiff. However, the old formula is not to be applied to the Ahlborn formula.

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