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January 7, 2014

WHITE PAPER ALERT
Medicaid Liens

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CMS Memo Contains Major Implications
For Liability Settlements

Happy New Year to one and all! While the nation was focused on the holidays the President and Legislature were enacting a budget. In response to the budget agreement signed by President Obama at the end of 2013, the Centers for Medicare and Medicaid Services (CMS) released a memo describing its implications with regard to Medicaid. The memo outlines Medicaid provisions in the budget agreement, HJ.Res.59, passed by Congress and signed by the President on December 26th. There are several Medicaid provisions included in this agreement.

Within the memo lies a potentially game-changing component that may affect Medicaid beneficiaries receiving a liability settlement and defendants attempting to reach agreement with Medicaid beneficiaries:

Section 202 – Medicaid Third-Party Liability

[...] the legislation makes changes to sections 1902(a)(25), 1912, and 1917. The changes give states the ability to recover costs from the full amount of a beneficiary's liability settlement, instead of only the portion of the settlement designated for medical expenses, and it establishes an option for states to place liens against Medicaid beneficiaries' liability settlements.

This is a major policy shift. Prior to this change, the state could not seek reimbursement from the portion of a tort recovery meant to pay for pain and suffering, lost wages, or other non-medical damages.

In effect, this renders the popularly referenced *Ahlborn* U.S. Supreme Court decision, in which the Court established the state could only recover a portion of the medical to satisfy the lien, obsolete. With the new changes, the state now can take a much larger portion of the settlement, depending on the size of the lien.

We anticipate this change will make negotiation of Medicaid liens much more difficult for plaintiffs' counsel and likely make resolution at times more difficult.

All changes are intended to go into effect beginning **October 1, 2014**. Perhaps there will be changes before this implementation date.

Please contact us with any questions.

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