

NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

June 7, 2010

Medicare/Medicaid Lien Reduction for Attorney Fees

New Mexico has a high rate of uninsured. The state has the highest rate of uninsured motorists in the nation. The numbers related to those lacking health insurance are comparable. As a result, many personal injury cases in New Mexico involve Medicare and/or Medicaid.

Many who have suffered personal injuries from the negligence of another are very surprised to hear that Medicare/Medicaid will claim liens against any personal injury settlement funds. Medicare/Medicaid will assert a lien for the amount of medical bills related to the personal injuries. Both Medicare and Medicaid are very aggressive about collecting on those liens. The penalties are quite severe for failure to properly account for and pay these liens.

It should be kept in mind that Medicare/Medicaid may assert liens only for medical bills related to the personal injuries related to the settlement. This includes both past and future medical expenses. However, it includes only medical expenses and only those related to the personal injuries on that particular claim. Because the liens may only include medical expenses related to the personal injuries on that claim, Medicare and Medicaid liens are often overstated.

There are a number of areas where the lien might be overstated and subject to reduction. The area addressed here are attorney fees related to the personal injury claim. Medicare/Medicaid will reduce their liens by the amount of attorney fees. For instance, if attorney fees are 1/3 of the recovery, the liens will be reduced by 1/3 as well. However, like most issues surrounding Medicare and Medicaid, it is important to negotiate these reductions prior to settlement. Both Medicare and Medicaid laws dictate that they be notified prior to any settlement. They are both quite reasonable when approached prior to settlement. The process of lien reduction negotiations is significantly more difficult when initiated subsequent to settlement. This includes the reduction for attorney fees.

If Medicare and/or Medicaid are properly addressed from the beginning of the personal injury action, the reduction of the lien for attorneys fees is automatic. Failure to properly address the liens in advance of settlement can make even the legally mandated reduction of the liens for attorney fees very difficult. In addition, the settlement proceeds cannot be distributed until Medicare and/or Medicaid have been properly addressed. Distribution of the settlement proceeds prior to addressing the liens can be disastrous both for the injured client and the attorney. In the event the case has

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>

settled prior to working out the Medicare/Medicaid liens, this can be a long and difficult process. All the while, the clients funds must be held in trust and cannot be released.

Those who have suffered personal injuries must understand the importance of addressing Medicare/Medicaid liens. As stated, many are surprised and even angry that Medicare/Medicaid has asserted liens against their recovery. Many will go further forbidding their attorneys to pay the liens. Of course, this is simply not a possibility and any lawyer heeding those directions would get both the client and the lawyer in a serious financial bind. And in the end, Medicare/Medicaid will recover on their liens. The only question is whether or not the liens have been properly reduced or collected in full due to the failure to properly account for them in advance of settlement.

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>