

NEW MEXICO INJURY ATTORNEY BLOG

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Pitfalls and Ironies of Medicare Liens in Personal Injury Actions

It is fairly common that those that have been injured in accidents, particularly auto accidents and slip and fall accidents, are receiving Medicare benefits at the time of the accident, or as a result of the accident. What many do not realize is that Medicare has a lien against any personal injury recovery for damages awards or settlements received as a result of the injuries.

It is difficult at times to explain to injured persons the law or the logic behind the liens. In a nutshell, Medicare has the right to recover all Medicare benefits expended to treat the person's injuries. In addition, Medicare can insist on a set aside of personal injury funds for future treatment of those injuries. These liens can be very large in cases of serious personal injuries. On occasion, the size of these liens can render the personal injury recovery process, particularly in complex litigation, futile and a waste of the injured party's time and energy. After all, litigation is extremely stressful and costly. In these cases, the injured person must decide whether he or she wants to work that hard simply to repay Medicare.

The decision to move forward with the personal injury recovery process, and perhaps litigation, is made even more difficult by the fact that recovery itself, and the failure to properly address Medicare liens can result in significant liability, penalties and even forfeiture of future Medicare rights.

Here are the basic ground rules:

- Medicare must be reimbursed within 60 days of the settlement or judgment. This means that the issues must be addressed well in advance of final settlement or judgment to avoid inadvertent violation of the law.
- The defendant, generally the other party's insurance company, must report a possible recovery to Medicare. The defendant is liable to Medicare if the injured party fails to properly address Medicare liens. Consequently, many defendants will make Medicare one of the payees.

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- The injured party's attorney is responsible for the full amount of the lien in the event that the injured party does not pay. This means that your attorney will not distribute any funds, yours or theirs, before addressing Medicare.
- The penalties for failure to properly account for Medicare liens are severe. The defendant can be fined \$1000 day for failure to notify Medicare of the possible recovery. The injured party and both attorneys, may be all held individually liable for up to double the full amount of Medicare lien.

This all sounds pretty bad. And it gets worse. Medicare is completely non-responsive to attorneys on either side in their attempt to determine the amount of the liens. It can take months to get any response at all from Medicare. The process of negotiating the liens takes even longer. This makes these cases particularly stressful and time-consuming for injured persons. Often, the only thing holding up settlement is the Medicare lien. There are times when the Medicare lien will prevent a settlement. Worse yet, in many of these cases, costly litigation is simply not warranted. The end result is that in some cases the injured party gets nothing, Medicare gets nothing, and the defendant who caused the harm completely escapes accountability. That's Medicare protecting your tax dollars.

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