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Medicaid Liens: What is the Obligation in a Personal Injury Settlement?

Medicaid liens can cause significant financial complications following settlement of a personal injury lawsuit. There are significant penalties for failure to properly account for those liens out of settlement funds. It is important that the Medicaid liens be addressed and satisfied with both New Mexico Human Services Department (HSD) and Center for Medicare and Medicaid Services (CMS) prior to distribution of personal injury settlement funds. It is equally important to the injured person that Medicaid not be overcompensated for their liens.

Medicaid through HSD and CMS is quite serious about collecting on its liens. In fact, Medicaid will on occasion assert liens beyond what it is legally mandated. This overstatement of its lien is typically the result of some confusion in the law regarding Medicaid reimbursement. This confusion over the Medicaid's rights to reimbursement can be quite costly if not addressed properly.

In most cases, Medicaid is very reasonable in addressing liens so long as the liens are addressed in a timely manner prior to settlement of personal injury claims. However, as a result of misinterpretations of the law, HSD in particular has been known to demand full recovery of all medical expenses advanced by Medicaid. In fact, Medicaid is not necessarily entitled to the full reimbursement of all Medicaid advanced medical expenses. This is particularly true in cases involving serious personal injuries.

Medicaid is entitled only to the recovery of liens associated with medical expenses. In a personal injury lawsuit, particularly in cases with serious injuries, the settlement or award typically includes a wide range of damages including lost wages, loss of consortium, loss of household services, permanent injury and disfigurement, pain and suffering and punitive damages. These are entirely distinct from the damages awarded for medical expenses.

Medicaid is not allowed to recover for any non-medical related damages. The reason for this is simple. As set forth in the 2006 United States Supreme Court case of *Arkansas Department of Health and Human Services v. Ahlhorn*, Medicaid may not "share in damages for which it has provided no compensation..." Medicaid provides no relief or support for damages other than medical expenses and therefore will not reap the benefit of any award for these other non-medical related damages.

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It is not uncommon that the settlement or award does not specifically break down the allocation between medical damages and other non-medical damages. In case of a dispute over the breakdown, the parties can call on the court for a determination of the allocation between medical and non-medical damages. The Court will then apportion the damages between medical and non-medical damages based upon the injuries in the case. Medicaid will then be reimbursed based upon the Court's apportionment of damages.

Medicaid issues are very complicated and it is important to seek the advice of an attorney prior to accepting any settlement. All liens, including Medicaid liens, should be negotiated prior to final settlement. Failure to negotiate liens in advance may have severe financial consequences for the injured person. This is particularly so in case of Medicaid liens for which failure to pay may result in significant fines and penalties.

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