

NEW MEXICO INJURY ATTORNEY BLOG

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

December 10, 2009

Beware Medicare & Medicaid Liens in Personal Injury Lawsuits

In personal injury cases in New Mexico, the injured person has often received medical care through Medicare or Medicaid (hereinafter referred to collectively as Medicare). Medicare by law has a lien against any settlement for the full amount of the Medicare benefits. This lien is prior to all other obligations or other distributions verdict or settlement funds. Failure to properly address these liens can have serious financial consequences.

Medicare liens are enforced through the Centers for Medicare and Medicaid Services (CMS). Often times, CMS will contact you or your attorney to put you both on notice of the liens. However, even if neither you nor attorney has received notice, you are both responsible for those liens. Therefore, if you have received any Medicare related medical treatment for your injuries, you should alert your attorney at the very first meeting.

Proper handling of these liens requires early attention to the liens. Medicare must be notified immediately of any possible claims or lawsuits associated with the Medicare related treatment. It is not the responsibility of Medicare to notify the parties. Medicare must also be kept informed of any settlement negotiations. Medicare technically has the authority to block a settlement if the settlement does not reasonably address its liens. Finally once the claims are resolved either through settlement or litigation, the lien must be resolved. In fact, Medicare is has first priority over any distribution of any funds.

There are significant potential penalties for failure properly account for Medicare liens. The rules are very strict. The Medicare lien must be paid within 60 days of the final notice of lien. Failure to do so can result in severe penalties including double damages and interest on delinquent liens. Thus, it is important to keep Medicare involved in the settlement or litigation process. This means negotiating the liens with Medicare prior to final settlement or immediately following a verdict.

The good news is that Medicare is very reasonable in the negotiation and resolution of its liens. Often, the final resolution will reflect inadequate insurance policy limits to cover the client's injuries and damages. In addition, Medicare often has overstated liens reflecting Medicare benefits unrelated to the personal injury claim. Medicare will routinely reduce its liens for an overstatement of benefits once it is brought to their attention. Once you have negotiated the lien, you will be able to move forward with the distribution of verdict or settlement funds with peace of mind.

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

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