

GREAT NEWS FOR STRUCTURED SETTLEMENT CLAIMANTS, ATTORNEYS AND STRUCTURED SETTLEMENT CONSULTANTS IN THE BUDGET ACT OF 2018

Almost hidden in the Bipartisan Budget Act of 2018 passed this month and signed by the President, was one critical change for anyone handling a case with a Medicaid lien. Toward the end of the 250-pages is a subsection (Section 53102) fully repealing Medicaid's expanded third-party recovery rights. Now, Medicaid can only seek reimbursement from a portion of the settlement allocated to medical costs – Medicaid cannot recover monies from lost wages, pain and suffering or any other damages awarded to the injured party.

For example, if a claim settles for \$100,000 (including \$80,000 for pain and suffering, lost wages and other non-medical damages) and \$20,000 related to medical damages, Medicaid now can only recover up to \$20,000.

Experts in the structured settlement industry, along with plaintiff and defense lawyers had been worried that Medicaid would indeed expand its recovery rights - a provision included in Section 202(b) of the Bipartisan Budget Act of 2013, allowing Medicaid to recover from the entire settlement, not just the medical portion. That legislation had been postponed several times until finally taking effect in October 1, 2017, raising questions about its impact on the structured settlement outcomes for claimants.

“Now, the Medicaid recovery law is fixed. Without this action, injury victims could have lost their entire settlement, including compensation for pain and suffering, to repay Medicaid,” according to John McCulloch, Vice President at Arcadia Settlements Group, who has been watching this issue very carefully.

The 2018 Act effectively resets the standard for Medicaid lien recovery to the standard of Arkansas DHHS v. Ahlborn, a Supreme Court ruling in 2006 and Wos v. E.M.A., another Supreme Court ruling in 2013, affirming Ahlborn, which limited recovery claims by state Medicaid against tort settlement to only amounts allocated for medical costs, or a state framework that provided a set portion for recovery.

Executive Director of NSSTA, Eric Vaughn expressed deep appreciation to the American Association for Justice (AAJ) for their efforts and Congressman Joe Crowley for his leadership on this critically important action.

NSSTA President, Jim Early says “NSSTA applauds this action as it continues to protect injured parties, which is at the heart of NSSTA's mission, the purpose of our continued alliances with other advocacy groups and the primary concern of all of our members.”

Special thanks for their input on this important news go to John McCulloch and Len Blonder from Arcadia Settlements Group and Henry Strong, Chairman and President at JMW Settlements.

Many Thanks,
Eric Vaughn