

Florida Medicaid Liens after *Wos*

July 02, 2013

The 2013 Florida legislature wasted no time responding to the March 20 Supreme Court opinion in *Wos v. E.M.A.*, 568 U.S. __ (2013). The legislature immediately revised Fla. Stat. §409.910 relating to the settlement of Medicaid claims involving third parties. The new legislation passed on April 30 and took effect July 1. It will undoubtedly affect the new client intake evaluation by plaintiffs' attorneys and will definitely impact mediations and other settlement negotiations in tort cases brought by Medicaid beneficiaries. In *Wos*, the Supreme Court held that North Carolina's irrefutable, one-size-fits-all statutory scheme, which allowed the State to recoup up to one third of a Medicaid beneficiary's tort recovery to satisfy past medical expenses, is preempted by Medicaid's anti-lien provision. The *Wos* opinion cast doubt on the constitutionality of §409.910, which set forth a formula similar to that of North Carolina. Under the Florida statute, the State could claim up to one half of the Medicaid beneficiary's tort recovery (after attorney fees and costs) regardless of how the parties to the tort case allocated the settlement proceeds. Furthermore, §409.910(17) allowed for judicial determination of Medicaid's rights under the formula, and trial judges tend to discount Medicaid liens during post-settlement equitable distribution proceedings. Not so any longer. The Florida legislature passed CS/CS/HB 939 to attempt to cure deficiencies identified by the *Wos* Court and, in the process, stack the deck in favor of Medicaid. The new bill expressly divests circuit court judges from jurisdiction to perform equitable distributions of the Medicaid beneficiary's tort settlement proceeds. Now, only a hearing officer in Leon County can hear these agency matters. Moreover, the burden is on the plaintiff to seek the administrative hearing during a narrow post-settlement window. The plaintiff must then prove, by clear and convincing evidence, that an amount less than the 50 percent provided for in §409.910(11)(f) should be allocated to the beneficiary's medical expenses. In other words, the State's Medicaid cost recovery formula remains the same, but the beneficiary now has the burden of going to Tallahassee to prove that the agency's recovery should be reduced under the facts of the case. It is reasonable to assume that an administrative hearing officer will tend to favor a government agency like Medicaid over the plaintiff in a hearing to allocate net settlement proceeds to past medical expenses. As a result, tort cases with large Medicaid liens and weak liability may not be as attractive to the plaintiff's bar in the first instance. When such cases proceed to litigation, however, the price of settling will inevitably be higher under the new Florida law. Plaintiff's attorneys will be well within their rights to argue that the Medicaid lien is no longer negotiable under the new statutory procedure. To avoid problems at the eleventh hour of settlement negotiations, it is

important to determine up front whether Medicaid should be part of any settlement negotiations. Section 409.910(6)(c)(7) states that any tort settlement without Medicaid's knowledge is considered prima facie evidence of an impairment of the agency's lien. The parties' interests will be best-served by keeping Medicaid informed of any mediation or settlement negotiations even though Medicaid cannot be compelled to participate. It is possible that Plaintiff's counsel may reject any attempt to discount the value of the case based on the perception that medical liens are highly negotiable. Further, if the plaintiff has medical liens from various sources, some of these sources may refuse to negotiate until the Medicaid lien is settled. The earlier the Medicaid lien is addressed, the sooner other medical providers should be willing to fall into line. Finally, if Medicaid is not a party to your settlement, you may want to insist that at least 100 percent of the lien amount is escrowed from the settlement proceeds pending final resolution of the lien to ensure that sufficient funds exist to obtain a release from the Agency.

- [View full bill in PDF](#)
- [View full statute in PDF](#)

Related Practices

[Mass Tort and Product Liability](#)

[Health Care](#)

[Pharmaceuticals and Medical Devices](#)

Related Industries

[Health Care](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.

