

WORKERS' COMPENSATION SETTLEMENTS AND MEDICAID FROM CRADLE TO GRAVE

MEDICAID LIEN RESOLUTION AND SPECIAL NEEDS TRUSTS

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August 2022

WHY WORRY ABOUT MEDICAID LIENS?

OHIO RULES OF PROFESSIONAL CONDUCT

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

(d) **Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person.** For purposes of this rule, the third person's interest shall be one of which **the lawyer has actual knowledge and shall be limited to a statutory lien,** a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. **Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, confirmed in writing, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.** *

* *”

MEDICAID'S RIGHT TO RECOVERY

▪ R.C. 5160.37

- (A) Gives Medicaid an automatic right of recovery against the liability of a third party for the cost of medical assistance paid on behalf of recipient
- (C) Requires disclosure, by Medicaid recipient or the recipient's attorney, of any settlement to the appropriate county department of Medicaid
- “(E) No settlement, compromise, judgment, or award or any recovery in any action or claim by a medical assistance recipient where the department or county department has a right of recovery shall be made final without first giving the department or county department written notice as described in division (C) of this section and a reasonable opportunity to perfect its rights of recovery. If the department or county department is not given the appropriate written notice, the medical assistance recipient and, if there is one, **the recipient's attorney, are liable to reimburse the department** or county department for the recovery received to the extent of medical assistance payments made by the department or county department.”

MEDICAID'S SHARE OF SETTLEMENT

■ R.C. 5160.37

- “(G)(1) Subject to division (G)(2) of this section, the right of recovery of the department or county department **does not apply to that portion of any judgment, award, settlement, or compromise of a claim, to the extent of attorneys' fees, costs, or other expenses** * * * .”
- “(2) * * * After fees, costs, and other expenses are deducted from the total judgment, award, settlement, or compromise, there shall be a rebuttable presumption that the department of Medicaid or county department shall receive **no less than one-half of the remaining amount, or the actual amount of medical assistance paid, whichever is less.** A party may rebut the presumption in accordance with division (L)(1) or (2) of this section, as applicable.

MEDICAID'S ENFORCEMENT OF RECOVERY

■ R.C. 5160.37

- (H) A right of recovery created by this section may be enforced separately or jointly by the department of Medicaid or county department. To enforce its recovery rights, the department or county department may do any of the following:
 - (1) Intervene or join in any action or proceeding brought by the medical assistance recipient or on the recipient's behalf against any third party who may be liable for the cost of medical assistance paid;
 - (2) Institute and pursue legal proceedings against any third party who may be liable for the cost of medical assistance paid;

- (K) The department of Medicaid may assign to a medical assistance provider the right of recovery given to the department under this section with respect to any claim for which the department has notified the provider that the department intends to recoup the department's prior payment for the claim.

HMS, NKA GAINWELL TECHNOLOGIES

SOLARIS (Subrogation Online Attorney Referral & Information Service)

- Old portal
- Recommended for workers' compensation settlements, by Kelly Hagen of Gainwell Technologies
- **Workers' Comp. liens tied to ICD codes billed**

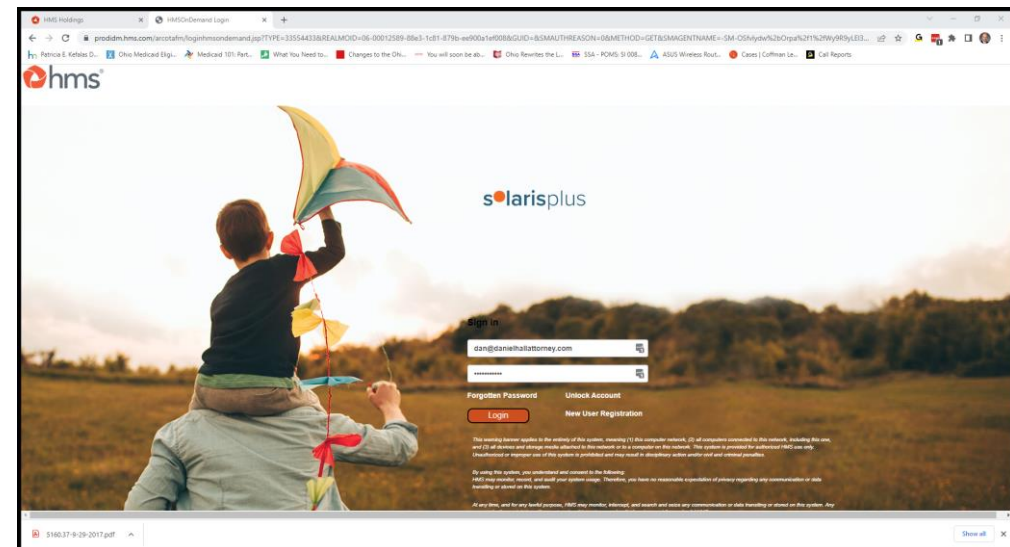
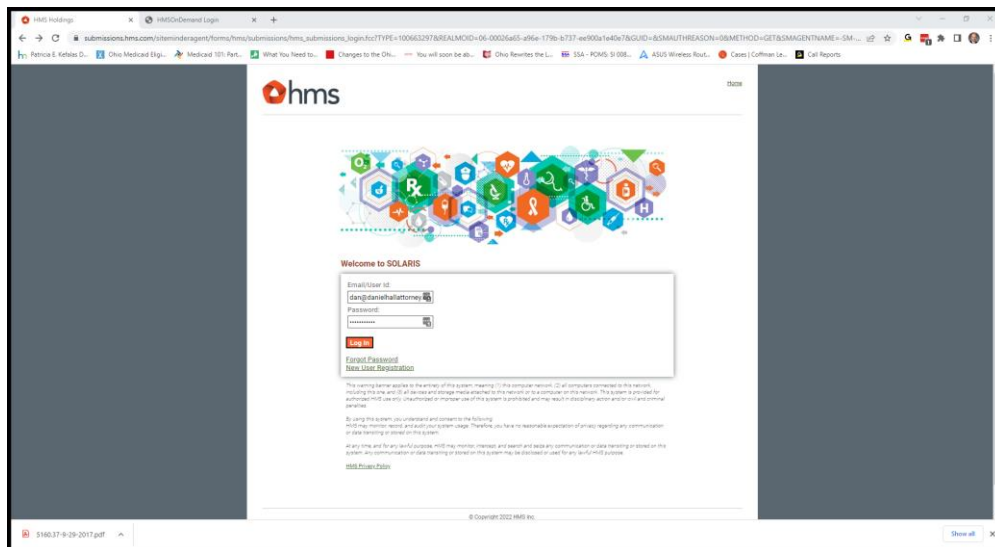
SOLARIS PLUS

- New and improved, self-service portal?
- Designed primarily for personal injury settlements
- Will work for workers' compensation settlements, but **may not work for 8+ year old claims**

OLD SOLARIS VS. NEW SOLARIS PLUS PORTAL

■ <https://www.submissions.hms.com>

■ <https://solarisplus.hms.com>



SOLARIS - MEMBER SEARCH PAGE

- After you log-in, you'll see the **Member Search Page**. Enter all information regarding your client and click continue.
 - If match is found to an existing case, you will receive a message with the existing case number.
 - If a match is found but not an existing case, you will be instructed to fill out a new **Subrogation Recovery Information Form**.
 - If you have valid executed Medical Authorization, you can upload it.

OPEN NEW CASE

- To open a new case, select SOLARIS (Subrogation Online Attorney Referral & Information Service)
 - In the next popup window select “**Ohio**” and “**Ohio Casualty.**”
- Enter your client’s information
 - If a new Case has been created, a Subrogation Notice Letter will be generated. The screen will display the Maestro case number and tells the user that a will email will be sent within 24 hours.
 - The email will contain the Subrogation Notice Letter and a blank Medical Authorization form.
- If there’s a problem and you don’t receive an email, call the Ohio Tort Recovery Unit at 888-245-9019.

REQUESTING LIENS

- To Request a lien, click the drop down next to “**ATTORNEY/INSURANCE CO**” and select: “**Request Claim/Lien Amount Personal Injury**”
 - Under “Client/Project/State” select “**Ohio Casualty**”
 - Under “Type of Organization” select “**Law Firm**”
- You will then enter the HMS case file number, and the client DOB
- You will then be redirected to a page that summarizes the lien you have requested
 - After you verify your Contact Information, you proceed to “Request Claim/Lien Amount”
- When the information has been input, Click “**Submit**”. The request will then be reviewed by a caseworker. You can use the “Special Instructions” field to note any information about the case, ie: **ICD codes for allowed conditions, last date of related treatment**, etc.
- To Submit Case Documents, click the drop down next to “**ATTORNEY/INSURANCE CO**” and select:
 - “**Submit Case Documents**”

GAINWELL / HMS OHIO TORT RECOVERY CONTACT NUMBERS

Ohio Tort Recovery Unit		
Kristina Hill	Sr. Operations Manager	(614) 772-1091
		E: Kristina.hill2@gainwelltechnologies.com
Kelly Hagan	Operations Supervisor	(614) 721-3660
		E: Kelly.hagan@gainwelltechnologies.com

Case Workers			
Member last name begins with:	Caseworker Name	Title	Phone #
A, B, K	Tina Lomax	Subrogation Case Worker I	614-721-3650
C, D, L	Kyrsty Rider	Subrogation Case Worker I	614-721-1172
E, S	Tasha Hurst	Subrogation Case Worker II	614-721-7479
F, T-V	Annette Burgess	Subrogation Case Worker I	614-721-3655
G-J	Pajah Lindsay	Subrogation Case Worker I	614-721-7574
M, N	Junaid Memon	Subrogation Case Worker I	469-897-4891
O-R, X-Z	Jamie Queen	Subrogation Case Worker I	903-522-6335
W	Kendra Hayes	Subrogation Team Lead	614-721-5188
Attorney General cases	Sue Ross	Subrogation Case Worker II	614-721-0775

Call Center
<p>The call center is available to assist with general inquiries. If additional information is needed regarding case assignments or your case worker is unavailable, the call center can be reached at:</p> <ul style="list-style-type: none"> • 888-245-9019 (toll free) • Non-Solaris Plus case requests (To open cases, request liens, claims disputes or request for compromise): submissions.hms.com • Solaris Plus lien requests, disputes and reduction requests: Solarisplus.hms.com (Solaris Plus cases ONLY) • Solaris Plus issues/help desk: Solarisplus@gainwelltechnologies.com (Solaris Plus cases ONLY) <p>***Please note as of 8/16/2021 we have moved.*** The new mailing address is:</p> <p style="padding-left: 40px;">HMS/Ohio Tort Recovery 5475 Rings Rd. Suite 200 Dublin, OH 43017</p>

GALLARDO V. MARSTILLER
596 US _ (2022)

Gianinna Gallardo suffered catastrophic injuries when she was hit by a truck after getting off her school bus, and she remains in a persistent vegetative state. She eventually recovered \$800,000 in a court-approved settlement, which applied to her past medical expenses, future medical expenses, lost wages, and other damages. However, the settlement amount covered only a fraction of each type of damages.

Medicaid had paid \$862,688.77 toward her past medical expenses, so in an attempt to recover reimbursement for its payments, pursuant to Florida law, the State of Florida asserted a lien over the compensation for past medical expenses, which Medicaid had paid, as well as the compensation for future medical expenses.

Gallardo's counsel filed a lawsuit asking the court to enjoin the state from asserting its lien over the portion of her tort recovery compensating for future medical expenses and to declare that Florida's reimbursement statute violates the Medicaid Act. The district court ruled for Gallardo, finding that the Medicaid Act preempted the Florida law to the extent that the law allows the State to satisfy its lien for past medical expenses from the portion of the beneficiary's tort recovery that compensates for future medical expenses. The U.S. Court of Appeals for the Eleventh Circuit reversed.

QUESTION AND ISSUE

Does the federal Medicaid Act provide for a state Medicaid program to recover reimbursement for Medicaid's payment of a ***beneficiary's past medical expenses*** by taking funds from the portion of the beneficiary's tort recovery that compensates for ***future medical expenses***?

CONCLUSION

The Medicaid Act permits a state to seek reimbursement from ***settlement payments allocated for future medical care.***

Justice Clarence Thomas authored the 7-2 majority opinion.



SPECIAL NEEDS TRUSTS

WILL A WORKERS'
COMPENSATION
SETTLEMENT AFFECT
MEDICAID OR OTHER
PUBLIC BENEFITS?

IT
DEPENDS

PUBLIC BENEFITS

	Health Insurance	Cash Benefit	Food	Housing
<u>Not</u> Means-Tested	Medicare	Social Security Disability Insurance (SSDI), Social Security Retirement (SS)	X	X
Means-Tested	Medicaid, Medicaid Waiver	Supplemental Security Income (SSI)	Supplemental Nutrition Assistance (SNAP)	HUD Section 8 Housing

MEANS-TESTED / NEED-BASED PUBLIC BENEFITS?

NOT means-tested benefits

- Receipt of workers' compensation settlement **WILL NOT** affect these benefits. (With exception of any SSD offset.)
- **BUT**, injured worker should consider whether means-tested benefits might be applied for in the future.

means-tested benefits

- A person with a **disability** who receives **means-tested benefits**, can lose those benefits if their resources exceed the maximum threshold.
- Receipt of workers' compensation settlement **WILL** affect these benefits.

MEDICAID ELIGIBILITY CATEGORIES:

Modified Adjusted Gross Income (MAGI) – Expansion Medicaid

- Resource test: NONE
- Income test: Household income no more than 133% of the Federal Poverty level using MAGI budgeting
- At least 19 years old but less than 65 years old
- Not pregnant
- Not enrolled in or eligible for coverage under Medicare Part A or Part B (If on Medicare = not eligible for MAGI)
- Not be eligible for coverage under another category of Medicaid (Long term care)
 - Get “Notice of Action” letter from Medicaid – look for **“approved for Medicaid benefits”** on second page

Aged, Blind, Disabled (ABD) Medicaid

- Resource test: \$2000 in assets
- Income Test: \$783/month (single); \$1,175/month (couple), same as SSI max benefit
- Disability test unless over age 65
- How to confirm?
 - Get “Notice of Action” letter from Medicaid – look for **“approved for ABD Medicaid”** on second page

MODIFIED ADJUSTED GROSS INCOME (MAGI) MEDICAID - EXPANSION MEDICAID

- Because NO resource test for MAGI, **settlement of workers' compensation will not affect current MAGI eligibility**
- But:
 - IF injured worker has recently been found eligible for SSD, will be converted to ABD Medicaid, and workers' compensation settlement will be considered a resource for ABD Medicaid eligibility.
 - IF injured worker applies for and is granted SSD in the future, balance of workers' compensation settlement will be considered a resource for ABD Medicaid eligibility.
- IF injured worker SSD and Medicare = not eligible for MAGI

EXEMPT RESOURCES

- Residence
- Household goods and personal effects
- One automobile
- Life insurance with face value less than or equal to \$2,000
- Irrevocable pre-paid funeral plan for applicant, spouse, or immediate family
- Property used in trade or business
- ABLE / STABLE Account
- **Exempt Special Needs Trusts**

DOES MEDICAID CONSIDER
MEDICARE SET-ASIDES AS
RESOURCES?

YES!

SPECIAL NEEDS PLANNING OPTIONS

- Third-Party Discretionary Trust
 - AKA “Wholly Discretionary Trusts”
- First-Party / Self-Settled Trust (d4A)
 - Must have Medicaid payback provision
- Pooled Trusts (d4C)
 - May be third-party or self-settled
 - SS trust must have Medicaid payback provision
- ABLE Account / STABLE Account (Ohio)
 - Not a trust but a bank account
- Qualified Income Trust (QIT) / Miller Trust

“Special Needs Trusts”
Beneficiary must be disabled to qualify, (usually by SSA).
SNT exempt as resource and income for means-tested benefit eligibility.

TWO TYPES OF SNT'S COMMONLY USED IN WORKERS' COMPENSATION SETTLEMENTS

Beneficiary is an individual with a disability as defined by 42 U.S.C. 1382c(a) and Ohio Admin. Code 5160:1-3-02

Medicaid Payback Trust
(42 USC 1396p(d)(4)(A))

Pooled Medicaid Payback Trust
(42 USC 1396p(d)(4)(C))

FIRST-PARTY / SELF-SETTLED SNT

- Beneficiary must be under age 65
- Established by the competent beneficiary, parent, grandparent, guardian, or probate court if beneficiary is legally incompetent
- Can be established by the beneficiary's agent under a power of attorney if there's authority in the document ("hot power")
- Medicaid payback provision, then unused funds may revert to beneficiaries
- Funding sources:
 - Inheritance
 - Workers' compensation / litigation settlement
 - Social Security back payment

POOLED TRUSTS

- Same as First-Party / Self-Settled SNT (d4A), with key differences:
 - Beneficiary **over age 65** can fund
 - Trustee is a nonprofit association (i.e., Ohio Catholic Social Services Pooled Trust, Columbus; The Disability Foundation, Dayton; Community Fund Ohio, Cleveland; The Center for Special Needs Trust Administration, Florida)
 - Medicaid payback provision, then **unused funds revert to nonprofit association**

SNT DISTRIBUTIONS

- Examples of permissible distributions:
 - Attorney fees, guardian fees, court costs
 - Clothing
 - Entertainment, streaming services, internet, cable
 - Furniture
 - Hobbies, memberships
 - Pet care
 - Technology, TV, iPad, cell phone, computer
 - Transportation, gasoline, auto insurance, ride share
 - Vacations including aide if medically necessary

SNT DISTRIBUTIONS

- Examples of impermissible distributions:
 - Any item prohibited by the SNT
 - ***Any item that will interfere with the beneficiary's means-tested benefit eligibility***
 - Any item that is for someone other than the beneficiary

QUESTIONS?



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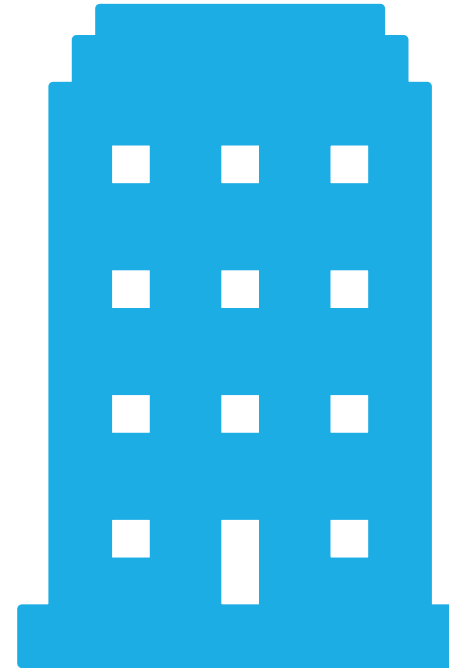
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