



**Agricultural Law Press**

Publisher/Editor

Robert P. Achenbach, Jr.

Contributing Editor

Dr. Neil E. Harl, Esq.

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**Issue Contents**

**Adverse Possession**

Prescriptive acquisition **83**

**Animals**

Bull **83**

**Bankruptcy**

Federal tax

Discharge **84**

**Federal Agricultural Programs**

Disaster programs **84**

Farm labor **84**

Guaranteed loans **84**

Meat and poultry products **84**

Peas **84**

Tobacco **84**

**Federal Estate and Gift Taxation**

Charitable deduction **85**

Income in respect of decedent **85**

Returns **85**

Valuation **85**

**Federal Income Taxation**

Legislation **86**

Accounting method **86**

Charitable deductions **86**

Court awards and settlements **86**

Dependents **86**

IRA **87**

Legal fees **87**

Like-kind exchanges **87**

Limited liability companies **87**

Returns **87**

S corporations

Shareholder basis **87**

Safe harbor interest rates

June 2006 **87**

Unrelated business income **87**

**Landlord and Tenant**

Specific performance **88**

**Property Law**

Hunting **88**

**Water Rights**

Jurisdiction **88**

**In the News 88**

# Agricultural Law Digest

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## U.S. Supreme Court Clarifies Extent of State Medicaid Lien Statutes

-by Roger A. McEowen\*

Medicaid is the joint federal/state program that pays for long-term health care in a nursing home.<sup>1</sup> To be able to receive Medicaid benefits, an individual must meet numerous eligibility requirements but, in short, must have a very minimal level of income and assets. State law typically allows the state Medicaid agency to file a claim in a deceased Medicaid recipient's estate to recoup Medicaid benefits paid during the recipient's lifetime,<sup>2</sup> and also authorizes a statutory lien to the extent of Medicaid benefits paid.<sup>3</sup> In general, the amount of the lien is set at the amount of assistance the state Medicaid agency pays to the individual after the person has been eligible for Medicaid for six months.<sup>4</sup> But, while federal law authorizes such state liens on monetary claims the Medicaid recipient may have, it bars placing a lien on a Medicaid recipient's property before death,<sup>5</sup> except under certain circumstances.<sup>6</sup>

Federal Medicaid law also permits states to place liens against monetary claims the Medicaid recipient may have from third parties.<sup>7</sup> The state agency must take reasonable steps to determine the legal liability of third parties to pay for the medical care of the Medicaid recipient, and the lien attaches to that obligation.<sup>8</sup> But, a question has existed as to whether a state's lien is limited to just those portions of any third party payments a Medicaid recipient is entitled to that are designated as being for medical expenses, or whether the lien applies to all third party payments a recipient is entitled to the extent of Medicaid benefits paid. The U.S. Supreme Court has now answered that question.<sup>9</sup>

### Facts of *Ahlborn*<sup>10</sup>

The plaintiff was permanently disabled in an automobile accident. During her medical care she received benefits under the Arkansas Medicaid program. State law required the plaintiff to assign to the state Medicaid agency (Arkansas Department of Health and Human Services (ADHS)) her "right to any settlement, judgment, or award" she may receive from third parties, "to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant." The plaintiff received \$215,645.30 in Medicaid benefits. A few years later, the plaintiff received \$550,000 as the result of a settlement of the litigation involving the auto accident. That total included amounts for past and future pain and suffering, medical claims, loss of earnings and working time, and the plaintiff's permanent inability to earn income in the future. Only \$35,581 of the settlement proceeds were for medical expenses, but the state Medicaid agency asserted a lien against the proceeds for \$215,645.30 - the full amount it had paid for the plaintiff's care.

\* Leonard Dolezal Professor of Agricultural Law, Iowa State University, Ames, Iowa. Member of the Nebraska and Kansas Bars; honorary member of the Iowa Bar.

The plaintiff sought a declaratory judgment that the state Medicaid agency could only recover \$35,581, the portion of the settlement that represented her claim to medical expenses. The plaintiff reasoned that the state's Medicaid recovery was limited to third-party payments for health care services. To do otherwise, the plaintiff claimed, would violate federal Medicaid law, which ensures that a Medicaid recipient's property will not be depleted during the recipient's life by a state seeking reimbursement for its medical assistance.<sup>11</sup> ADHS argued that its lien did not conflict with the federal law, because the plaintiff's third party settlement was not her "property" until the state was fully reimbursed for all funds expended on medical care. The trial court agreed with the state,<sup>12</sup> but the United States Court of Appeals for the Eighth Circuit reversed.<sup>13</sup> According to the Eighth Circuit, while the federal statutory scheme required the plaintiff to assign her rights to recover from third parties for the costs of medical care and services incurred as a result of the accident, it also protected her other property from recovery by the state. The Eighth Circuit sent the case back to the trial court with directions to enter a judgment for ADHS in the amount of \$35,581.47, the amount of the settlement allocated for medical care.

### The Supreme Court's Opinion

ADHS asked the U.S. Supreme Court to hear the case. They agreed to do so in the fall of 2005,<sup>14</sup> and have now unanimously agreed with the Eighth Circuit, holding that the federal Medicaid law did not authorize the state to assert a lien on the plaintiff's settlement in an amount exceeding the \$35,000 for medical care, and that the federal anti-lien provision actually barred the state from doing so.<sup>15</sup> The Court pointed out that the portion of the federal Medicaid statute that allows states to condition Medicaid eligibility on assigning to the state rights to payment for medical care from a third party meant precisely what it stated – that the right of ADHS to payments from third parties was limited to payments for medical care and did not include rights to other types of payments such as lost wages. In addition, the federal anti-lien provision which bars states from asserting a lien against a Medicaid recipient's property (except under the conditions mentioned above) precluded attachment or encumbrance of any part of the plaintiff's settlement that was not designated as being for medical payments. ADHS characterized the plaintiff's settlement as not her "property" in an attempt to avoid application of the federal anti-lien statute. The Court disagreed, pointing out that the settlement was "received from a third party" (as required by federal law for a state lien to apply) only upon being reduced to proceeds in the plaintiff's possession. As such, the proceeds never belonged to the state. Likewise, the Court reasoned that the state's argument that the plaintiff lost her property rights in the proceeds the moment she applied for medical assistance was inconsistent with the creation of statutory lien on those proceeds. ADHS, the Court pointed out, would not need a lien if the settlement proceeds belonged to ADHS.

### Impact on State Lien Statutes

The Supreme Court's opinion in *Ahlborn*,<sup>16</sup> would appear to have no direct impact on some state lien statutes. For example,

the Kansas lien statute<sup>17</sup> appears to conform to the federal requirements and limits the lien to the amount of assistance the state Medicaid agency pays after the expiration of six months from the date the Medicaid recipient becomes Medicaid-eligible. However, other state Medicaid lien statutes may now be at least partially invalidated. For instance, while the Iowa statute<sup>18</sup> appears to limit the state's lien to claims a Medicaid recipient has against third parties to the extent of Medicaid benefits paid to the recipient - "... the department shall have a lien, to the extent of those payments [i.e., Medicaid benefits paid to the recipient], upon all monetary claims which the recipient may have against third parties....", additional language in the same statute providing that, "...A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.", would appear to extend the state's lien to amounts a Medicaid beneficiary is entitled to that are not for medical care. If that is the case, the statute is invalid to the extent it gives the state a right to assert a lien on third party payments that are not for medical care. Consequently, it appears that the Iowa provision (and any other state statute with similar language) will now need to be amended in accordance with the Supreme Court's ruling.

### Footnotes

<sup>1</sup> 42 U.S.C. § 1396 *et seq.* The states are not required to participate in Medicaid, but all of them do. The program is cooperative in nature – the Federal Government pays between 50 percent and 83 percent of the costs the State incurs for patient care and, in return, the State pays its portion of the costs and complies with certain statutory requirements for making eligibility determinations, collecting and maintaining information, and administering the program. 42 U.S.C. § 1396(a).

<sup>2</sup> See, e.g., Iowa Code § 249A.5; Kan. Stat. Ann. § 39-709(g)(2).

<sup>3</sup> For example, under Iowa law, the lien applies to all monetary claims which the Medicaid recipient may have against third parties. Iowa Code § 249A.6. Under Kansas law, the lien can be filed against the Medicaid recipient's real property (typically the recipient's home) after a determination has been made that the individual cannot reasonably be expected to be discharged from the nursing home to return to their residence. A six-month period of compensated inpatient care at a nursing home, nursing homes or other medical institution constitutes a determination that the Medicaid recipient cannot reasonably be expected to be discharged and return home. Kan. Stat. Ann. § 39-709(g)(4). To "return home" means the Medicaid recipient leaves the nursing home or medical facility and resides for at least 90 days in the home on which the lien has been placed without being readmitted as an inpatient to a nursing medical facility. *Id.*

<sup>4</sup> See, e.g., Kan. Stat. Ann. § 39-709(g)(4). Under Kansas law, the state Medicaid agency must provide notice and an opportunity for a hearing before filing the lien. While the lien

may be enforced either before or after the Medicaid recipient's death by the filing of an action to foreclose the lien in the county district court (or through an estate probate court action), it may be enforced only after the death of the recipient's surviving spouse and (1) when there is no child who is 20 years old or less residing in the home; (2) when there is no adult child who is blind or disabled that resides in the home, and (3) when there is no brother or sister of the Medicaid recipient that lawfully resides in the home who has resided there for at least a year immediately before the date of the Medicaid recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

<sup>5</sup> 42 U.S.C. § 1396p(a)(1).

<sup>6</sup> *Id.*

<sup>7</sup> 42 U.S.C. § 1396k(a)(1) provides that, as a condition of eligibility, the individual must assign to the state any rights to payment for medical care from any third party.

<sup>8</sup> Under the typical state statute, the lien is dissolved if the Medicaid recipient leaves the nursing facility and resides in the property subject to the lien for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. See, e.g., *Kan. Stat. Ann. § 39-709(6)(D)*. If the Medicaid recipient is readmitted to a nursing

or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved. *Id.* The lien also becomes dormant and ceases to operate as a lien if the state Medicaid agency does not take action to foreclose the lien within 10 years of filing the lien. *Id.* The dormant lien may be revived in the same manner as a dormant judgment is revived under Kansas law. *Id.*

<sup>9</sup> *Arkansas Department of Health and Human Services, et al. v. Ahlborn*, 126 S.Ct. 1752 (2006).

<sup>10</sup> *Id.*

<sup>11</sup> See 42 U.S.C. § 1396p(a).

<sup>12</sup> *Ahlborn v. Arkansas Department of Health and Human Services*, 280 F. Supp. 2d 881 (E.D. Ark. 2003).

<sup>13</sup> *Id.*, 397 F.3d 620 (8th Cir. 2005).

<sup>14</sup> *Id.*, *cert. granted*, 126 S. Ct. 35 (2005).

<sup>15</sup> *Arkansas Department of Health and Human Services, et al. v. Ahlborn*, 126 S.Ct. 1752 (2006).

<sup>16</sup> 126 S.Ct. 1752 (2006).

<sup>17</sup> *Kan. Stat. Ann. § 39-709(4)*.

<sup>18</sup> *Iowa Code § 249A.6(1)*.

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## CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

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### ADVERSE POSSESSION

**PRESCRIPTIVE ACQUISITION.** Note: prescriptive acquisition is a civil law doctrine similar to adverse possession. The plaintiffs owned land south of the disputed property which had been in the family since 1940. The plaintiffs presented evidence that the disputed property had been used by family members since that time for recreation, pasture, hunting and farming. The defendants purchased their land neighboring the disputed property in 1963 and claimed that purchase included the disputed property. The defendants paid taxes on the disputed property from that time and argued that the purchase of the property interrupted the adverse possession of the disputed property by the plaintiffs. The defendants acknowledged that they had not exercised physical occupation of the land but argued that the payment of taxes and occasional viewing of the land were sufficient to maintain title to the land. The defendant also pointed to the fact that when they purchased their land in 1963, an ancestor of the plaintiffs had offered to buy the disputed property from the defendants, indicating that the plaintiffs knew that they did not own the land. Finally, the defendants had executed mineral leases for the disputed property and argued that all of their actions involving the property interrupted the plaintiff's possession of the land. The

court held that the activities of the plaintiffs were sufficient exercise of control over the property for over 30 years to pass title to them under prescriptive acquisition. The court noted that, even if the actions of the defendants interrupted the plaintiffs' possession, the plaintiffs' activities on the disputed property re-established control and possession within one year and, under La. Civ. Code art. 3465, repossession within one year removes the interruption. **Prince v. Palermo Land Co., 2006 La. App. LEXIS 1022 (La. Ct. App. 2006).**

### ANIMALS

**BULL.** The plaintiff was working with a carpenter in repairing the cow barn for the defendant. The defendant did not know that the plaintiff was present on the farm or that the plaintiff was working in the cow barn. The plaintiff and the carpenter did not know that the defendant had a dairy bull loose with the other dairy cows. The plaintiff was injured by the defendant's dairy bull while working in the barn and filed suit in strict liability and negligence against the defendant and carpenter for the cost of the injuries. Applying the Restatement (Second) of Torts § 509, the court held that the standard of care for owners of domestic farm animals was that the owner would be liable for harm caused by animals which the owner knew had vicious propensities. The court held that the defendant was not liable for the plaintiff's injury because the evidence demonstrated