

[Supreme Court Case Could Alter Ohio Medicaid Lien Law](#)

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A decision this spring in U.S. Supreme Court case of *Delia v. E.M.A.* could affect how Ohio and other states recoup their Medicaid costs from the recoveries of Medicaid beneficiaries in tort litigation.

In *Delia v. E.M.A.*, the plaintiff, a minor who was a Medicaid beneficiary, settled a medical malpractice case with a defendant physician who allegedly caused her long-term physical injuries. The case was settled for approximately \$2.8 million, the insurance policy limits of the defendant physician, even though the plaintiff's actual damages were potentially much higher.

North Carolina, where the lawsuit originated, has a bright-line statute that says in cases in which a Medicaid beneficiary recovers for an injury for which the Medicaid program paid part of the medical bills, the North Carolina Medicaid program is entitled to either 33% of the recovery or the actual amount of the medical bills paid, whichever is less. North Carolina enacted the statute pursuant to a federal law that requires states to recover their expenses from Medicaid beneficiaries' tort recoveries if possible.

But when North Carolina came to collect its 33% from the plaintiff in *Delia*, she protested that the state was collecting a disproportionately large portion of the settlement given that the medical expenses had not been 33% of the total damages that she had claimed in the lawsuit. The plaintiff claimed that the North Carolina law actually violated another federal Medicaid law that prohibits a state from recouping more than its share for Medicaid expenses from a beneficiary's recovery in a tort lawsuit.

In response to the plaintiff's arguments, North Carolina argued that its law is a reasonable balance between the state's obligation to recoup its Medicaid costs when it can and the difficulty in determining how much of a tort recovery is correctly allocable to medical expenses. The plaintiff's lawyers countered that Medicaid beneficiaries should at least be entitled to a hearing on how to allocate tort recoveries. This year the dispute reached the U.S. Supreme Court.

The arguments in this case reflect the reality that in medical malpractice cases it is often impossible to determine exactly how much of a settlement or verdict is allocable to medical expenses. Settlements are often structured as a lump sum for the dismissal of all claims, which might include claims for pain and suffering, loss of consortium, lost wages, and medical expenses. It is often very hard, if not impossible, to determine how each claim contributed to the overall settlement. And allocations made by the parties are often unreliable because usually neither party has an incentive to allocate settlement money that will ultimately be returned to the Medicaid program.

Ohio's Medicaid lien law, O.R.C. § 5101.58, is similar to the North Carolina law. After attorneys' fees and costs are deducted, Ohio is entitled to 50% of the remaining amount of the Medicaid beneficiary's recovery or the actual amount of the medical bills paid, whichever is less. Consequently, if the North Carolina law falls, the Ohio law is next in line.

The case was argued before the Court in January. Expect a decision sometime this spring.

More information on the case can be found here:

<http://www.scotusblog.com/case-files/cases/delia-v-e-m-a/>

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