

## Casenote

# **Keeping the Government Away from Medicaid Recipients' Pocket- book: Protecting Medicaid Recipients' Rights to Proceeds of Third-Party Settlements in *Arkansas Department of Health & Human Services v. Ahlborn***

### I. INTRODUCTION

In *Arkansas Department of Health & Human Services v. Ahlborn*,<sup>1</sup> the United States Supreme Court approached the contentious issue of whether Medicaid and state Medicaid agencies can recover expenses incurred on behalf of a Medicaid recipient from the entirety of the

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1. 126 S. Ct. 1752 (2006).

recipient's third-party settlement.<sup>2</sup> Over the past decade, several states and the United States Department of Health and Human Services have reached opposite results on this question. In its unanimous opinion, the Court quelled the debate by limiting Medicaid and the corresponding state programs' recoveries from third-party settlements to the proceeds representing repayment of medical expenses,<sup>3</sup> a move likely to cause changes for the federal government, state governments, and individual Medicaid recipients.

## II. FACTUAL BACKGROUND

A motor vehicle accident on January 2, 1996, rendered Heidi Ahlborn permanently disabled.<sup>4</sup> Ahlborn was a nineteen-year-old college student and future teacher, but the accident left her brain-damaged and incapable of continuing her education.<sup>5</sup> Ahlborn filed suit against the allegedly responsible individuals and entities, seeking various damages arising out of the vehicle accident. These damages included the following: (1) permanent injury; (2) past and future medical expenses; (3) past and future pain, suffering, and mental anguish; (4) past loss of earnings and working time; and (5) permanent impairment of ability to earn in the future. In 2002 Ahlborn settled her suit with the defendants and her underinsured motorist insurer for a total of \$550,000, without allocating the settlement among types of damages.<sup>6</sup>

Shortly after the accident, Ahlborn applied and qualified for Medicaid in Arkansas, leading the Arkansas Department of Human Services ("ADHS"), the state agency charged with administering Arkansas's Medicaid program, to pay \$215,645.30 of medical expenses on Ahlborn's behalf.<sup>7</sup> Arkansas law requires Medicaid recipients to assign their rights of recovery from a third party to ADHS.<sup>8</sup> As a result, ADHS asserted a lien on the settlement proceeds. In response, Ahlborn initiated the present suit against ADHS, seeking a declaratory judgment to limit ADHS's recovery to the portion of the settlement representing past medical expenses.<sup>9</sup>

The United States District Court for the Eastern District of Arkansas, faced with cross-motions for summary judgment, denied Ahlborn's

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2. *Id.* at 1756.

3. *Id.* at 1767.

4. *Ahlborn v. Ark. Dep't of Human Servs.*, 397 F.3d 620, 622 (8th Cir. 2005).

5. *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 126 S. Ct. 1752, 1757 (2006).

6. *Ahlborn v. Ark. Dep't of Human Servs.*, 280 F. Supp. 2d 882, 882 (E.D. Ark. 2003).

7. *Ahlborn*, 397 F.3d at 622.

8. ARK. CODE ANN. § 20-77-307(a) (West 2001).

9. *Ahlborn*, 397 F.3d at 622.

motion for summary judgment and granted ADHS's motion for summary judgment.<sup>10</sup> Prior to the trial court's order granting ADHS's motion for summary judgment, the parties had stipulated that if ADHS's argument prevailed, ADHS would recover the full \$215,645.30. The parties also stipulated that \$35,581.47 represented a reasonable measure of the medical expenses portion of Ahlborn's settlement and was the amount that ADHS would recover if Ahlborn's argument prevailed.<sup>11</sup>

Ahlborn argued that the federal Medicaid laws preempted the Arkansas Medicaid laws to the extent that Arkansas's law allowed for reimbursement beyond settlement proceeds that reasonably represent third-party compensation for medical expenses.<sup>12</sup> The court reasoned that the statutory text, an opinion of the United States Department of Health and Human Services, and the legislative history of Medicaid led to the conclusion that Congress intended for the Medicaid statutes to provide states the right to recover fully from third-party payments to a Medicaid recipient.<sup>13</sup>

On appeal, the Eighth Circuit Court of Appeals reversed and remanded the case with instructions for the lower court to render judgment for ADHS according to Ahlborn's lower calculation.<sup>14</sup> The court adopted a "straightforward interpretation of the text" of the federal Medicaid statutes to conclude that key Arkansas statutes were preempted by the federal statutes if they required Ahlborn to assign her rights to recover third-party liability payments beyond the cost of medical expenses.<sup>15</sup>

Ultimately, the United States Supreme Court agreed with the court of appeals, holding that federal Medicaid laws do not permit ADHS to recover any amount beyond that which reasonably represents third-party compensation for medical expenses and that "Arkansas[s] third-party liability provisions are unenforceable insofar as they compel a different conclusion."<sup>16</sup>

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10. *Ahlborn*, 280 F. Supp. 2d at 889.

11. *Id.* at 883.

12. *Id.* at 885.

13. *Id.* at 888.

14. *Ahlborn*, 397 F.3d at 628.

15. *Id.* at 625, 628.

16. *Ahlborn*, 126 S. Ct. at 1767.

## III. LEGAL BACKGROUND

A. *The Medicaid Program*

Medicaid is a joint program between the federal government and participating state governments in which the federal government provides over half of the program's cost in exchange for the states complying with certain statutory requirements.<sup>17</sup> To ensure that Medicaid can recover costs from liable third parties, federal law requires state Medicaid agencies to "take all reasonable measures to ascertain the legal liability of third parties . . . to pay for care and services available under [Medicaid]."<sup>18</sup> The primary mechanism for accomplishing this goal is the assignment statute, which requires recipients to assign to Medicaid their "rights . . . to payment for medical care from any third party."<sup>19</sup> Protecting against an over-invasive government recovery from a recipient, federal law also proscribes placing a lien on the property of a Medicaid recipient before the recipient's death.<sup>20</sup> Unfortunately, these statutes do not uniformly describe the types of third-party payment from which the government can recover.<sup>21</sup> The federal statutes declare that the state should seek repayment of the recipient's Medicaid assistance "to the extent of such legal liability," departing from the assignment statute's language restricting the government interest to third-party compensation for medical expenses.<sup>22</sup> Furthermore, the federal statutes apparently grant Medicaid a priority over the recipient to third-party payment by stating that "any amount collected by the State under an assignment" should first satisfy the state's medical payments while only giving the recipient a remainder interest in such funds.<sup>23</sup> Though detailed in its provisions, courts have interpreted the federal Medicaid statutes with contradictory results.

The other half of Medicaid is state participation. The federal provisions require states to enact their own statutory regimes to administer state plans in accordance with the federal statutes.<sup>24</sup> Arkansas, like many other states, enacted laws which, while on the surface appear to be identical to the federal counterparts, were

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17. Ark. Dep't of Health & Human Servs. v. Ahlborn, 126 S. Ct. 1752, 1758 (2006).

18. 42 U.S.C. § 1396a(a)(25)(A) (2000).

19. *Id.* § 1396k(a)(1)(A) (2000); *accord* 42 U.S.C. § 1396a(a)(25)(H) (2000).

20. *Id.* § 1396p(a)(1) (2000).

21. *See id.* §§ 1396a(a)(25)(A), 1396k(a)(1)(A), 1396p(a)(1).

22. *Id.* §§ 1396a(a)(25)(B) (2000), 1396k(a)(1)(A).

23. *Id.* § 1396k(b) (2000).

24. *See id.* § 1396a(a)(25)(A).

sufficiently different to lead courts to interpret them differently.<sup>25</sup> The Arkansas assignment statute, states that all Medicaid applicants automatically assign their rights “to any settlement, judgment, or award which may be obtained against any third party . . . to the full extent” of Medicaid’s medical payments for the recipient.<sup>26</sup> Arkansas law also imposes a lien upon any “settlement, judgment, or award received by the recipient from a third party.”<sup>27</sup> These state statutory provisions do not match their companion federal provisions, paving the road towards the Court’s decision.

### B. *Contrary State Supreme Court Decisions*

Arkansas is not alone in enacting laws that do not completely match the federal provisions. The Washington Supreme Court addressed such an apparent mismatch in 2000 in *Wilson v. State*.<sup>28</sup> Much like Arkansas’s statute, Washington’s assignment statute seemingly allowed the state agency to recover from “any recovery . . . to the extent of the value of the assistance paid.”<sup>29</sup> In *Wilson* the state Medicaid agency asserted a lien against any recovery. When the recipient negotiated a settlement in this medical malpractice case, the agency asserted the right of reimbursement, and the recipient sued the agency to prevent recovery.<sup>30</sup> The recipient argued that any lien violated the federal anti-lien provision, and the court framed the issue as “[w]hether federal law prohibits the imposition of a state statutory recovery lien against the proceeds of a Medicaid recipient’s third party recovery beyond that portion of the recovery allocated specifically to medical expenses.”<sup>31</sup>

The court showed great deference to congressional intent in premising its interpretation upon the belief that Congress intended for Medicaid “to be the payment source of last resort.”<sup>32</sup> With this intent in mind, the court interpreted 42 U.S.C. § 1396a(a)(25)(H)<sup>33</sup> to authorize the state to recover to the full extent of Medicaid payments, rather than limiting recovery to payments for medical expenses.<sup>34</sup> As a result, the state law allowing for full recovery of Medicaid’s expenses did not conflict with the

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25. See, e.g., ARK. CODE ANN. § 20-77-307 (West 2001).

26. *Id.* § 20-77-307(a).

27. *Id.* § 20-77-307(c).

28. 10 P.3d 1061 (Wash. 2000).

29. *Id.* at 1064 (quoting WASH. REV. CODE § 43.20B.060(2) (1998)).

30. *Id.* at 1063.

31. *Id.* at 1064.

32. *Id.* (citing S. Rep. No. 99-146, at 7, 16 (1985), as reprinted in 1986 U.S.C.C.A.N. 42, 47).

33. 42 U.S.C. § 1396a(a)(25)(H).

34. *Wilson*, 10 P.3d at 1064.

federal scheme and actually “advance[d] the purposes and objectives of the federal law.”<sup>35</sup> The court also held that the federal anti-lien provision did not preclude recovery because the recipient assigned the third-party recovery right to the extent paid out by the state, and the resulting lien blocked any property transfer of the proceeds before the funds became the Medicaid recipient’s property.<sup>36</sup> The four dissenting justices partially forecasted the United States Supreme Court’s position of six years later by stating that the majority had failed to interpret § 1396a(a)(25)(H) in light of the surrounding provisions in the statute.<sup>37</sup> According to the dissent, the remainder of the federal Medicaid statutes only provided for assignment of “payments from another party for health care items or services,” and thus, the state laws that provide further assignment conflict with these federal statutes.<sup>38</sup> Nevertheless, the majority utilized congressional intent in interpreting the federal Medicaid statutes to allow recovery from a recipient’s third-party settlements to the full extent of Medicaid’s payments, without restriction.<sup>39</sup>

In 2002 the Utah Supreme Court also approached the property and anti-lien issue in *Houghton v. Department of Health*.<sup>40</sup> In this class action, the plaintiffs were Medicaid recipients whose settlement proceeds were subjected to a state lien. The plaintiffs argued that compensation for non-medical damages was their property, and thus, Utah’s statute granting a priority to full Medicaid reimbursement before the recipient recovered anything violated the federal anti-lien provision.<sup>41</sup> The court quickly dismissed this challenge by concluding, as did the Washington Supreme Court in *Wilson*, that “liens against third-party settlement proceeds are valid because those proceeds do not become a Medicaid recipient’s property until Medicaid is reimbursed.”<sup>42</sup>

A dissent in *Houghton* foreshadowed the Court’s approach in *Arkansas Department of Health & Human Services v. Ahlborn*<sup>43</sup> by interpreting the federal Medicaid statutes to limit the sources from which Medicaid can recover.<sup>44</sup> The dissent argued that because Medicaid’s interest is

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35. *Id.* at 1065.

36. *Id.* at 1066.

37. *Id.* at 1069 (Alexander, J., dissenting).

38. *Id.*

39. *Wilson*, 10 P.3d at 1065-66.

40. 57 P.3d 1067 (Utah 2002).

41. *Id.* at 1068-69.

42. *Id.* at 1069.

43. 126 S. Ct. 1752 (2006).

44. *Houghton*, 57 P.3d at 1072 (Durham, C.J., concurring in part and dissenting in part).

premised upon the recipient's assignment of his or her right to recover medical expenses, Medicaid's right to recovery is limited to the third party's actual liability for medical expenses.<sup>45</sup> Classifying the majority view as causing a "sweeping and indiscriminate right to third-party payments,"<sup>46</sup> the dissent argued that the majority's interpretation conflicted with the congressional intent and objective and therefore should be preempted.<sup>47</sup> Nevertheless, this more restrictive view of Medicaid's right to recovery was relegated to a dissent rather than a majority opinion.

*C. Guidance from the United States Department of Health and Human Services*

The United States Department of Health and Human Services Departmental Appeals Board ("DAB") has also been active in interpreting the federal Medicaid laws.<sup>48</sup> In 1995 the Health Care Financing Administration ("HCFA")<sup>49</sup> disallowed California \$7.5 million in federal Medicaid money on grounds that this was the amount that "California should have collected from third party liability (TPL) settlements and awards received by Medicaid recipients."<sup>50</sup> The HCFA asserted that according to the federal Medicaid regime and California statutes, the state is entitled and obligated to recover the full amount of benefits paid out to the recipient from any third-party recovery.<sup>51</sup> The DAB reasoned that Medicaid's payments are to be a last resort and that Congress intended for reimbursement from *any* third party source.<sup>52</sup> As a result, Medicaid would be paid in full prior to when the Medicaid recipient obtained any of the settlement, regardless of the classification of the settlement proceeds.<sup>53</sup> The DAB also agreed with HCFA's argument that Medicaid had a superior interest to the recipient in the recovery and that HCFA had the right "to characterize recoveries from third parties first as payments for medical care."<sup>54</sup> The agency opinion

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45. *Id.*

46. *Id.* at 1078 (Durham, C.J., concurring in part and dissenting in part).

47. *Id.* at 1079.

48. Cal. Dep't of Health Servs., DAB No. 1504 (1995), 1995 WL 66444; Wash. State Dep't of Social & Health Servs., DAB No. 1561 (1996), 1996 WL 157123 (holding proper the decision to disallow \$75,395 in federal Medicaid assistance from the state of Washington for not pursuing full Medicaid recovery from third-party payments).

49. HCFA is the federal agency formerly charged with administering Medicaid.

50. DAB No. 1504, 1995 WL 66444, at \*1.

51. *Id.*

52. *Id.*

53. *See id.*

54. *Id.* at \*6.

clearly supported the positions taken by the state agencies in *Wilson* and *Houghton*: Medicaid can take full recovery from recipients' third-party recoveries without regard to the classification of such settlement proceeds.

#### D. Late-Breaking Dissent

Regardless of the uniformity arising throughout the past decade, the balance of opinion began to shift in recent years. The first major decision to interpret the federal regime as disallowing reimbursement from funds beyond those representing medical costs was *Martin v. City of Rochester*.<sup>55</sup> In *Martin* an individual suffered debilitating injuries in a motor vehicle accident. The individual qualified for Medicaid and subsequently received \$267,754.50 worth of medical payments from Medicaid. The recipient filed suit, seeking the following: (1) past and future medical expenses; (2) past and future pain and suffering; (3) disability; (4) disfigurement; (5) past loss of earnings; and (6) loss of earning capacity. After six years of litigation, the recipient negotiated a \$220,000 settlement with the liable parties for all causes and claims. Important to note is the fact that the parties did not allocate the settlement proceeds between the different types of damages alleged. The State, made a party through involuntary joinder, then asserted a cross-claim for reimbursement against the recipient.<sup>56</sup>

Unlike the other courts that had approached this issue, the Minnesota Supreme Court held that the federal anti-lien provision was unambiguous and had a plain-meaning interpretation.<sup>57</sup> The court further held that the proper approach to interpretation is to view each section in the context of the surrounding sections.<sup>58</sup> In interpreting the federal assignment provisions 42 U.S.C. § 1396k<sup>59</sup> and § 1396a(a)(25)(H),<sup>60</sup> the court held that when read together, these provisions only required assignment of the recipient's right to recover for *medical expenses*.<sup>61</sup> This assignment served to transfer the recipient's property rights—but only the proceeds specific to medical expenses.<sup>62</sup> The court then held that the state's recovery, when limited to the portion of the third-party recovery representing medical expenses, did not violate the federal anti-

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55. 642 N.W.2d 1 (Minn. 2002).

56. *Id.* at 5-7.

57. *Id.* at 12.

58. *Id.* (quoting *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)).

59. 42 U.S.C. § 1396k.

60. 42 U.S.C. § 1396a(a)(25)(H).

61. *Martin*, 642 N.W.2d at 12-13.

62. *Id.*

lien statute because recovery would not involve any of the recipient's property and would actually keep intact the recipient's property interest in his or her other causes of action and resulting proceeds.<sup>63</sup> The court also rejected the HFCA opinions, determining that the interpretations of the statutes were unreasonable because the interpretations negated the plain meaning of the statute.<sup>64</sup> *Martin* provided a counter-current to the prevailing jurisprudence on Medicaid recovery.

*Martin* also provided an important analysis of the effects of this narrow interpretation of federal statutes upon seemingly broader state statutes. Minnesota's Medicaid statutes, much like Arkansas's, required assignment beyond the recipient's recovery for medical expenses.<sup>65</sup> The Minnesota Supreme Court held that the state lien provision's broad wording was preempted to the extent that it strayed from the federal provision, as the state statute potentially allowed a lien on all of the recipient's recovery.<sup>66</sup> In regards to the state assignment statute, the court stated that the federal statute assignment did not preempt it; nevertheless, the federal anti-lien provision did, as the state's expansion of the assignment to all of the recipient's damages defeated the purpose of the federal provision.<sup>67</sup> Correspondingly, the Minnesota court interpreted the text of the federal Medical provisions to restrict the state's ability to recover from third-party recoveries to only those amounts representing compensation for medical expenses.

#### IV. COURT'S REASONING

Much like the dissenting opinions in most prior lower court decisions on the issue, the Court in *Arkansas Department of Health & Human Services v. Ahlborn*<sup>68</sup> unanimously took a strict approach in interpreting the federal Medicaid statutes to restrict the sources from which the state Medicaid agency can be reimbursed. At the outset, the Court, in an opinion by Justice Stevens, characterized the crux of the parties' dispute as depending wholly upon statutory interpretation.<sup>69</sup> Throughout its evaluation, the Court centered upon three key areas: the federal assignment and third-party liability statutes, the federal anti-lien statute, and the policy rationales supporting each interpretation. With these key provisions and considerations in mind, the Court held that

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63. *Id.*

64. *Id.* at 22 n.26.

65. *Id.* at 17.

66. *Id.* at 17-18.

67. *Id.* at 18.

68. 126 S. Ct. 1752 (2006).

69. *Id.* at 1758.

Medicaid's reimbursement from third-party settlements ended with the exhaustion of funds reasonably representing medical damages.<sup>70</sup>

*A. Leading the Charge: Federal Assignment and Third-Party Liability Statutes*

The Court first addressed ADHS's argument that the federal assignment and third-party liability statutes allowed Medicaid unfettered reimbursement.<sup>71</sup> The Court looked to the statutory text, which states that a Medicaid recipient must "assign the State any rights . . . to payment for medical care from any third party."<sup>72</sup> The Court noted that this provision only says payment for "medical care," and not for other types of damages such as lost wages.<sup>73</sup> On the other hand, ADHS argued that the third-party liability statutes authorized state reimbursement "for [medical] assistance to the extent of such legal liability."<sup>74</sup> This assertion is reminiscent of the opinion in *Wilson v. State*,<sup>75</sup> as both arguments utilize the federal third-party liability statutes to vie for an unrestricted reimbursement.<sup>76</sup> Nevertheless, the Court read all of the statute's subsections together and held that the statute's phrasing of "such legal liability" refers to the previous subsection's language of "the legal liability of third parties . . . to pay for care and services available under the plan," rather than the entirety of the third party's liability.<sup>77</sup> As a result, the liability provided extends no further than the third party's liability for medical care and stops before the third party's liability for other forms of damages.<sup>78</sup>

ADHS also attempted to argue that the state had a right to recovery "to the extent that payment has been made under the State plan for medical assistance for health care items or services . . . ."<sup>79</sup> This argument, present in the *Wilson* majority and both of the Department of Health and Human Services appellate board decisions, failed to

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70. *Id.* at 1762.

71. *Id.* at 1760-61.

72. *Id.* at 1761 (quoting 42 U.S.C. § 1396k(a)(1)(A) (2000)) (emphasis supplied by the Court).

73. *Id.*

74. *Id.* (quoting 42 U.S.C. § 1396a(a)(25)(B) (2000)) (brackets in original and emphasis supplied by the Court).

75. 10 P.3d 1061 (Wash. 2000).

76. *See id.* at 1063-64; *Ahlborn*, 126 S. Ct. at 1761.

77. *Ahlborn*, 126 S. Ct. at 1761 (quoting 42 U.S.C. § 1396a(a)(25)(A) (2000)) (emphasis supplied by the Court).

78. *Id.*

79. *Id.* (quoting 42 U.S.C. § 1396a(a)(25)(H) (2000)).

persuade the Court.<sup>80</sup> Instead, the Court read the provision in context, holding that the last sentence of this statute restricts Medicaid's reimbursement to the assigned rights to third-party payment for medical expenses.<sup>81</sup>

ADHS asserted a final claim that 42 U.S.C. § 1396k(b)<sup>82</sup> creates authority for the state to demand full reimbursement before the recipient gains any recovery.<sup>83</sup> Though forwarded by the majority in *Houghton v. Department of Health*,<sup>84</sup> the Court rejected this position in light of the explicit text of the provision.<sup>85</sup> Rather than allowing for priority on recovery from the whole settlement, this statutory provision gives the state priority over the "amount recovered . . . under an assignment," and the federal assignment statute only includes recovery of payment for medical care.<sup>86</sup>

The Court also held that the Arkansas statutes regarding assignment and third party recovery go beyond the bounds provided by the federal statutes.<sup>87</sup> The Court concluded that the federal statutes are limited to assignment of and recovery from the cause of action regarding medical expenses.<sup>88</sup> In contrast, the Arkansas statutes could allow a broader interpretation.<sup>89</sup> The Arkansas assignment statute forces the recipient to assign not just damages for medical expenses, but also the "right to any settlement, judgment, or award" from a third party "to the full extent" of Medicaid's payments.<sup>90</sup> The general third-party liability statute grants the state the right to recover from a third party "the cost of benefits so provided."<sup>91</sup> Clearly, the federal and state regimes on assignment and third-party liability are not a complete match. The Court noted, just as the court in *Martin v. City of Rochester*,<sup>92</sup> that the interaction of the federal and state assignment provisions was somewhat questionable as to whether the federal provisions provide a minimum or a maximum for the causes of action that a state can require a recipient

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80. *Id.* at 1761-62.

81. *Id.*

82. 42 U.S.C. § 1396k(b) (2000).

83. *Ahlborn*, 126 S. Ct. at 1761.

84. 57 P.3d 1067 (Utah 2002).

85. *Ahlborn*, 126 S. Ct. at 1761-62.

86. *Id.* (quoting 42 U.S.C. § 1396k(b)) (brackets in original).

87. *Id.* at 1762.

88. *Id.*

89. *See generally* ARK. CODE ANN. § 20-77-301, 307 (West 2001).

90. *Id.* § 20-77-307(a).

91. *Id.* § 20-77-301(a).

92. 642 N.W.2d 1 (Minn. 2002).

to assign.<sup>93</sup> As a result of this ambiguity, the Court held that this aspect of federal and Arkansas Medicaid statutes does not necessarily conflict.<sup>94</sup>

*B. Protecting the Recipient: The Federal Anti-Lien Provision*

The Court also concluded that the federal anti-lien statute, 42 U.S.C. § 1396p,<sup>95</sup> provided grounds for preemption.<sup>96</sup> As stated above, this provision prohibits the placement of liens on a recipient's property before the recipient's death.<sup>97</sup> Prior opinions on the classification of the recipient's settlement or award have been highly contentious. The courts in *Houghton* and *Wilson* employed the logic that since the state's lien automatically attached to the proceeds, the lien prevented the property interest of the recipient.<sup>98</sup> The *Martin* court developed the underlying legal theory a bit further to hold that the recipient retained a property right to the damages, and thus retained a right to the proceeds for all damages other than medical expenses.<sup>99</sup> ADHS attempted to use the Utah and Washington courts' approaches and argued that the automatic lien made the settlement proceeds property of the state rather than property of the recipient.<sup>100</sup> The Court highlighted two logical errors in ADHS's argument,<sup>101</sup> but a more important idea emerged during this discussion. Pointedly leaving the question of whether the anti-lien provision blocks all recovery from awards and settlements,<sup>102</sup> the Court adopted the interpretation that the federal assignment statutes represent an exception to the anti-lien provision.<sup>103</sup> Nevertheless, this exception is limited to the Court's interpretation of the assignment statutes as only requiring assignment of rights to damages for medical expenses.<sup>104</sup> As a result, the anti-lien provision provides the necessary grounds for preemption, and the Court held Arkansas's "third-party

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93. *Ahlborn*, 126 S. Ct. at 1762.

94. *Id.*

95. 42 U.S.C. § 1396p (2000).

96. *Ahlborn*, 126 S. Ct. at 1763.

97. 42 U.S.C. § 1396p(a)(1).

98. *Houghton*, 57 P.3d at 1069; *Wilson*, 10 P.3d at 1066.

99. *Martin*, 642 N.W.2d at 13.

100. *Ahlborn*, 126 S. Ct. at 1765-66.

101. *Id.* at 1764. The Court held that ADHS's argument failed first because Arkansas's statute explicitly states that the lien attaches to the proceeds *received* by the recipient, and thus, the lien attaches to the property of the recipient. *Id.* Second, ADHS's argument failed because if the proceeds were already state property, why "would ADHS need a lien on its own property?" *Id.*

102. *Id.* at 1763 n.12.

103. *Id.* at 1763.

104. *Id.*

liability provisions . . . unenforceable insofar as they compel a different conclusion.”<sup>105</sup>

*C. Beseeching the Court: Policy Grounds for a Judicial Exception*

Similar to prior court holdings, ADHS attempted to argue policy rationales and congressional intent.<sup>106</sup> According to ADHS, the Court, in equity, should allow Medicaid to recover from the entirety of a settlement to prevent the “inherent danger of manipulation in cases where the parties to a tort case settle without judicial oversight or input from the State.”<sup>107</sup> The Court observed that the risk of a party in a tort settlement allocating away Medicaid’s interest is avoidable by state participation and that the result of allowing such recovery would be to discourage settlement in a large number of cases.<sup>108</sup> Nevertheless, the Court concluded that this issue was not relevant to the current proceedings, as the parties had already stipulated to the precise amount that represented medical expenses.<sup>109</sup>

ADHS’s alternate argument, that Congress’s intent was for Medicaid to be the payer of last resort, received little attention. While the Court did not explicitly reject the use of the legislative history and intent to support ADHS’s interpretation of the federal Medicaid statutes, the Court characterized ADHS’s position as having a “conscious disregard for the statutory text.”<sup>110</sup> Adopting a strict approach to statutory interpretation, the Court revisited a topic debated by lower courts and administrative agencies to provide uniformity of judicial outcomes. In deciding *Ahlborn*, the Court clearly asserted that federal Medicaid statutes preempt corresponding state statutes that seek to recover from a recipient’s third-party recovery any amount in excess of that which reasonably represents compensation for medical expenses.

V. IMPLICATIONS

The Court’s decision in *Arkansas Department of Health & Human Services v. Ahlborn*<sup>111</sup> will affect several different areas of both federal and state law. The first issue for the federal government is the conflict between the judicial and executive branches resulting from the Court choosing not to defer to the Department of Health and Human Services’s

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105. *Id.* at 1767.

106. *See id.* at 1764-67.

107. *Id.* at 1764.

108. *Id.* at 1765.

109. *Id.*

110. *Id.* at 1767.

111. 126 S. Ct. 1752 (2006).

clearly stated point of view. The Court differentiated these opinions on the grounds that these opinions did not address the anti-lien provision.<sup>112</sup> Nevertheless, the Court's broad holding could be refined and limited by subsequent decisions as the state and federal agencies and the courts attempt to operate under these new guidelines. On the other hand, the overall holding is not likely to change, as this decision was unanimous.

The federal government might also witness some changes in the Medicaid laws and Department of Health and Human Services regulations and adjudications. If Congress agrees with the Court, Congress might act to clarify the sections of the statutes that caused problems—those that could lead to multiple reasonable interpretations. If Congress disagrees with the holding of this decision, then legislation could follow to mitigate the effects of this decision. First, Congress could easily adopt a new Medicaid statutory provision describing the meaning of “property” to be less than the definition ascribed by the Court. As well, the legislature and agencies could adopt other measures to end-run this decision or provide alternative sources of reimbursement. After all, Medicaid does need some source of funding.

Changes are also likely to take place on the state level. After the Court's decision, states are much more likely to take on a greater role in a Medicaid recipient's litigation. As state involvement in Medicaid recipient litigation is already provided for under the federal scheme as well as most state schemes, there will be no need for any additional legislation. More state participation would allow the state to protect Medicaid's interest to the greatest extent possible and to participate in settlement negotiations. Naturally, this increase in state responsibility could lead to difficulties in cooperation between the state and the Medicaid recipient; the recipient will probably be much more willing than the state to settle the case for less than full recovery. Such difficulty could even cause problems with joinder in civil cases, as the state will want sole authority over any settlement. The underlying difficulty for the applicable state agencies, a difficulty that the courts do not appear to recognize, is the resulting budgetary and resource drain such litigation would place upon state agencies.

One final implication deals with the Court's footnote 12, which explicitly left open the question of whether the federal anti-lien provision proscribes any reimbursement from a Medicaid recipient.<sup>113</sup> The Court stated in the main text that this provision, when read “literally and in isolation[,] . . . [could] ban even a lien on that portion of the settlement

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112. *Id.* at 1766.

113. *Id.* at 1763 n.12.

proceeds that represents payments for medical care.”<sup>114</sup> This note could suggest that the Court wants to return to this issue. Regardless, the Court is unlikely to adopt the assertion that the anti-lien provision is a complete bar, as none of the laws currently in existence purports to do this. To the contrary, the majority of courts prior to this decision were willing to narrow the effectiveness of the anti-lien provision. Even *Martin v. City of Rochester*,<sup>115</sup> which foreshadowed the Court’s position, held the anti-lien provision was not a complete bar.<sup>116</sup> As a result, the Court is unlikely to pursue any further change with respect to this provision.

This opinion will make a great deal of difference in the application and funding of Medicaid budgets. Not only does this decision affect how the states administer and supervise Medicaid and recipient litigation, but also there will be a large budgetary effect for the federal government, which pays over half of each state’s Medicaid bill. If for no other reason than this immediate budgetary concern, congressional action to rectify or accommodate to this new precedent is highly likely.

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114. *Id.* at 1763.

115. 642 N.W.2d 1 (Minn. 2002).

116. *Id.* at 14.