



Q&A Medicaid Overpayment

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Question: My client recently received a letter from the state Medicaid agency stating that he owed money for the few months in which he was incorrectly deemed eligible for Medicaid and enrolled in a Medicaid managed care plan. Notably, enrollment was due to agency error, not fraud or misrepresentation on his part, and my client did not utilize any Medicaid services during that period.¹ Can we challenge the state's action to collect overpayments in the form of capitation payments made by the state agency to the managed care plan in those months? If so, how?

Answer: Advocates can challenge state action on the grounds that states can impose liens on beneficiaries for medical assistance incorrectly paid only if pursuant to a court judgment. Additionally, advocates can argue that requiring repayment of Medicaid funds violates Medicaid regulation provisions to the extent that it reduces other public assistance funds paid to the beneficiary. Advocates also can claim equitable estoppel or substantial hardship.

Federal Law Pertaining to Overpayment

The federal Medicaid statute allows states to impose a lien upon individuals for whom Medicaid benefits were incorrectly paid, stating that:

[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual.²

¹ A separate set of issues are raised when the overpayment is due to an alleged act of the recipient such as fraud or misrepresentation. Those issues are beyond the scope of this Q and A.

² See 42 U.S.C. § 1396p(a)(1)(A) (2005). See also 42 C.F.R. 433.36(g)(1) (maintaining that "the agency may place a lien against an individual's property, both personal and real, before his or her death because of Medicaid claims paid or to be paid on behalf of that individual following a court judgment which determined that benefits were incorrectly paid for that individual"). Note that some courts have held that recovery statutes should be strictly construed. See *Pottgieser v. Kizer*, 906 F.2d 1319 (9th Cir. 1990); *State v. Murtha*, 427 A.2d 807, 810 (Conn. 1980); *Dep't of Pub. Welfare v. Anderson*, 384 N.E.2d

However, there must be a court judgment before the state can place a lien on the beneficiary's real or personal property.³

Aside from the requirement that there be a court judgment before a lien is imposed, the statute provides no additional guidance on the parameters of seeking an overpayment from the beneficiary or types of action the state may take against a beneficiary.⁴ Nor does the statute define overpayment in the context of the individual beneficiary. In the section on federal financial participation, the Medicaid statute does define "erroneous excess payments for medical assistance" as "payments under the state plan with respect to ineligible individuals and families, and overpayments on behalf of eligible individuals and families by reason of error in determining the amount of expenditures for medical care required of an individual or family as a condition of eligibility."⁵ Similarly, in the federal regulations, erroneous payments are described as "Medicaid payments made for an individual or family who was ineligible to receive Medicaid-covered services or had not satisfied their beneficiary liability." "Beneficiary liability" is defined as "the amount of excess income that must be offset with incurred medical expenses to gain eligibility; or the amount of payment a recipient must make toward the cost of services."⁶ However, discussion of overpayment in that section refers only to a reduction in the federal financial participation of Medicaid expenditures owed to the state. While the statute states the conditions for a state to receive federal financial participation, individual liability does not necessarily follow.

State Overpayment Laws

Because of the limited federal guidance provided on Medicaid overpayments, states have crafted their own legislation to address the issue. States are divided in their approaches to collecting funds from beneficiaries who received Medicaid overpayments. Some states go after only those beneficiaries who received Medicaid benefits as a result of fraud or misrepresentation.⁷ For example, under California law, if a beneficiary

628, 631 n.3 (Mass. 1979); *In re Estate of Colon*, 372 N.Y.S.2d 812, 827 (N.Y. Surr.Ct. 1975); *Estate of Rios*, 375 N.Y.S.2d 269, 271 (N.Y. Surr.Ct. 1975).

³ *See id.*

⁴ *But see* 42 U.S.C. § 1396b(q) (2005); 42 C.F.R. § 455.12 (2006). The federal Medicaid statute and regulations do describe Medicaid fraud and state pursuit of fraud claims through a state Medicaid fraud unit.

⁵ *See* 42 U.S.C. §1396b(u)(1)(D) (2005). In the section of the Medicaid statute that defines "medical assistance," there is no mention of capitation payments. Statutory and regulatory sections that discuss Medicaid managed care organizations also contain no language defining capitation rates as a form of medical assistance. *See* 42 U.S.C. § 1396b(m) (2005); 42 C.F.R. 438.2 (2006).

⁶ *See* 42 C.F.R. § 431.865(b) (2006).

⁷ *See* CAL. WELF. & INST. CODE §14009 (2006) (Medi-Cal beneficiaries are liable for overpayment if they have failed to accurately report facts pertaining to eligibility); GA. CODE ANN. § 49-4-15 (2006) (persons who "by means of false statement, failure to disclose information, impersonation or fraud obtains public assistance, including Medicaid benefits, for which they are not eligible shall be guilty of a

received Medi-Cal services to which she was not entitled because of a failure to report accurately facts pertaining to eligibility, she shall be liable to repay any overpayment.⁸ When the California Department of Health Services (DHS) determines that such an overpayment has occurred, it “shall seek to recover the full amount of the overpayment by appropriate action under state law against the income or resources of the beneficiary or a person who is financially responsible for the cost of the beneficiary’s health care.”⁹ Where the overpayment is caused by an error made by DHS or a county welfare department, there is no beneficiary liability for overpayment.¹⁰

Other states seek to collect funds for all types of overpayment regardless of whether they were due to fraud, misrepresentation, improper claiming or mistake of the beneficiary or department.¹¹ In New York, overpayments are defined as payments

felony”); IDAHO CODE § 56-227 (2006) (“whoever knowingly obtains or attempts to obtain . . . by means of willfully false statement or representation, material omission, or fraudulent device, public assistance” to which he is not entitled shall be punished in the same manner and extent as for larceny); 305 ILL. COMP STAT 5/8A-2 (2006) (providing for liability and criminal prosecution of “any person, who by means of any false statement, willful misrepresentation or failure to notify the county department or local government unit . . . to obtain public aid”); LA. REV. STAT. ANN. § 46:114 (2006) (persons who have “fraudulently obtained such medical assistance may be suspended from the medical assistance program for twelve months”); 62 PA. CONS. STAT. § 481 (2005) (“any person who . . . by means of a willfully false statement or misrepresentation, or by impersonation secures, or attempts to secure, or aids or abets or attempts to aid or abet any person in securing assistance, or Federal food stamps, commits a crime”); S.C. CODE ANN. § 43-7-70 (2005) (“[i]t is unlawful for a person to knowingly and willfully to [sic] make or cause to be made a false statement or representation of material fact on an application for assistance, goods, or services under the state’s Medicaid program when the false statement or representation is made for the purpose of determining the person’s entitlement to assistance, goods, or services”); W. VA. CODE ANN. § 9-7-4 (Michie 2006) (“[a] person shall not knowingly make or cause to be made a false statement or false representation of any material fact in an application for medical assistance under the medical programs of the department of welfare”).

⁸ CAL. WELF. & INST. CODE §14009(c) (2006). *See also* CAL. CODE REGS. tit. 22 §50781 (2006).

⁹ CAL. WELF. & INST. CODE §14009(e) (2006). *See also* CAL. CODE REGS. tit. 22 §50783 regarding county action on potential overpayment.

¹⁰ CAL. WELF. & INST. CODE §14009(d) (2006).

¹¹ *See* COLO. REV. STAT. § 26-4-403 (2006) (“any medical assistance paid to which a recipient was not lawfully entitled shall be recoverable from the recipient or the estate of the recipient by the county as a debt due to the state”); HAW. REV. STAT. § 346-44 (Michie 2006) (“all overpayments of public assistance funds . . . shall constitute debt due and owing to the department by the recipient of such overpayments”); KY. REV. STAT. ANN. § 205.211 (2006) (“secretary may . . . take all necessary steps to correct any underpayment or overpayment of public assistance benefits”); N.Y. SOC. SERV. § 106-b (Consol. 2006) (“a social services official shall . . . take all necessary steps to correct any overpayment or underpayment to a public assistance recipient”); OHIO REV. CODE ANN. § 5101.184 (2006) (“[a]ny overpayment of assistance, whether obtained by fraud or misrepresentation, as the result of an error by the recipient or by the agency making the payment, or in any other manner, may be collected”); R.I. GEN. LAWS § 40-8-10 (2006) (“any person, who through error or mistake of himself or herself or another, receives medical care benefits to which he or she is not entitled or with respect to which he or she was ineligible, shall be required to reimburse the state for the benefits paid through error or mistake”); UTAH CODE ANN. § 26-19-13.7 (2006) (“[t]he department may recover medical assistance incorrectly provided, whether due to administrative or factual error or fraud, from the recipient or his estate”). *See also* VA.

made to an eligible person in excess of his needs or as payments made to ineligible persons.¹² The New York Department of Social Services is required to “take all necessary steps to correct any overpayment or underpayment to a public assistance recipient.”¹³ Furthermore, it can require repayment from the individual submitting an incorrect or improper claim, the individual causing the claim to be submitted, or the individual receiving payment for the claim.¹⁴ The New York Court of Appeals validated the state’s procedures in *Oxenhorn v. Fleet Trust Co.*, stating that “courts can reasonably infer that Congress intended to permit recovery of benefits even from those who mistakenly received them, regardless of fault for the source of the error.”¹⁵

Advocacy Tips

To address the issue of overpayment, advocates must first determine if an action seeking repayment of a Medicaid overpayment in cases without beneficiary fraud or misrepresentation is permitted by their state statutes and regulations. If state statutes and regulations allow actions against the beneficiary even when overpayment is due to state agency error, advocates can make a number of arguments to challenge the action:

- Assert that the state can only pursue a lien if it has obtained a court judgment in its favor;¹⁶
- If the beneficiary receives Medicaid as a result of a disability, argue that state attempts to seek Medicaid repayment result in unlawful reduction of other payments, such as Supplemental Security Income (SSI);¹⁷
- Pursue claims of equitable estoppel on grounds that it is inequitable for the state to benefit from its errors; or
- If the state has statutes or regulations prohibiting repayment in cases of hardship to the beneficiary, make the claim that the client would suffer a substantial hardship in making repayment.

CODE ANN. § 32.1-321.2 (2006)(statute imposes liability on those who received “excess benefits” without intent to do so, but does not hold beneficiaries liable if those benefits resulted from error by the Department of Medical Assistance Services).

¹² N.Y. SOC. SERV. § 106-b (2006).

¹³ *Id.*

¹⁴ N.Y. COMP. CODES R. & REGS. tit. 18 § 518.3 (2006). *But see* N.Y. SOC. SERV. § 106-b (2006)(mandating that procedures to correct overpayments must be designed to minimize any adverse impact or undue hardship on the beneficiary).

¹⁵ *See Oxenhorn v. Fleet Trust Co.*, 94 N.Y.2d 110, 117 (N.Y. 1999). *See also* *Case v. Fargnoli*, 182 Misc. 2d 996 (N.Y. Sup. Ct. 1999).

¹⁶ *See* 42 U.S.C. § 1396p(a)(1)(A) (2005); 42 C.F.R. 433.36(g)(1).

¹⁷ *See* 42 C.F.R. 433.36(i) (“[n]o money payment under another program may be reduced as a means of recovering Medicaid claims incorrectly paid”).