

## **Alert** | Health Care & FDA Practice



June 2022

### **Supreme Court Rules that Medicaid's Secondary Payer Provision Applies to Future Medical Expenses**

On June 6, the Supreme Court in *Gallardo v. Marstiller* resolved an ambiguity in the Medicaid statute that could have significant ramifications for those seeking to settle personal injury cases involving a plaintiff who is on Medicaid.<sup>1</sup> The case focused on a provision in the Medicaid Act requiring states to compel Medicaid beneficiaries to assign their rights “to payment for medical care from any third party[.]”<sup>2</sup> At issue before the Court was whether this provision “permits a State to seek reimbursement from settlement payments allocated for future medical care.”<sup>3</sup>

The case involved a 13-year-old who was permanently disabled after being struck by a truck and, as a result, became a Florida Medicaid beneficiary.<sup>4</sup> Florida, rather than permitting the state to recover a beneficiary's entire settlement, limits the state's recovery to no more than half of the settlement or judgment after deducting 25% for attorney's fees and costs.<sup>5</sup> The case settled for \$800,000, \$35,367.52 of which was expressly designated to cover past medical expenses, and arguably the remainder (after deducting attorney's fees) was allocated implicitly to future medical care.<sup>6</sup> Florida, which had already

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<sup>1</sup> *Gallardo v. Marstiller*, No. 20–1263 (U.S. June 6, 2022), slip op. at 6.

<sup>2</sup> 42 U.S.C. § 1396k(a)(1)(A).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Gallardo v. Marstiller*, *id.*, slip op. at 4.

spent more than \$800,000 on medical care when the case settled, sought \$300,000, the full amount it was entitled to receive under its own statute ( $\$300,000 = 50\% \times 75\% \times \$800,000$ ).<sup>7</sup>

The plaintiff sued the state, arguing that the Medicaid provision only authorized the state to recoup past medical expenses and there was nothing that permitted it to seek “recovery” for future medical expenses.<sup>8</sup> The plaintiff argued that an express federal statutory authorization was required because another provision in the Medicaid Act prevented a state from placing a lien on any property of a beneficiary unless authorized by federal law.<sup>9</sup>

The Court, in holding that the Medicaid provision encompassed both past and future medical expenses, reasoned that the lack of a past-expenses-only limitation in the statute is proof that Congress did not intend such a limitation to apply.<sup>10</sup> The Court reasoned that if Congress had wanted to draw a distinction between past and future payments, it easily could have done so but did not.<sup>11</sup>

The Court noted that there were two provisions in the Act addressing third-party liability. One, a mandatory state plan provision, limited third-party liability to payments made in the past by a state Medicaid plan: “payment [that] *has been made* under the State plan for medical assistance for health care items or services *furnished* to an individual[.]”<sup>12</sup> See 42 U.S.C. § 1396a(a)(25)(H). The other, at issue in this case, required a beneficiary to assign his or her recovery from a third-party to the state Medicaid plan. That one contained no such temporal limitation.<sup>13</sup> See *id.* at 1396k(a)(1)(A).

Plaintiff-petitioner urged the Court to engraft the “past tense only” language from the state-plan provision onto the separate mandatory assignment provision.<sup>14</sup> The Court not only declined to rewrite the statute but also reasoned that the existence of this limitation elsewhere in the statute was evidence that Congress knew how to limit the assignment to past medical payments and chose not to do so in Section 1396k(a)(1)(A).<sup>15</sup> Since the Court found that Section 1396k(a)(1)(A) permitted recovery for future medical expenses, Florida’s assignment provision falls within the exception to the anti-lien provision.<sup>16</sup>

## Author

This GT Alert was prepared by:

- **Robert P. Charrow** | +1 202.533.2396 | [charrowr@gtlaw.com](mailto:charrowr@gtlaw.com)

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Gallardo v. Marsteller*, 596 U.S. \_\_\_\_ (2022), slip op. at 7.

<sup>12</sup> *Id.* (first emphasis added).

<sup>13</sup> *Id.* at 6 (first emphasis added).

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 7-8.

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