STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL MOBLEY, BY AND THROUGH
HIS FATHER AND NATURAL GUARDIAN,
DAVID MOBLEY,

Petitioner,

vs. Case No. 13-4785MTR

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.
_____/

FINAL ORDER ON REMAND

On March 17 and 24, 2014, a duly-noticed hearing was held in Pensacola and Tallahassee, Florida, via video teleconference, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH). The Final Order issued on May 21, 2014, was reversed and remanded by Mobley v. State, Agency for Health Care Administration, 40 Fla. L. Weekly D2816 (Fla. 1st DCA Dec. 18, 2015).

APPEARANCES

For Petitioner: Floyd B. Faglie, Esquire
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For Respondent: Alexander R. Boler, Esquire
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STATEMENT OF THE ISSUE

The issue to be decided is the amount payable to Respondent in satisfaction of Respondent's Medicaid lien from a settlement, judgment, or award received by Petitioner from a third-party under section 409.910(17), Florida Statutes (2013).[1/]

PRELIMINARY STATEMENT

On December 13, 2013, Petitioner filed a Petition to Determine Amount Payable to the Agency for Health Care Administration in Satisfaction of Medicaid Lien. The final hearing was held on March 17 and 24, 2014. The Final Order was issued on May 21, 2014. On appeal, the court reversed in Mobley, supra. The court, noting that ERISA liens can be paid from any portion of a settlement, reversed the finding of fact that the $120,000.00 to be paid to ERISA in satisfaction of its claim should be allocated to past medical expenses along with the allocation of $20,717.53 for the Medicaid lien. The court remanded with instructions to "not consider the ERISA settlement as a part of the medical expense allocation and to determine whether, without the ERISA settlement, [Petitioner] proved by clear and convincing evidence that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the formula." As this direction from the court required consideration of issues not addressed in the May 21, 2014, Final Order, the parties

submitted a Supplemental Joint Stipulation of fact and additional legal argument. These were accepted and considered along with the original record and in light of the District Court decision.

FINDINGS OF FACT

1. This case stems from a personal injury claim that arose in 2005. Petitioner, Michael Mobley (Michael or Petitioner), then a 14-year-old boy, attended a beach party thrown by off-duty employees at a hotel in Destin. He became intoxicated and drowned in the Gulf of Mexico. He was revived, but suffered irreversible anoxic brain damage, which left him unable to live independently.

2. Michael's parents brought suit on his behalf against the hotel operators and a third-party contractor that provided lifeguard services for the hotel. The total claim for past medical expenses amounted to $627,804.14. This claim consisted of $515,860.29 paid by a self-funded ERISA plan and $111,943.89 paid by Medicaid. After years of litigation, the parties agreed to settle all claims, including those for medical expenses, for $500,000.00. The ERISA plan asserted a lien for the full amount of medical expenses it had paid, but agreed to accept $120,000.00 in satisfaction of its lien.

3. The Florida Statutes provide that Respondent, Agency for Health Care Administration (AHCA), is the Florida state agency authorized to administer Florida's Medicaid program. § 409.902, Fla. Stat. AHCA, through ACS Recovery Services,

asserted a lien against any settlement in the full amount of medical assistance paid by Medicaid in its letter of June 9, 2011.

4. The testimony at hearing established that a conservative "pure value" of Michael's economic damage claims in the case, before consideration of such factors as comparative fault, application of the alcohol statute, a defendant's bankruptcy, and the novel theories of legal liability, was $15 million.

5. A Joint Petition for Approval of Settlement was filed in the Circuit Court in and for Okaloosa County, Florida, on or about June 14, 2012. It stated that although the damages Michael received far exceeded the sum of $500,000.00, the parties had agreed to fully resolve the action for that amount in light of the parties' respective assessments of the strengths and weaknesses of their cases. The petition specifically alluded to pending bankruptcy proceedings, summary judgment dismissal of claims premised upon a duty to provide lifeguarding services, plaintiff's remaining theories of liability, available defenses, specifically including the statutory "alcohol defense" as interpreted by the Florida courts, and anticipated costs of trial and appeal.

6. The petition stated: "Plaintiff's claim for past medical expenses related to the incident total $627,804.18. This claim consists of $515,860.29 paid by a self-funded ERISA plan and $111,943.89 paid by Medicaid."

7. As an attached exhibit, the petition incorporated a Distribution Sheet/Closing Statement which allocated the $500,000.00 total recovery among the categories of attorneys' fees, costs, outside attorneys' fees, lien/subrogation/medical expenses, and net proceeds to client. The Distribution Sheet allocated $140,717.54 to "lien/subrogation/medical expenses," subdivided into $120,000.00 to Blue Cross Blue Shield of Florida/CIGNA and $20,717.54 to Medicaid lien. The distribution sheet did not further describe the $331,365.65 amount identified as "net proceeds to client" or allocate that amount among distinct claims or categories of damages such as pain and suffering, future medical costs, disability, impairment in earning capacity, or loss of quality and enjoyment of life. Under the Joint Petition for Approval of Settlement, most of the total recovery thus remains undifferentiated as to the type of damages it represents.

8. The Joint Petition for Approval of Settlement was submitted on behalf of the defendants and plaintiffs in the lawsuit, including Michael. AHCA did not participate in settlement negotiations or join in the Release, and no one represented its interests in the negotiations. AHCA has not otherwise executed a release of its lien.

9. A Release was signed by the plaintiffs contingent upon court approval of the Joint Petition for Approval of Settlement.

The Release provided that "the parties have agreed to allocate $20,717.54 of this settlement to Michael Mobley's claim for past medical expenses and allocate the remainder of the settlement towards the satisfaction of claims other than medical expenses." The Release was signed by the parents and guardians of Michael.

10. The court approved the settlement, with the exception of the Medicaid lien, pending an administrative determination of the amount of the lien to be paid.

11. This $500,000.00 settlement is the only settlement received and is the object of AHCA's lien.

12. AHCA through the Medicaid program spent $111,943.89 on behalf of Michael, all of which represents expenditures paid for Michael's past medical expenses, and seeks that amount from the settlement. No portion of the $111,943.89 paid by AHCA on behalf of Michael represents expenditures for future medical expenses, and AHCA did not make payments in advance for medical care.

13. Michael, or others on his behalf, did not make payments in the past or in advance for Michael's future medical care.

14. In Michael's personal injury action, no claim for damages was brought for reimbursement, repayment, restitution, indemnification, or to be made whole for payments made in the past or in advance for future medical care.

15. No portion of the $500,000.00 settlement represents reimbursement for payments made in the past or in advance for future medical care.

16. Michael receives health insurance coverage through his father's employer, and this health insurance coverage will continue even when Michael's father retires due to Michael's disability during minority. Further, Michael will be eligible for Medicare benefits if his parents become disabled or his parents reach retirement age, due to Michael's disability during minority.

17. AHCA correctly computed the lien amount pursuant to statutory formula. Deducting 25 percent attorney's fees and $60,541.22 taxable costs from the $500,000.00 recovery leaves a sum of $314,458.78, half of which is $157,229.39. In this case, application of the formula therefore results in a statutory lien of the lesser amount of $111.943.89, the amount actually paid. § 409.910(17), Fla. Stat.

18. The $500,000.00 total recovery represents approximately 3.3 percent of the $15 million total economic damages. The amount of $20,717.54 represents approximately 3.3 percent of the $627,804.18 of total past medical expenses. The sum of $3,694.15 represents approximately 3.3 percent of the $111,943.89 in medical costs paid by Medicaid.

19. Scant evidence was presented by Petitioner at hearing as to what portion of the $331,365.74, if any, should be

allocated as compensation for future medical expenses, or what the parties to the settlement may have considered that allocation to be. Petitioner relied upon the proposed settlement and the Release signed by Michael's parents, with its statement that, other than the amount allocated for past medical expense, the remainder of the settlement was towards the satisfaction of claims other than medical expenses.

20. Matthew Schultz, an attorney experienced in personal injury law who handled the tort case for Michael, testified at hearing regarding the settlement. In discussing the economist's report, which assigned net present values to the life care plan, and the "percentage" allocation, he testified on cross examination:

> Q: Okay. Well, see if you follow this. You've got – you know, to get to that 20 million you multiplied the actual past med claim by 3.3 percent. And what we have just done now is multiplied the actual – the lowest possible end of the future med claim of 14 million by 3.3 percent and we added those two numbers together, the 20,000 and the 460?
>
> A: To get past and future meds. You said 20 million – you meant 20,000 – at the beginning of the question, I think, and that would be make in the range of 480,000, right.
>
> Q: Okay. I just wanted to make sure we were on the same page about the calculations. So 480 would be the entirety, based on your math and your expert, of the past and future medical expense damages actually recovered?

> A: Right. Using the 3.3 percent figure, these being future medicals as yet unpaid. In other words, not reimbursement the way Floyd described it, but future medical care needs.
>
> Q: Yes. I think we'll hash out that legal issue.

Later in redirect, Mr. Schultz testified that he was not stating that $480,000.00 was the amount of future medical expenses allocated by the settlement. He testified that they used the $15 million dollar figure that represented only economic losses as the conservative value of the entire case for purposes of allocation, but they treated the $15 million dollar amount as if it included "the entire value of the case, past medical, future medical, noneconomic damages, everything." The present value analysis prepared by Dr. F.A. Raffa on the future life care needs of Michael assigned present values to future medical expenses.[2/] The non-economic damages were at least equal to the total economic damages, and may have been considerably more.

21. Petitioner proved by clear and convincing evidence that the amount of $20,717.54 should be allocated for past medical expenses.

22. Petitioner failed to prove by clear and convincing evidence what amount of the recovery should be allocated for future medical expenses.

23. Petitioner failed to prove by clear and convincing evidence that the statutory lien amount of $111,943.89 exceeds the amount of the total recovery that should be allocated for past and future medical expenses.

CONCLUSIONS OF LAW

24. DOAH has jurisdiction over the subject matter and the parties in this case pursuant to section 409.910(17), Florida Statutes (2015).

25. As a condition for receipt of federal Medicaid funds, states are required to seek reimbursement for medical expenses incurred on behalf of beneficiaries who later recover from third-party tortfeasors. See Arkansas Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268 (2006).

26. Consistent with this federal requirement, the Florida Legislature has enacted section 409.910. This statute authorizes and requires the State to be reimbursed for Medicaid funds paid for a plaintiff's medical care when that plaintiff later receives a personal injury judgment or settlement from a third party. Smith v. Ag. for Health Care Admin., 24 So. 3d 590, 590 (Fla. 5th DCA 2009). The statute creates an automatic lien on any such judgment or settlement for the medical assistance provided by Medicaid. § 409.910(6)(c), Fla. Stat.

27. A formula is set forth in section 409.910(11)(f) to determine the amount the State is to be reimbursed. The statute

sets that amount at half the amount of the total recovery, after deducting taxable costs and 25 percent attorney's fees, not to exceed the amount actually paid by Medicaid on the beneficiary's behalf. Ag. for Health Care Admin. v. Riley, 119 So. 3d 514, 515 n.3 (Fla. 2d DCA 2013). Here, application of the statutory formula yields $111,943.89, the amount actually paid.

28. Section 409.910(17)(b) provides that a Medicaid recipient has the right to attempt to rebut this presumptively valid allocation created under Florida law in an administrative hearing. Petitioner must establish, through clear and convincing evidence, that either: (1) a lesser portion of the total recovery should be allocated as medical expense reimbursement than has been calculated by the statutory formula; or (2) Medicaid actually provided a lesser amount of medical assistance than has been asserted by AHCA. This administrative procedure for adversarial testing of the statutory allocation is consistent with Wos v. E.M.A., 133 S. Ct. 1391 (2013)(state statutes may not contain an unrebuttable presumption as to the amount of a recovery that should be considered as medical expense). Florida courts had required a similar hearing in light of federal law even prior to the statute's amendment in 2013. See Davis v. Roberts, 130 So. 3d 264, 268 (Fla. 5th DCA 2013); Riley, supra; Roberts v. Albertson's Inc., 119 So. 3d 457, 465-466 (Fla. 4th DCA 2012), reh'g and reh'g en banc denied sub nom.

Giorgione v. Albertson's, Inc., 2013 Fla. App. LEXIS 1067 (Fla. 4th DCA 2013).

29. Petitioner here did not dispute the amount of medical assistance provided by Medicaid, but attempted to show that a lesser portion of the total recovery should be allocated as medical expense reimbursement than that calculated by the statutory formula, principally in the form of evidence as to the terms of the settlement and Release.

Effect of the Settlement

30. "When there has been a judicial finding or approval of an allocation between medical and nonmedical damages--in the form of either a jury verdict, court decree, or stipulation binding on all parties--that is the end of the matter. Ahlborn was a case of this sort. All parties (including the State of Arkansas) stipulated that approximately 6 percent of the plaintiff's settlement represented payment for medical costs." Wos v. E.M.A., 133 S. Ct. at 1399.

31. There has been no binding stipulation in this case. Respondent correctly argues that the portion of the total recovery allocated to medical expense in the Release is not dispositive of its interests, as it was not a party to the settlement and did not approve it. §§ 409.910(6)(c)7. and (13), Fla. Stat.

32. In the circuit court case preceding this hearing, the court only approved the settlement subject to the determination of the amount that should be allocated to the Medicaid lien as provided by section 409.910(17).

33. Respondent's lack of participation in a settlement does not necessarily ensure that the statutory formula's default calculation of the medical expense portion of the total recovery will prevail. Florida's statute authorizes an administrative determination that a lesser portion of a total recovery should be allocated as reimbursement for medical expenses. A settlement agreement does not dictate, but may inform, that administrative determination. A settlement's allocation to medical expenses may be adopted, even when AHCA did not participate in the settlement, provided a petitioner proves that it is supported by clear and convincing evidence. § 409.910(17)(b), Fla. Stat.

34. The settlement here allocated $20,717.54 to past medical expenses, representing approximately 3.3 percent of the $627,804.18 of total past medical expenses claimed. This percentage was used because the $500,000 total recovery represents approximately 3.3 percent of the $15 million total economic damages claimed, conservatively used as the value of the case.

35. The main legal issue remaining for determination is whether a Medicaid lien under section 409.910 applies to that

portion of a recovery allocable to past and future medical expenses, or only to that portion allocable to past medical expenses.

Section 409.910(17)(b)[3/]

36. There has been a split[4/] in DOAH Final Orders as to the best interpretation of section 409.910(17)(b):

> In order to successfully challenge the amount payable to the agency, the recipient must prove, by clear and convincing evidence, that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f) or that Medicaid provided a lesser amount of medical assistance than that asserted by the agency. (Emphasis added).

37. In interpreting the phrase "should be allocated as reimbursement for past and future medical expenses," some orders emphasize that a common dictionary definition of the word "reimburse" is "to pay someone an amount of money equal to an amount that person has spent."[5/] Since AHCA, not the recipient, has spent money, the phrase is interpreted to refer to reimbursement to AHCA. These orders conclude that the statute restricts AHCA to reimbursement for funds it has already spent, either for past medical assistance or for medical expenses to be incurred in the future. Under this interpretation, because there is no evidence that AHCA has pre-paid for future medical

expenses, or that it even has authority to do so, the phrase as a practical matter refers only to past medical expenses.[6/]

38. Other Orders note that common dictionaries define the word "reimburse" as "to repay or compensate (a person) for expenses, damages, losses, etc."[7/] Using this definition, it is concluded that the word reimbursement in the statute refers to compensation given to the recipient for medical expenses as part of the recovery. Under this interpretation, compensation for both past and future medical expenses received by a recipient as part of a settlement from third-party tortfeasors is subject to AHCA's lien.

39. The statute is not clearly drafted, but is best interpreted to refer to the allocation of the recovery to the recipient. First, there is no evidence that Medicaid ever pays for future medical care, so interpreting the statute to refer to reimbursement to AHCA effectively renders the words "and future" meaningless. Significance and effect must be given to every word and phrase in a statute; words in a statute should not be construed as mere surplusage. Hechtman v. Nations Title Ins., 840 So. 2d 993, 996 (Fla. 2003).

40. Second, "past medical expense" and "future medical expense" are commonly used categories in the allocation of a settlement proceeds to a recipient, whereas referring to Medicaid assistance as an "expense" of AHCA is unusual.

41. Third, and most importantly, interpreting the phrase to refer to portions of the settlement allocated to the recipient is most consistent with the history and context of section 409.910. It is undisputed that, throughout its existence, the tenor of Florida's third-party recovery statute has been to maximize repayment to Medicaid. Section 409.910(11)(e) has long stated that, except as otherwise provided, "the entire amount of any settlement of the recipient's action or claim involving third-party benefits, with or without suit, is subject to the agency's claims for reimbursement." (Emphasis added). The statutory formula was used to determine the amount of the lien to be applied to the entire settlement. It was only after the United States Supreme Court cases of Ahlborn and Wos that section 409.910(17)(b) was added by the Florida Legislature.

42. The first sentence of section 409.910(17)(b) allows a recipient to contest "the amount designated as recovered medical expense damages" by the formula. This language took the amount computed by the already existing statutory formula and re-characterized it as the presumptive amount of the recovery to be allocated as "medical expense." This change was made to satisfy Ahlborn, because a lien could no longer be placed against the entire settlement, but only against that portion of the damages that could be allocated to medical expense. The reference later in the paragraph to "reimbursement for past and future medical

expenses" is clearly to these same "recovered medical expense damages" as determined by the formula, the elaboration being completely consistent with the legislative history to maximize repayment to Medicaid. The administrative hearing to challenge the appropriate allocation of the damages to medical expense was made to satisfy Wos, transforming an impermissible irrebuttable presumption into a permissible rebuttable one. The phrase "allocated as reimbursement for past and future medical expenses" makes sense as a response to Ahlborn and Wos only if it describes an allocation of recovered damages. It does not make sense as a response to those Supreme Court cases if it is simply a reiteration of the provision that reimbursement may not be in excess of the amount of medical assistance paid by Medicaid, which has long been a part of the statute.[8/]

Medicaid Anti-Lien Provision

43. Petitioner argues that even if the Florida Legislature did intend to allow a Medicaid lien to be imposed against settlement allocations compensating for both past and future medical expenses, it erred in doing so, because it is in violation of the federal Medicaid anti-lien provision. Again, DOAH Orders have been sharply divided on this question.[9/]

44. The determination that a state statutory provision has been preempted by federal law is not to be reached lightly. As the Florida Supreme Court has noted:

> Federal preemption of a state law is "strong medicine," and is "not casually to be dispensed." Id. (quoting [Grant's Dairy-Me., LLC v. Comm'r of Me. Dep't of Agric., Food & Rural Res., 232 F.3d 8, 11 (1st Cir. 2000)]). This is especially true when the federal statute creates a program, such as Medicaid, that utilizes "cooperative federalism." "Where coordinated state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal preemption becomes a less persuasive one."

State v. Harden, 938 So. 2d 480, 486 (Fla. 2006), cert. denied, 127 S. Ct. 2097, 167 L. Ed. 2d 812 (2007).

45. Where state and federal law directly conflict, state law must give way. PLIVA, Inc. v. Mensing, 564 U.S. 604, 131 S. Ct. 2567, 2570 (2011). Petitioner cites to Ahlborn and Wos, but the preemption found necessary in those cases did not extend to liens on future medical expenses. True, the only medical damages at issue in Ahlborn were for past medical expense, as stipulated by all parties in that case, but both Ahlborn and Wos consistently describe the anti-lien law as requiring a distinction between medical damages (available to satisfy Medicaid liens) on the one hand and nonmedical damages (not subject to lien) on the other. There is no reference or limitation to only "past" medical expenses in either case.

46. A Medicaid lien on the portion of a settlement allocated to future medical expense simply does not cross the "preemption line" set by United States Supreme Court into those

portions of the settlement "meant to compensate the recipient for damages distinct from medical costs--like pain and suffering, lost wages, and loss of future earnings." Ahlborn, 547 U.S. at 284. As one DOAH case recently concluded: "The undersigned is unwilling to assume that the U.S. Supreme Court was not choosing its words advisedly in stating repeatedly that a state's Medicaid lien can be imposed against proceeds recovered for medical damages, but not against proceeds recovered for nonmedical damages." Villa v. Ag. for Health Care Admin., Case No. 15-4423MTR (Fla. DOAH Dec. 30, 2015), at paragraph 80.

47. No 11th Circuit case was cited or found that has considered the question of past medical expense as opposed to past and future medical expense.

48. One Florida case does directly refer to "past" medical expenses in discussing the scope of the federal Medicaid anti-lien statute; however, the actual holding of the case stated only:

> As such, we reiterate our prior directive and hold that a Medicaid recipient "should be afforded the opportunity to seek the reduction of a Medicaid lien amount by demonstrating, with evidence, that the lien amount [established by section 409.910(11)(f)] exceeds the amount recovered for medical expenses."

Davis v. Roberts, 130 So. 3d 264, 270 (Fla. 5th DCA 2013) (quoting Smith v. Ag. for Health Care Admin., 24 So. 3d 590, 592 (Fla. 5th DCA 2009)).

49. Further, the primary issue in Davis, and virtually all discussion in the case, involved the opportunity to contest the allocation to medical expenses presumed by Florida's statutory formula. It is not clear from the opinion whether there were in fact any future medical expenses involved, or if the issue of past and future medical expenses, as opposed to only past medical expenses, was even argued by the parties. In framing the issue before the court, the opinion states: "AHCA insists that Wos does not provide recipients a right to prove, with evidence, that any amount required for reimbursement by a state exceeds the medical expense portion of a settlement." This is a more fundamental issue, and the Davis opinion must be read in light of the issue it was called to address. See also Harrell v. State, 143 So. 3d 478, 480 (Fla. 1st DCA 2014)("we now hold that a plaintiff must be given the opportunity to seek reduction of the amount of a Medicaid lien established by the statutory formula outlined in section 409.910(11)(f), by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses.").

50. The day may come when a case before a Florida Appellate Court, the 11th Circuit Court of Appeals, or the United States

Supreme Court will squarely present the issue of past and future medical expenses and a decision will be issued clearly holding that section 409.910 either conflicts or conforms with the federal anti-lien provision, ending the confusion that now prevails. Until that day, it is the language of the Florida statute that should govern.

51. Petitioner presented clear evidence as to the amount of the settlement allocable to "past medical expenses," but only unclear and contradictory evidence as to the amount of the undifferentiated recovery allocable to future medical expenses. Petitioner did not meet his burden under Florida law.

52. Petitioner failed to prove by clear and convincing evidence that less than $111,943.89 of the total recovery should be allocated as reimbursement for medical expenses.

DISPOSITION

Upon consideration of the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED that:

The Agency for Health Care Administration is entitled to $111,943.89 in satisfaction of its Medicaid lien.

DONE AND ORDERED this 2nd day of March, 2016, in Tallahassee, Leon County, Florida.

F. SCOTT BOYD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of March, 2016.

ENDNOTES

[1/] All citations are to the 2013 Florida Statutes except as otherwise indicated.

[2/] The summary of the present value analysis assigned values of $1,563,652.00 for evaluations, therapeutic modalities, wheelchair needs and maintenance, orthotics/prosthetics, orthopedic equipment and furnishing and accessories, aids for independent function, supplies, and medications; $364,988.00 for "routine" future medical care; and $4,821,553.00 for "aggressive" future medical care, yielding a total of $14,249,822.00 of what appear to constitute future medical expenses for the lowest cost option of private hire facility placement. Future medical expenses would therefore appear to constitute almost all of the total economic losses of $15,099,623.00, as computed by Dr. Raffa, but Petitioner put on no testimony explaining his calculations. If future medical expenses did constitute even one third of the undifferentiated recovery, the amount of the recovery allocable to past and future medical expenses combined would exceed the amount of the Medicaid lien.

[3/] Much of the discussion here as to the best interpretation of section 409.910(17)(b) is derived from Judge McArthur's opinion

in Villa v. Agency for Health Care Administration, Case No. 15-4423MTR (Fla. DOAH Dec. 30, 2015).

[4/] Compare Savasuk v. Ag. for Health Care Admin., Case No. 13-4130MTR (Fla. DOAH Jan. 29, 2014); Holland v. Ag. for Health Care Admin., Case No. 13-4951MTR (Fla. DOAH May 2, 2014); and Villa, supra, interpreting section 409.910(17)(b) to require proof of the amount of the third-party recovery that should be allocated to medical damages (past and future), from which AHCA may satisfy its lien for past Medicaid assistance with Holland v. Ag. for Health Care Admin., Case No. 14-2520MTR (Fla. DOAH Sept. 29, 2014) and Bryant v. Ag. for Health Care Admin., Case No. 15-4651MTR (Fla. DOAH Feb. 12, 2016), concluding that an interpretation of section 409.910(17)(b) that allows reimbursement for past medical expenses to be recovered from funds designated for future medical expenses that have not yet been incurred is clearly erroneous.

[5/] See Merriam Webster Online Dictionary, at http://www.merriam-webster.com/dictionary/reimburse.

[6/] The Final Order in Goddard v. Agency for Health Care Administration, Case No. 14-4140MTR (Fla. DOAH Mar. 23, 2015), with its interpretation that the statute intends reimbursement of future payments by AHCA after they have been made through the use of a special needs trust, has not been overlooked. While the detailed research and broad perspective of that decision is compelling as a policy prescription consistent with legislative objectives, it is difficult to conclude that the Legislature conceived of such a structure or authorized it through the calculated use of the single term "reimbursement," without elaboration or guidance elsewhere in the statute.

[7/] See Collins American English Dictionary, at http://www.collinsdictionary.com/dictionary/american/reimburse. Similar alternative definitions of the word "reimburse" and "reimbursement" are found in the following commonly used online dictionary resources: One Look Dictionary online search for "reimbursement" at http://www.onelook.com/?w=reimbursement&ls=a, offering the following quick definition by WordNet: "reimbursement" means "compensation paid (to someone) for damages or losses or money already spent etc."; American Heritage Dictionary, at https://ahdictionary.com/word/search.html?q=reimburse&submit.x=55&submit.y=23, defining "reimburse" to mean "pay back or compensate (another party) for money spent or losses incurred;" and Webster's New Word Collegiate Dictionary, at http://www.yourdictionary.com/reimburse#websters, defining

"reimburse" to mean "to repay or compensate (a person) for expenses, damages, losses, etc."

[8/] Chapter 90-232, Section 4, Laws of Florida, created section 409.2665(17), which provided that reimbursement may not be "in excess of the amount of medical assistance paid by Medicaid."

[9/] Compare Savasuk, supra; Holland, supra; Silnicki v. Ag. for Health Care Admin., Case No. 13-3852MTR (Fla. DOAH July 15, 2014); Villa, supra; and Hopper v. Ag. for Health Care Admin., Case No. 15-5026MTR (Fla. DOAH Feb. 12, 2016), finding federal law does not prohibit a lien on portions of a recovery allocable to future medical expenses, with Gibbons v. Ag. for Health Care Admin., Case No. 13-4720MTR (Fla. DOAH May 7, 2014); Holland v. Ag. for Health Care Admin., Case No. 14-2520MTR (Fla. DOAH Sept. 29, 2014); Mierzwinski v. Ag. for Health Care Admin., Case No. 14-3806MTR (Fla. DOAH Mar. 6, 2015); Bryant v. Ag. for Health Care Admin., Case No. 15-4651MTR (Fla. DOAH Feb. 12, 2016); and Pierre v. Ag. for Health Care Admin., Case No. 14-5308MTR (Fla. DOAH Apr. 14, 2016), finding federal law prohibits a lien on portions of a recovery allocable to future medical expenses.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.