STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIO CESAR CABRERA, as Personal Representative of the Estate of YISELL CABRERA RODRIGUEZ, deceased,

Petitioner,

vs. Case No. 17-4557MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017),[1/] before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on October 16, 2017, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Steven G. Jugo, Esquire
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Miami, Florida 33156

For Respondent: Alexander R. Boler, Esquire
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Tallahassee, Florida 32317

STATEMENT OF THE ISSUE

The issue to be determined is the amount to be reimbursed to Respondent, Agency for Health Care Administration ("AHCA"), for medical expenses paid on behalf of Yisell Cabrera Rodriquez pursuant to section 409.910, Florida Statutes, from settlement proceeds received by Petitioner from third parties.

PRELIMINARY STATEMENT

On August 15, 2017, Petitioner filed his Petition to Determine Medicaid Lien, challenging Respondent's lien to recover the amount of $86,491.86 in medical expenses paid by Respondent on behalf of Yisell Cabrera Rodriquez. The basis for the challenge is the assertion that the application of section 409.910(17)(b) warrants reimbursement of a lesser portion of the total third-party settlement proceeds than the amount calculated by Respondent pursuant to the formula codified in section 409.910(11)(f).

The final hearing was scheduled for, and held on, October 16, 2017. Petitioner presented the testimony of Maria Rodriquez,[2/] Julio Cesar Cabrera, and Orlando Ruiz. Petitioner's exhibits 1 through 4 were admitted into evidence without objection. Respondent did not present any witnesses or tender any exhibits for admission into evidence.

The one-volume Transcript was filed on November 7, 2017, and the parties were given until November 16, 2017, to file

their proposed final orders. Pursuant to joint motion of the parties, the deadline for filing proposed final orders was extended to December 1, 2017. Both parties timely filed their proposed final orders,[3/] which were duly considered in preparing this Final Order.

FINDINGS OF FACT

The Parties

1. Petitioner, Julio Cesar Cabrera, is the duly-appointed Personal Representative of the Estate of Yisell Cabrera Rodriquez, his deceased daughter.

2. Respondent is the state agency charged with administering the Florida Medicaid program, pursuant to chapter 409.

The Events Giving Rise to this Proceeding

3. On August 30, 2015, Petitioner's 23-year old daughter, Yisell, was severely injured in an automobile accident. She was a passenger in an automobile that was struck by another automobile that failed to yield the right-of-way at an intersection.

4. The automobile in which Yisell was a passenger previously had been in an accident and had been determined a total loss. It subsequently was rebuilt by Unique Body Works in Miami. A sister company, Unique Automotive, sold the vehicle to the driver of the car in which Yisell was a passenger on

August 30, 2015. When Unique Body Works rebuilt the automobile, it did not replace the passenger side airbags. When the automobile was struck in the accident, airbags on the passenger side were not available to deploy. As a result, Yisell was severely injured.

5. She was transported to Jackson Memorial Hospital, where she received medical treatment in intensive care. Tragically, on August 31, 2015, Yisell died from the injuries she sustained in the accident.

6. Petitioner instituted a wrongful death action against the at-fault driver ("Carlos Espinoza") and the owner of the automobile ("Ana Ramirez") that struck the automobile in which Yisell was a passenger, Unique Body Works, and Unique Automotive, to recover damages to Yisell's parents and to her estate.

7. Espinoza/Ramirez were insured by Infinity Auto Insurance Company under a policy having a bodily injury limit of $10,000.

8. Unique Body Works was insured by Grenada Insurance Company under a policy having a liability limit of $100,000.

9. Unique Automotive was insured by Western Heritage Insurance Company under a policy having a liability limit of $30,000.

10. All of the insurers tendered their respective policy limits for a total of $140,000.

11. On July 14, 2017, Petitioner, on behalf of the Estate of Yisell Cabrera Rodriquez, entered into settlement agreements with Espinoza/Ramirez, Unique Body Works, and Unique Automotive, for a total of $140,000, which constitutes the total amount of the third-party benefits received.[4/]

12. Yisell's medical care related to her injury was paid by Medicaid.[5/] The medical expenses paid by Medicaid totaled $86,491.86. Pursuant to section 409.910(6)(c)1., AHCA has a Medicaid lien for that amount.

Petitioner's Challenge to the Repayment Amount

13. Section 409.910(11)(f) establishes a formula for distributing the benefits that are recovered by a recipient or his or her legal representative in a tort action against a third party that results in a judgment, settlement, or award from that third party. Applying this formula to the $140,000 that Petitioner received in third-party benefits results in a lien repayment amount of $51,838.61.[6/] In this proceeding, AHCA asserts that it is owed this amount.

14. As noted above, Petitioner disputes that $51,838.61 is the amount of recovered medical expenses payable to Respondent, and instead asserts that $4,039.17 in medical expenses are payable to Respondent.

15. In support of his position, Petitioner presented the testimony of Mrs. Maria Rodriquez, Yisell's mother. She testified, persuasively, that theirs was a very close-knit family who did everything together, and that the loss of Yisell has destroyed their family life. She also testified that as a result of the emotional trauma of losing Yisell, her health has suffered, and she has difficulty sleeping and has gastric reflux for which she is being treated.

16. Petitioner also testified, persuasively, that the loss of Yisell changed his life and the lives of his family members. As he described it, "[her loss] has changed our life. It's all the sadness. It's all the pain, everything. Everything's changed. . . . We were happy. We were so happy. We were so close."

17. Petitioner also presented the expert testimony of Oscar Ruiz[7/] regarding the valuation of Petitioner's wrongful death claim.

18. Mr. Ruiz testified that in his opinion, $3 million constituted a very conservative valuation of the damages suffered by Yisell's parents in this case. He based this opinion on having interviewed Yisell's parents regarding the impact of her loss on their family, and on his knowledge of jury verdicts and settlements in recent Florida cases involving awards of damages to parents for the loss of their children in

automobile accidents or due to medical malpractice. He emphasized that his valuation was far more conservative than many comparable cases that yielded substantially higher verdicts or settlements.

19. Petitioner asserts that Respondent is only entitled to recover $4,039.17 in medical expenses on the basis of the calculation method used in Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S. 268 (2006). Specifically, Petitioner proposes to apply the same ratio that the settlement of $140,000 bore to the total monetary value of all damages ($3 million, according to Petitioner's expert) to determine the amount Respondent is owed for medical expenses. Petitioner contends that although Ahlborn did not establish a uniform calculation method applicable in all cases, it nonetheless has been accepted and applied by ALJs in other Medicaid third-party recovery cases to determine the amount of reimbursable medical expenses under section 409.910(17)(b), without challenge from AHCA regarding the accuracy of that method.

20. Respondent did not present any evidence regarding the value of Petitioner's claim or propose a differing valuation of the damages.

21. As more fully discussed below, Respondent contends that the opportunity to rebut the medical expense allocation provided under section 409.910(17)(b) is not available in cases

such as this, where the Medicaid recipient dies before third-party benefits are recovered through settlement or other means.

CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

23. Petitioner has brought this proceeding pursuant to section 409.910(17)(b), which states:

> If federal law limits the agency to reimbursement from the recovered medical expense damages, a recipient, or his or her legal representative, may contest the amount designated as recovered medical expense damages payable to the agency pursuant to the formula specified in paragraph (11)(f) by filing a petition under chapter 120 within 21 days after the date of payment of funds to the agency or after the date of placing the full amount of the third-party benefits in the trust account for the benefit of the agency pursuant to paragraph (a). The petition shall be filed with the Division of Administrative Hearings. For purposes of chapter 120, the payment of funds to the agency or the placement of the full amount of the third-party benefits in the trust account for the benefit of the agency constitutes final agency action and notice thereof. Final order authority for the proceedings specified in this subsection rests with the Division of Administrative Hearings. This procedure is the exclusive method for challenging the amount of third-party benefits payable to the agency. In order to successfully challenge the amount designated as recovered medical expenses, the recipient must prove, by clear and convincing evidence,[8/] that the portion of the total

> recovery which should be allocated as past and future medical expenses is less than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f). Alternatively, the recipient must prove by clear and convincing evidence that Medicaid provided a lesser amount of medical assistance than that asserted by the agency.

The Medicaid Program and Third-Party Lien Statute

24. The Medicaid program "provide[s] federal financial assistance to states that chose to reimburse certain costs of medical treatment for needy persons." Harris v. McRae, 448 U.S. 297, 301 (1980).

25. The Medicaid program is a cooperative one. The federal government pays between 50 percent and 80 percent of the costs a state incurs for patient care. In return, the state pays its portion of the costs and complies with certain statutory requirements for making eligibility determinations, collecting and maintaining information, and administering the program. Estate of Hernandez v. Ag. for Health Care Admin., 190 So. 3d 139, 141-42 (Fla. 3d DCA 2016)(internal citations omitted).

26. Although state participation in the Medicaid program is optional, once a state elects to participate, it must comply with federal Medicaid law. Harris, 448 U.S. at 301.

27. One condition for receipt of federal Medicaid funds is that states must seek reimbursement for medical expenses

incurred on behalf of Medicaid recipients[9/] who subsequently recover benefits from legally liable third parties.[10/] See Ahlborn, 547 U.S. at 276; Hernandez, 190 So. 3d at 142 (federal law requires each participating state to implement a third-party liability statute which requires the state to seek reimbursement for Medicaid expenditures from third parties who are liable for medical assistance provided to a Medicaid recipient).

28. To comply with this requirement, the Florida Legislature enacted the Medicaid Third-Party Liability Act, section 409.910. This statute authorizes and requires the State of Florida, through Respondent, to be reimbursed for Medicaid funds paid for a recipient's medical assistance when that recipient subsequently receives a personal injury judgment, award, or settlement from a third party. Smith v. Ag. for Health Care Admin., 24 So. 3d 590 (Fla. 5th DCA 2009). See also Davis v. Roberts, 130 So. 3d 264, 266 (Fla. 5th DCA 2013)(recognizing that to comply with federal law, the Florida Legislature enacted section 409.910, which authorizes the State to recover, from a tort settlement, Medicaid money that the State paid for medical expenses for a recipient).

29. Section 409.910(1) expresses the Florida Legislature's clear intent that Medicaid be repaid in full for medical

assistance furnished to Medicaid recipients. The statute states:

> It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.

30. To that end, Respondent is required to recover, from third-party benefits, the full amount of medical assistance provided by Medicaid on behalf of the recipient. Section 409.910(7) states:

> The agency shall recover the full amount of all medical assistance provided by Medicaid on behalf of the recipient to the full extent of third-party benefits.
>
> (a) Recovery of such benefits shall be collected directly from:

1. Any third party;

2. The recipient or legal representative, if he or she has received third-party benefits;

3. The provider of a recipient's medical services if third-party benefits have been recovered by the provider; notwithstanding any provision of this section, to the contrary, however, no provider shall be required to refund or pay to the agency any amount in excess of the actual third-party benefits received by the provider from a third-party payor for medical services provided to the recipient; or

4. Any person who has received the third-party benefits.

31. To enable Respondent to execute this mandate, section 409.910(6) creates, in favor of Respondent, a lien on any recovered third-party benefits for the full amount of the medical assistance provided by Medicaid. The statute states, in pertinent part:

> (6) When the agency provides, pays for, or becomes liable for medical care under the Medicaid program, it has the following rights, as to which the agency may assert independent principles of law, which shall nevertheless be construed together to provide the greatest recovery from third-party benefits:
>
> (a) The agency is automatically subrogated to any rights that an applicant, recipient, or legal representative has to any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment,

award, or settlement, but is to provide full recovery by the agency from any and all third-party benefits. Equities of a recipient, his or her legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the agency as to its subrogation rights granted under this paragraph.

(b) By applying for or accepting medical assistance, an applicant, recipient, or legal representative automatically assigns to the agency any right, title, and interest such person has to any third-party benefit, excluding any Medicare benefit to the extent required to be excluded by federal law.

1. The assignment granted under this paragraph is absolute, and vests legal and equitable title to any such right in the agency, but not in excess of the amount of medical assistance provided by the agency.

2. The agency is a bona fide assignee for value in the assigned right, title, or interest, and takes vested legal and equitable title free and clear of latent equities in a third person. Equities of a recipient, the recipient's legal representative, his or her creditors, or health care providers shall not defeat or reduce recovery by the agency as to the assignment granted under this paragraph.

3. By accepting medical assistance, the recipient grants to the agency the limited power of attorney to act in his or her name, place, and stead to perform specific acts with regard to third-party benefits, the recipient's assent being deemed to have been given, including:

a. Endorsing any draft, check, money order, or other negotiable instrument representing third-party benefits that are received on

> behalf of the recipient as a third-party benefit.
>
> b. Compromising claims to the extent of the rights assigned, provided that the recipient is not otherwise represented by an attorney as to the claim.
>
> (c) The agency is entitled to, and has, an automatic lien for the full amount of medical assistance provided by Medicaid to or on behalf of the recipient for medical care furnished as a result of any covered injury or illness for which a third party is or may be liable, upon the collateral, as defined in s. 409.901.

32. This automatic lien cannot be impaired by settlements entered into on behalf of the recipient. To this point, the statute states:

> No action of the recipient shall prejudice the rights of the agency under this section. No settlement, agreement, consent decree, trust agreement, annuity contract, pledge, security arrangement, or any other device, hereafter collectively referred to in this subsection as a "settlement agreement," entered into or consented to by the recipient or his or her legal representative shall impair the agency's rights. However, in a structured settlement, no settlement agreement by the parties shall be effective or binding against the agency for benefits accrued without the express written consent of the agency or an appropriate order of a court having personal jurisdiction over the agency.

§ 409.910(13), Fla. Stat.

33. Also in furtherance of the mandate that Respondent seek reimbursement from third-party benefits to the limit of

legal liability, the Legislature has afforded Respondent the right to "institute, intervene in, or join any legal or administrative proceeding in its own name . . . as lienholder." § 409.910(11), Fla. Stat.

34. Section 409.910(11)(f) establishes a formula governing the distribution of third-party benefits recovered in tort. This provision states:

> Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgment, award, or settlement from a third party, the amount recovered shall be distributed as follows:
>
> 1. After attorney's fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid.
>
> 2. The remaining amount of the recovery shall be paid to the recipient.
>
> 3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.
>
> 4. Notwithstanding any provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, "medical coverage" means any

> benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under coverage for workers' compensation, personal injury protection, and casualty.

As noted above, Respondent asserts that pursuant to this formula, it is entitled in this case to recover $51,838.61 of its full lien of $86,491.86.

35. Federal law imposes some limits on a state's authority to recover medical expenses paid by Medicaid. One such limit is imposed by the federal Medicaid "anti-lien" statute, 42 U.S.C. § 1396p(a)(1), which provides, in pertinent part, 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 under specified circumstances. 42 U.S.C. § 1396p(a)(1)(emphasis added).

Florida Case Law on Federal Anti-lien Statute Applicability

36. Florida case law addressing the interplay between this federal anti-lien statute and section 409.910 consistently has held that in cases where the recipient dies before a settlement of an action in tort for third-party benefits is reached, the federal anti-lien statute does not operate to preempt or negate the applicability of section 409.910(11)(f), so that the formula governs the distribution of third-party benefits in such cases.

37. Goheagan v. Perkins, 197 So. 3d 112 (Fla. 4th DCA 2016), involved circumstances similar to those present in this case. In that case, Medicaid paid $95,476.60 in medical expenses for a recipient who ultimately died of injuries sustained in an automobile accident. After the recipient's death, the estate brought a wrongful death action against the at-fault driver, resulting in a multi-million dollar judgment. Thereafter, her estate recovered $1,000,000 from the at-fault driver's insurer in a bad faith action. AHCA asserted a lien for $95,476.60, the full amount it had paid for medical expenses for the recipient. The estate moved to reduce the lien commensurate with the percentage of the multi-million dollar judgment that the lien amount constituted. The trial court ordered the estate to repay the entire amount of the Medicaid lien. On appeal, the Fourth District Court of Appeal affirmed the trial court's order, concluding that the plain language of the federal anti-lien statute clearly reflected Congress' intent that the statute only apply to recipients who are living when the settlement or judgment against the third party is obtained, and not to recoveries made by an estate or beneficiary in a wrongful death action. See Goheagan, 197 So. 3d at 120.

38. Hernandez v. Agency for Health Care Administration, 190 So. 3d 139 (Fla. 3d DCA 2016), yielded similar results. In Hernandez, Medicaid paid $409,676.36 in medical expenses for

Hernandez, who ultimately died as a result of a hospital physician's misdiagnosis and improper treatment of her medical condition. The hospital paid $700,000 in settlement of any wrongful death claims Hernandez's estate may have brought against the hospital. Thereafter, the estate filed an action in court, seeking to apportion $200,000 as medical expenses to satisfy AHCA's Medicaid lien. AHCA argued that pursuant to the formula in 409.910(11)(f), it was owed $262,500 in medical expenses from the recovered third-party benefits. The Third District Court of Appeal held that the express terms of the federal anti-lien statute mandated that it does not apply to a Medicaid lien that vests against the property of a Medicaid recipient after his or her death. The court stated: "[i]f the language of the statute is clear and unequivocal, then the legislative intent must be derived from the words used without involving incidental rules of construction or engaging in speculation as to what the judges might think that the legislators intended or should have intended." Id. at 143 (citing Hess v. Philip Morris USA, Inc., 175 So. 3d 687, 692 (Fla. 2015)). The court held that the federal Medicaid Act's anti-lien provision does not preempt Florida's Medicaid Third-Party Liability Act where a Medicaid lien is imposed on a wrongful death settlement. Id.

39. Pursuant to the holdings in Goheagan and Hernandez, it is concluded that in this case, the formula in section 409.910(11)(f) governs the distribution of the third-party benefits recovered by Petitioner.[11/]

40. As discussed above, applying that formula to the $140,000 in third-party benefits Petitioner received, results in $51,838.61 being owed to Respondent as reimbursement for its Medicaid lien.

The 2017 Amendments to Section 409.910(17)(b)

41. The 2017 amendments to section 409.910(17)(b) do not change this result.

42. In the 2017 Legislative Session, the following language, underlined, was added to the first sentence of section 409.910(17)(b)[12/]:

> If federal law limits the agency to reimbursement from the recovered medical expense damages, a recipient, or his or her legal representative, may contest the amount designated as recovered medical expense damages payable to the agency pursuant to the formula specified in paragraph (11)(f) by filing a petition under chapter 120 within 21 days after the date of payment of funds to the agency or after the date of placing the full amount of the third-party benefits in the trust account for the benefit of the agency pursuant to paragraph (a).

43. The Florida Senate 2017 Summary of Legislation Passed for Senate Bill 2514,[13/] discussing the amendments to

section 409.910, generally explains the amendments' purpose as follows:

> Section 19 amends s. 409.910, F.S., relating to responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable, and addresses federal compliance issues in the current statute. Specifically addressed are applicable federal law limits on recoveries, evidentiary standards, applicability to third party payers, and payment response requirements. Outdated provisions are deleted from the statute.

44. Consistent with this explanation, the addition of the first clause to section 409.910(17)(b) appears to clarify that the opportunity to challenge the amount of medical expenses allocated under the formula in section 409.910(11)(f) is limited to circumstances where the federal anti-lien statute applies—— that is, to situations where the recipient is living at the time AHCA's right to recover third-party benefits vests. This is consistent with the plain language of the federal anti-lien statute and with the holdings in Goheagan and Hernandez.

45. As discussed above, because this proceeding involves the recovery of third-party benefits after the death of the Medicaid recipient, section 409.910(17)(b) does not afford Petitioner the right to challenge Respondent's recovery pursuant to the formula in section 409.910(11)(f), and the addition of the first clause to the first sentence of section 409.910(17)(b) does not change that result.

46. The second amendment to the first sentence adds the clause "or his or her legal representative." This appears to clarify that a recipient who is otherwise entitled to bring a challenge to AHCA's asserted recovery under section 409.910(17)(b) may be represented in that proceeding by a legal representative. This amendment does not create entitlement to bring such a challenge, but only clarifies who may bring that challenge.

Conclusion

47. There is absolutely no question in the mind of the undersigned that Petitioner and his family have suffered, and continue to suffer, a grievous loss due to the tragic death of Yisell.

48. However, while this outcome may seem inequitable, the Florida Legislature has clearly stated that equity cannot serve as the basis for reducing the Medicaid lien. See § 409.910(6)(a) & (b)2., Fla. Stat.

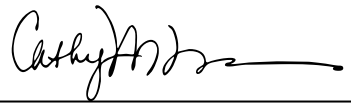
49. As compelling as the circumstances in this proceeding are, the undersigned is nonetheless required to follow the applicable law. Here, the applicable law, discussed in detail above, dictates that pursuant to section 409.910(11)(f), Respondent is entitled to recover $51,838.61 in third-party benefits paid to Petitioner through settlement of his actions in tort.

ORDER

Consistent with the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

The Petition to Determine Medicaid Lien filed by Julio Cesar Cabrera, as Personal Representative of the Estate of Yisell Cabrera Rodriquez, deceased, is dismissed.

DONE AND ORDERED this 23rd of January, 2018, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of January, 2018.

ENDNOTES

[1/] The 2017 version of Florida Statutes is applicable to this case. In Suarez v. Port Charlotte HMA, LLC, 171 So. 3d 740 (Fla. 2d DCA 2015), the court determined that AHCA's right under section 409.910 to be reimbursed from third-party benefits recovered by the Medicaid recipient vests at the time of the recipient's recovery of those benefits, not when the lien itself attaches, so the version of section 409.910 in effect at the time of the recovery of third-party benefits applies to challenges brought under section 409.910(17)(b). As noted in paragraph 11, Petitioner's settlement agreements with the third parties in this case were executed on July 14, 2017.

[2/] Richard Cotton, a Spanish language interpreter, translated the examination of Maria Rodriquez.

[3/] In addition to Petitioner's Proposed Final Order, Petitioner also filed Petitioner's Memorandum of Law in Support of Proposed Final Order, and Petitioner's Notice of Supplemental Authority. These documents have been treated as part of Petitioner's Proposed Final Order.

[4/] "Third-party benefit" is defined by section 409.901(28) as:

> any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient, unless available under terms of the policy to pay medical expenses prior to death. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance or personal injury protection coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

[5/] Section 409.910(6)(b) provides that by applying for or accepting medical assistance, an applicant, recipient, or legal representative automatically assigns to AHCA any right, title, and interest such person has to any third-party benefit, excluding any Medicare benefit to the extent required to be excluded by federal law. Pursuant to this provision, Yisell assigned her right to recover, from third parties, the medical expenses paid by Medicaid.

[6/] This amount is calculated as follows: 25% of $140,000 = $35,000. $140,000 – ($35,000 in attorney's fees + $1,322.79 in costs) = $103,677.21. $103.677.21 ÷ 2 = $51,838.61.

[7/] Mr. Ruiz has been a practicing attorney for 37 years. He started his career with the U.S. Department of Justice in the Torts Branch of the Civil Division, where he represented the United States in civil litigation, medical malpractice, and national security cases. Thereafter, he joined a large Florida law firm, where he served as head of the firm's medical malpractice defense section. In that capacity, he represented Jackson Memorial Hospital and the University of Miami Medical School in malpractice cases. For the last 30 years, he has practiced in his own law firm, specializing in plaintiff representation in medical malpractice cases.

[8/] In Gallardo v. Senior, 2017 U.S. Dist. LEXIS 112448, *21-*23 (N.D. Fla. July 18, 2017), the court determined that the "clear and convincing" standard in section 409.910(17)(b) is preempted by the federal Medicaid Act. Accordingly, if the merits of Petitioner's challenge in this proceeding were reached, he would be required to demonstrate, by a preponderance of the evidence, that Respondent is entitled to a lesser amount of medical expenses than it would recover pursuant to application of the formula in section 409.910(11)(f). However, as discussed below, because the federal anti-lien statute does not apply in this case because the recipient died before the settlement agreements with liable third parties were executed, as a matter of law, Petitioner is not entitled to a reduction of the recovery amount determined pursuant to the formula in section 409.910(11)(f).

[9/] Section 409.901(19) defines a "Medicaid recipient," in pertinent part, as an individual whom the Department of Children and Families determines is eligible, pursuant to federal and state law, to receive medical assistance and related services for which the agency may make payments under the Medicaid program. For purposes of determining third-party liability, the term includes an individual formerly determined to be eligible for Medicaid, an individual who has received medical assistance, or an individual on whose behalf Medicaid has become obligated.

[10/] Title 42 U.S.C. § 1396a(a) sets forth the requirements that a state Medicaid plan must address to be consistent with federal law. One of those requirements is that the state must enact laws under which a Medicaid recipient is considered to have assigned to the state his or her right to recover from, liable third parties, medical expenses paid by Medicaid. Title

42 U.S.C. § 1396a(a)(25)(H), which imposes this specific requirement, states:

> that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to any payments by such third party.

[11/] Petitioner urges the undersigned to reject the application of Goheagan and Hernandez to this proceeding on two grounds. First, Petitioner contends that these cases are not pertinent because they addressed the ability of a trial court to reduce a Medicaid lien, rather than addressing the ability of an administrative forum to do so pursuant to section 409.910(17)(b). Second, he urges that these cases should be disregarded because they "misconstrue" federal Medicaid law and provide only a "shallow, confused review of federal Medicaid law and reach the wrong result." Neither of these arguments is well-taken. Petitioner's first argument disregards that at the time of the trial court proceedings in those cases, section 409.910(17)(b) had not yet been enacted, so trial courts were the only forum available in which to seek a reduction of the lien and reimbursement amounts. To comply with the holding in Wos v. E.M.A., 568 U.S. 627 (2013), requiring states to provide an administrative opportunity and forum in which to rebut the application of a medical expenses recovery allocation pursuant to formula, the Florida Legislature enacted section 409.910(17)(b) in 2013. See Harrell v. State, 143 So. 3d 478, 480 n.1 (Fla. 1st DCA 2014); Villa v. Ag. for Health Care Admin., Case No. 15-4423MTR (Fla. DOAH Dec. 30, 2015) aff'd sub. nom. Giraldo v. Ag. for Health Care Admin., 208 So. 3d 244 (Fla. 1st DCA 2016). However, the rationale for the holdings in Goheagan and Hernandez is equally applicable in judicial and administrative proceedings. Those cases addressed the interplay between the federal anti-lien statute and the Medicaid Third-Party Liability Act, and determined that the federal anti-lien statute only applies to situations where the Medicaid recipient is living when the third party benefits are recovered by settlement or other means. This substantive law is not affected

or changed according to the forum——judicial or administrative—— in which the reimbursement reduction proceeding is brought. Petitioner's second argument invites the undersigned to disregard binding Florida appellate case law in this proceeding, which the undersigned cannot do.

[12/] In addition to the language added to the first sentence, the Legislature clarified that the amount designated as recovered medical expenses under the formula can be challenged, and also imposed on the challenger a "clear and convincing evidence" standard to show that Medicaid provided a lesser amount of medical assistance than that asserted by the agency. These changes affect provisions in the statute that are not at issue in this proceeding.

[13/] The undersigned takes official recognition of this document pursuant to section 90.202(6), which authorizes judicial notice of records of any state, territory, or jurisdiction of the United States. The 2017 amendments to section 409.910, which included the amendments to section 409.910(17)(b), constituted section 19 of Senate Bill 2514, the comprehensive health care bill that passed during the 2017 Legislative Session.

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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.