

OFFICE OF THE SECRETARY OF STATE  
DENNIS RICHARDSON  
SECRETARY OF STATE  
  
LESLIE CUMMINGS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
MARY BETH HERKERT  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**SSP 19-2018**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**  
05/04/2018 2:12 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Changing rule about liens from the Department

EFFECTIVE DATE: 05/04/2018 THROUGH 09/30/2018

AGENCY APPROVED DATE: 05/04/2018

CONTACT: Robert Trachtenberg  
503-947-5290  
robert.trachtenberg@state.or.us

DHS - SSP  
500 Summer Street NE, E-48  
Salem, OR 97301

Filed By:  
Robert Trachtenberg  
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-195-0305 regarding liens of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization needs to be amended to address the federal Bipartisan Budget Act of 2018 that repealed with retroactive effect federal legislation that had taken effect on October 1, 2017. OAR 461-195-0305 needs to be amended by restoring retroactively the Oregon policy that existed prior to October 1, 2017. This rule amendment restores the rebuttable presumption that settlement or judgment proceeds of a Medicaid assistance recipient are first allocated to medical expenses. This amendment places the burden to rebut the presumption on the Medicaid assistance recipient by clear and convincing evidence. The 2018 federal legislation effectively reinstated the US Supreme Court decision in *Arkansas v Ahlborn* which limits the personal injury lien program reimbursement to that portion of a personal injury settlement or judgment, of a Medicaid recipient, that is reimbursement for medical damages.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly by amending OAR 461-195-0305 would result in serious prejudice to the public interest and the Department. Under 42 USC § 1396b(o), the state may lose federal funds for failure to comply with Medicaid mandates to obtain reimbursement from liable third parties. The federal Bipartisan Budget Act of 2018 repealed with retroactive effect federal legislation that had taken effect on October 1, 2017. The 2018 federal legislation effectively reinstated the US Supreme Court decision in *Arkansas v Ahlborn* which limits the personal injury lien program reimbursement to that portion of a personal injury settlement or judgment, of a Medicaid recipient, that is reimbursement for medical damages. The Department needs to immediately implement this rule amendment which restores the rebuttable presumption that settlement or judgment proceeds of a Medicaid assistance recipient are first allocated to medical expenses. This amendment places burden to rebut the presumption on the Medicaid assistance recipient by clear and convincing evidence.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Bipartisan Budget Act of 2018, Pub L 115-123, § 53102, available at

Arkansas Dept. of Health and Human Servs. v. Ahlborn, 547 US 268, 126 S. Ct. 1752, 164 L.Ed.2d 459 (2006) available at <https://supreme.justia.com/cases/federal/us/547/268/opinion.html>

---

AMEND: 461-195-0305

RULE TITLE: Lien of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization

RULE SUMMARY: OAR 461-195-0305 regarding liens of the Department, Coordinated Care Organization, or Prepaid Managed Care Health Services Organization is being amended retroactively to restore the policy that existed prior to October 1, 2017. This amendment restores the rebuttable presumption that settlement or judgment proceeds of a Medicaid assistance recipient are first allocated to medical expenses. This amendment places burden to rebut the presumption on the Medicaid assistance recipient by clear and convincing evidence. This amendment addresses the federal Bipartisan Budget Act of 2018 that repealed with retroactive effect federal legislation that had taken effect on October 1, 2017. The 2018 federal legislation effectively reinstated the US Supreme Court decision in Arkansas v Ahlborn which limits the personal injury lien program reimbursement to that portion of a personal injury settlement or judgment, of a Medicaid recipient, that is reimbursement for medical damages.

RULE TEXT:

- (1) Whenever a recipient (see OAR 461-195-0301) has a claim (see OAR 461-195-0301) for damages for a personal injury (see OAR 461-195-0301), the Department (see OAR 461-195-0301) shall have a lien upon the amount of any judgment (see OAR 461-195-0301) in favor of a recipient or amount payable to the recipient under a settlement (see OAR 461-195-0301) or compromise (see OAR 461-195-0301) as a result of that claim for all assistance (see OAR 461-195-0301) received from the date of the injury to –
  - (a) The date of satisfaction of the judgment favorable to the recipient; or
  - (b) The date of the payment under the settlement or compromise.
- (2) The person or public body, agency or commission bound by the judgment, settlement, or compromise shall be responsible for immediately informing the Personal Injury Liens Unit (see OAR 461-195-0310 for address) when a judgment has been issued or a settlement or compromise has been reached so that the exact amount of the lien of the Department may be determined. For the purposes of this rule, immediately means within ten calendar days.
- (3) The lien does not attach to the amount of any judgment, settlement, or compromise to the extent of the attorney fees, costs and expenses which the recipient incurred in order to obtain that judgment, settlement, or compromise.
- (4) The lien does not attach to the amount of any judgment, settlement, or compromise to the extent of medical, surgical and hospital expenses incurred by the recipient on account of the personal injuries for which the recipient had a claim or action (see OAR 461-195-0301). "Incurred" refers only to those medical, surgical and hospital expenses the recipient has paid or is legally obligated to pay at the time of the judgment, settlement, or compromise, excluding any expenses that a third party will reimburse the recipient.
- (5) The lien of the Department must be satisfied or specific approval must be given by the Department staff of the Personal Injury Liens Unit before any portion of the claim judgment, settlement, or compromise is released to the recipient. The Department shall have a cause of action against any person, public body, agency, or commission bound by the judgment, settlement, or compromise who releases any portion of the claim judgment, settlement, or compromise to the recipient or the agent of the recipient before meeting this obligation.
- (6) This rule applies to any lien assigned by the Department under OAR 461-195-0321.
- (7) Notwithstanding any other provision in this rule, there is a rebuttable presumption that the entire proceeds from any judgment, settlement, or compromise are in payment for medical care or services. The presumption may be rebutted only by clear and convincing evidence. This presumption applies to any lien created under ORS 416.540, regardless of

whether the lien, judgment, settlement, compromise, or claim occurred before, on, or after October 1, 2017.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 411.060, 413.085, 414.685

STATUTES/OTHER IMPLEMENTED: 659.830, 743B.470, 409.010, 411.060, 413.085, 414.685, 416.351, 416.510 - 416.610