

# Summary

- History of the Medicaid Act and its relationship to tort recoveries
- Litigation history of *Gallardo v. Marstiller* and how the caselaw evolved
- *Gallardo* majority decision and Justice Sotomayor's dissent
- Strategies for dealing with Medicaid liens in light of *Gallardo*

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# Medicaid Act

- Joint federal-state program to pay medical benefits for those in need
- "Medicaid is not a loan. If a Medicaid beneficiary's financial circumstances change and a beneficiary gains the ability to pay for his or her own medical expenses, the beneficiary is not obligated to repay the State for past expenses, no matter the magnitude of the change in circumstances. Rather, the ordinary consequence is that the individual simply becomes ineligible for benefits moving forward."

*Gallardo v. Marstiller*, No. 20-1263, slip op., at 3, 596 U.S. \_\_ (2022) (Sotomayor, J., dissenting).

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# History of Medicaid Act

- 1965 – Medicaid act enacted with anti-lien and anti-recovery provisions, 42 U.S.C. § 1396p
- 1968 – Third-party liability provisions enacted, 42 U.S.C. § 1396a(a)(25)(A)-(B)
- 1977 – Assignment provision enacted, 42 U.S.C. § 1396k
- 1984 – Assignment provision made mandatory
- 1993 —Payment-recovery provision, 42 U.S.C § 1396a(a)(25)(H)

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# History of Medicaid Litigation

- 1990's – Litigation over whether state Medicaid agencies could take the entire tort recovery—both for medical and non-medical expenses
- 2006: *Arkansas Dept. of Health and Human Servs. v. Ahlborn*, 547 U. S. 268, establishes that state Medicaid agency may not take from nonmedical portion of tort recovery
- 2013: *Wos v. E. M. A.*, 568 U. S. 627, establishes that State may not have an irrebuttable presumption to allocate between medical and nonmedical expenses

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# History of Medicaid Litigation

- Courts or judges saying Medicaid could take from portions of tort recovery compensating for medical expenses not covered by Medicaid:
  1. *In re Matey*, 213 P.3d 389 (Idaho 2009)
  2. *In re E.B.*, 729 S.E.2d 270, 306–09 (W. Va. 2012) (Ketchum, C.J., dissenting) (Workman, J., dissenting)
  3. *I.P. v. Henneberry*, 795 F. Supp. 2d 1189 (D. Colo. 2011)
  4. *Special Needs Tr. for K.C.S. v. Folkemer*, 2011 WL 1231319, at \*13 (D. Md. Mar. 28, 2011)
  5. *Gallardo v. Dudek*, 963 F. 3d 1167 (11th Cir 2020).

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# History of Medicaid Litigation

- Courts or judges saying Medicaid could not take such portions:
  1. *In re E.B.*, 729 S.E.2d 270 (W. Va. 2012)
  2. *Doe v. Vermont Office of Health Access*, 54 A.3d 474 (Vt. 2012)
  3. *Giraldo v. Agency for Health Care Admin.*, 248 So. 3d 53 (Fla. 2018)
  4. *Latham v. Office of Recovery Servs.*, 448 P.3d 1241 (Utah 2019)
  5. *McKinney v. Phil. Hous. Auth.*, 2010 WL 3364400 (E.D. Pa. Aug. 24, 2010)
  6. *Price v. Wolford*, 2008 WL 4722977 (W.D. Okla. Oct. 23, 2008)
  7. *Bolanos v. Superior Ct.*, 87 Cal. Rptr. 3d 174 (Cal. Ct. App. 2009)
  8. *Lugo v. Beth Israel Med. Ctr.*, 819 N.Y.S.2d 892 (N.Y. Sup. Ct. 2006)
  9. *Sw. Fiduciary, Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 249 P.3d 1104 (Ariz. Ct. App. 2011)

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