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Overturing *Ahlborn*: Congress's Affirmation of Medicaid's Position as Payer of Law Resort

by Shannon A. Laymon-Pecoraro, Esq.

For nearly seven and a half years, Medicaid recovery has been limited to settlement proceeds specifically attributable to medical expenses. See *Arkansas Department of Human Services v. Ahlborn*, 547 U.S. 268 (2006). In an unexpected move, the Bipartisan Budget Act of 2013 (H.J. Res 59), which overturns the *Ahlborn* decision by amending the Social Security Act, was enacted by Congress on December 18, 2013 and signed into law by President Obama on December 26, 2013.

Section 202(b) of the Bipartisan Budget Act of 2013 directly correlates to Medicaid recovery in personal injury settlements and awards received by Medicaid recipients. The changes are designed to extend Medicaid recovery and assignment of rights to payment beyond the traditional payments by a third party for "health care items or services" and "medical care" by expressly permitting recovery from "any payments" made by a third party.

While Congress estimates the changes made pursuant to Section 202 will save \$1.4 billion over the next ten years, many practitioners fear that the legislation may have a chilling effect on Medicaid recovery. Specifically, it is believed that an injured Medicaid recipient's recovery will be reduced as a result of (i) costs associated with increased complexity of settlements and (ii) Medicaid's entitlement to full satisfaction of its lien against settlement proceeds beyond those allocated for medical expenses. This decreased recovery may discourage or bar a Medicaid recipient from pursuing litigation for injuries sustained, thereby resulting in Medicaid's inability to recover any funds expended on behalf of the Medicaid beneficiary.

The amendments to the Social Security Act are set to go into effect on October 1, 2014, but it is expected that the changes will be lobbied against. It is also believed that elder law attorneys and special needs planners will serve an integral role in sorting out whether the effective date will apply to date of settlements and awards, or whether it will be limited to Medicaid enrollment date.

The attorneys of the Hook Law Center are led by Andrew H. Hook, a Member of the Special Needs Alliance (SNA), an invitation-only, not-for-profit organization dedicated to the practice of disability and public benefits law. Although

Overturing *Ahlborn*: Congress's Affirmation of Medicaid's Position as Payer of Law Resort – Cont'd

Andrew H. Hook is one of six Members with offices in the Commonwealth of Virginia, Andrew H. Hook is the only Member with an office located in Hampton Roads. Such affiliation enables the attorneys of the Hook Law Center to remain leaders in special needs planning, personal injury settlement consulting, guardianships and conservatorship, estate and trust administration, public benefit eligibility planning, and other legal issues involving individuals with special needs.



Why Cats Roll on their Backs?

Hook Law Center: Kit Kat, why do cats roll on their backs sometimes?

Kit Kat: Well, when cats roll on their backs, it can mean a couple of things. Usually, it means that they want your attention. Some cats say they want attention by rubbing against your leg or ankle. Others roll on their backs. Rolling on one's back can also be a submissive behavior. But the submissive behavior conveys the message that they are comfortable with you, and they are inviting you to engage or interact with them. So be flattered if your cat exhibits this behavior. It means they love you.

Also, don't discount the fact that rolling around on one's back may relieve an itch or is just plain enjoyable. According to Dr. Sharon Crowell-Davis, DVM, professor at the College of Veterinary Medicine at the University of Georgia, it is frequently the case that the rolling behavior may have started out to relieve an itch or for some other reason. However, the cat soon learned it elicited a lot of attention, liked that, and so continued the rolling behavior.

So don't be concerned about your cat rolling around on its back. It's a very normal behavior for some. Just enjoy each cat as he/she expresses his/her unique personality!

(<http://vetstreet.com/our-pet-experts/why-does-my-cat-roll-around-on-his-back>) (1-7-2014)

Upcoming Events

- Andrew H. Hook, will begin his series of speeches at The Ballentine with *Long Term Care Planning Part I (Estate Planning)* on **January 28, 2014**. This will be included as part of their family night, so dinner will be from 5:00-6:00PM and the presentation will be from 6:00PM-7:30PM. The address to the facility is 7211 Granby Street, Norfolk, VA 23505.

- Hook Law Center will be speaking on Long Term Care Insurance (traditional and hybrid), Estate Planning, and Tax Planning just to name a few of the topics at Leigh Hall Assisted Living. This speaking engagement will be on **January 29, 2014** at 6:00PM, and the facilities address is 890 Poplar Hall Drive, Norfolk, VA 23502.
- Shannon Laymon-Pecoraro, Esq. will speak at the Parkinson's and Caregivers Coffee Break on medical/legal issues concerning elders and those with significant health issues. The coffee break will take place at St. Andrew's United Methodist Church, 717 Tucson Rd., Virginia Beach, VA 23462 on **February 5, 2014** from 10AM-12:00PM.
- Hook Law Center is a sponsor of the American Heart Association Ball which will take place on **March 8, 2014** at the Norfolk Botanical Gardens. For event information, contact Stephanie Phipps at 757-628-2608
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on **April 12, 2014**.

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