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**DIVISION:** Office of Medicaid Management

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**TO:** Local District Commissioners, Medicaid Directors, Third Party  
Liability Staff, Resource Recovery Staff, Attorneys  
**FROM:** Betty Rice, Director  
Division of Consumer and Local District Relations  
**SUBJECT:** Personal Injury and Casualty Action/Gold v. United Health  
Services Hospital, Inc.

**EFFECTIVE DATE:** March 1, 2001

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The Court of Appeals has held that the entire amount of a personal injury award or settlement, in an action brought on behalf of a minor, is available to satisfy a Medicaid lien imposed pursuant to Social Services Law (SSL) Section 104-b (Gold v. United Health Services Hospitals, Inc., 95 NY2d 683). The Court's decision has a significant impact on current Medicaid policy, since it reverses the 1976 Baker v. Sterling decision, in which the Court held that SSL Section 104(2) limited such a Medicaid recovery to the amount of a minor's award or settlement which represented compensation for past medical expenses.

Citing post-Baker changes to Federal Medicaid law regarding the Medicaid agency's assignment and subrogation rights, the Court in Gold held that the Medicaid program now has statutory authority independent of SSL Section 104 to recover the cost of Medicaid furnished to the minor for care and services which are the responsibility of the personal injury defendant. Accordingly, although SSL Section 104(2) still limits Public Assistance recoveries, the Court held that it no longer limits Medicaid recoveries.

The Court in Gold also stated that the amount of a minor's award or settlement to be placed into a supplemental needs trust, after the satisfaction of the Medicaid lien, is to be determined by the trial court. Under Section 1206 of the Civil Practice Law and Rules, the trial court has the discretion to invest or disburse the proceeds of the minor's personal injury action to serve the minor's best interests. The clear implication of the Gold decision is that the trial court is not required to order all of the proceeds to be placed into a supplemental needs trust, but rather can allocate a portion of the proceeds for other purposes if in the best interests of the minor. The Court did not address the issue of whether setting aside a portion of the proceeds to pay for future medical needs would be an appropriate exercise of the trial court's discretion.