

1 SB93
2 188213-1
3 By Senators Orr, Reed and Whatley
4 RFD: Finance and Taxation General Fund
5 First Read: 09-JAN-18

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8 SYNOPSIS: Under existing federal law, the state
9 Medicaid Agency may establish procedures by which
10 the agency may recover the amount of medical
11 assistance payments made to a recipient by placing
12 a lien on the real property of the recipient or by
13 filing a claim against the estate of a recipient.

14 This bill would establish procedures by
15 which the state Medicaid Agency could place a lien
16 on the real property of a recipient or file a claim
17 against the estate of a deceased recipient.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To establish procedures by which the state Medicaid
24 Agency may place a lien on the property of a recipient or file
25 a claim against the estate of a deceased recipient.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) For purposes of this act, Medicaid
2 Agency shall mean the Medicaid Agency of the State of Alabama.

3 (b) In accordance with applicable federal law and
4 regulations, including Title XIX of the federal Social
5 Security Act, the Medicaid Agency may file real property liens
6 against the property of a Medicaid recipient.

7 (c) The lien shall include the name of the recipient
8 and the legal description of the property owned by the
9 recipient.

10 (d) The lien shall be in the amount of any medical
11 assistance payments made on behalf of the recipient. The
12 amount of the lien shall be calculated on a continuing basis
13 for so long as the Medicaid Agency makes payments on behalf of
14 the recipient.

15 (e) The lien, once recorded, shall be subordinate to
16 all mortgages, liens, or encumbrances recorded earlier in
17 time.

18 (f) The Medicaid Agency may foreclose or otherwise
19 enforce a lien by filing a petition for sale of the real
20 property in the circuit court of the county in which the
21 property is located. The Medicaid Agency shall give notice of
22 any proceeding under this section to any person with recorded
23 interest in the property or a recorded lien or mortgage.
24 Notice of the commencement of the proceeding shall be in
25 accordance with the Alabama Rules of Civil Procedure.

26 (g) This section shall apply both prospectively and
27 retrospectively to all liens filed by the Medicaid Agency.

1 Section 2. (a) The personal representative, or
2 person filing to initiate a proceeding in accordance with the
3 Alabama Small Estates Act, Division 10, Article 18, Chapter 2
4 of Title 43 of the Code of Alabama 1975, shall give notice to
5 the Medicaid Agency of the commencement of any estate
6 proceeding. The notice shall include all of the following
7 information:

8 (1) The full legal name of the deceased.

9 (2) The date of birth of the deceased.

10 (3) The date of death of the deceased.

11 (4) The social security number of the deceased.

12 (5) The marital status of the deceased at the time
13 of death.

14 (6) The name, address, and phone number of the
15 spouse of the deceased, if applicable.

16 (7) The court in which a probate estate has been
17 opened.

18 (8) The probate case number.

19 (9) The date on which letters testamentary or
20 letters of administration were issued by the probate court.

21 (10) The name, address, and phone number of the
22 person giving notice.

23 (11) The type of probate proceeding.

24 (b) The notice shall be ineffective if the
25 requirements of subsection (a) are not met.

26 (c) The notice shall be mailed to Alabama Medicaid
27 Agency, Attn: Estate Notice Office, P.O. Box 5624 Montgomery,

1 AL 36103-5624, or such other address as the commissioner may
2 provide by rule. The notice shall be mailed by United States
3 Postal Service Certified Mail with instructions to forward,
4 return receipt requested, with instructions to the delivering
5 postal employee to show to whom delivered, date of delivery,
6 and address where delivered. The return receipt shall be
7 addressed to the probate court in which the estate was filed
8 and shall identify the case number of the case to which the
9 notice pertains. Upon mailing, the personal representative, or
10 person filing to initiate a proceeding in accordance with the
11 Alabama Small Estates Act, shall immediately file with the
12 probate court an affidavit of certified mailing of notice to
13 the Medicaid Agency, along with a copy of the notice sent. The
14 affidavit shall verify that the notice has been mailed by
15 certified mail in accordance with this act. The probate court
16 shall enter the return receipt into the case record.

17 (d) The Medicaid Agency shall respond to the notice
18 by sending one of the following documents to be filed in the
19 probate court:

20 (1) A claim.

21 (2) A waiver of claim.

22 (3) A statement that no amount is due.

23 (e) The Medicaid Agency shall send a response under
24 subsection (d) as soon as practicable, but no later than 30
25 days after the date of receipt of the notice. The claim is
26 waived if the Medicaid Agency has not delivered its response

1 to the probate court within 30 days of receipt of the notice,
2 so long as the requirements of this section have been met.

3 (f) The Medicaid Agency may create an electronic
4 system for persons to provide notice in accordance with this
5 section. If created, the electronic system shall issue a
6 serialized certificate as proof of notice. The personal
7 representative, or person filing to initiate a proceeding in
8 accordance with the Alabama Small Estates Act, shall file the
9 serialized certificate in the probate court if the electronic
10 system is utilized. If the Medicaid Agency provides such a
11 system, then the personal representative, or person filing to
12 initiate a proceeding in accordance with the Alabama Small
13 Estates Act, may choose to either provide notice through the
14 electronic system or in accordance with subsection (c), but
15 shall not be required to do both.

16 (g) The Medicaid Agency shall not be charged for
17 filing a waiver of claim or statement that no amount is due.
18 The fee for the filing of the agency's claim shall be
19 considered part of the fees and charges of administration and
20 shall be paid back to the agency without the filing of an
21 additional claim.

22 (h) The debts of the sixth order of preference, in
23 accordance with Section 43-2-371, shall not be paid, or an
24 order directing a summary distribution shall not be made,
25 until proof of notice, as required by this section, has been
26 filed in the probate court and 30 days has passed since
27 Medicaid received notice.

1 (i) For the purpose of this section, personal
2 representative shall be have the same meaning as provided in
3 Section 43-8-1.

4 (j) This section shall only apply to cases initiated
5 on or after the effective date of this act.

6 (k) All notices provided to the Medicaid Agency and
7 all reports, records, databases, or other documents generated
8 by the Medicaid Agency shall be exempt from disclosure
9 pursuant to Section 36-12-40, Code of Alabama 1975.

10 Section 3. (a) The Medicaid Agency may petition to
11 open the probate estate of a Medicaid recipient by filing a
12 petition to appoint a third party administrator and issue
13 letters of administration.

14 (b) The petition shall contain all of the following
15 information:

16 (1) The date the recipient died.

17 (2) An explanation of why the petition is filed in
18 the proper court in accordance with Section 43-2-40.

19 (3) A listing of the recipient's personal and real
20 property of which the Medicaid Agency is aware.

21 (4) A listing of the recipient's debts of which
22 Medicaid is aware.

23 (5) A listing of the recipient's possible heirs,
24 including contact information, if known, of which the Medicaid
25 Agency is aware.

1 (c) If the Medicaid Agency is not aware of
2 information listed in subsection (b), then the Medicaid Agency
3 shall describe each piece of information that it lacks.

4 (d) If the petition contains the information
5 required in subsection (b), or statements in accordance with
6 subsection (c), the court shall appoint a third party
7 administrator in accordance with Section 43-2-42, Code of
8 Alabama 1975, and require that administrator to procure a bond
9 in accordance with Article 4, Chapter 2, of Title 43 of the
10 Code of Alabama 1975. Once the court is satisfied that an
11 appropriate bond has been procured, the court shall issue
12 letters of administration to the administrator.

13 (e) The administrator shall be compensated in
14 accordance with Section 43-2-848.

15 (f) The probate court shall not appoint an employee
16 of the Medicaid Agency as an administrator of the estate of a
17 Medicaid recipient.

18 (g) The filing fee for the filing of the agency's
19 petition under this section shall be considered part of the
20 fees and charges of administration and shall be paid back to
21 Medicaid without the filing of an additional claim.

22 Section 4. (a) In accordance with applicable federal
23 law and regulations, including Title XIX of the federal Social
24 Security Act, the Medicaid Agency may file a claim against the
25 estate of a Medicaid recipient for the amount of any medical
26 assistance payments made on the recipient's behalf.

1 (b) The claim shall be filed pursuant to Article 15,
2 Chapter 2, of Title 43 of the Code of Alabama 1975, unless
3 otherwise provided by law. The claim shall be filed with an
4 affidavit stating the amount the Medicaid Agency spent and the
5 time period in which the amount was spent. The affidavit shall
6 be completed by the Commissioner of Medicaid or a designee.
7 The affidavit shall be competent evidence of the claim and
8 shall be prima facie genuine and authentic when signed by the
9 Commissioner or a designee.

10 (c) This section 4 shall apply both prospectively
11 and retrospectively to all persons who have had, or will have,
12 medical assistance paid on their behalf under the Alabama
13 Medicaid Agency State Plan.

14 Section 5. (a) The Alabama Medicaid Agency may hold
15 title to real property.

16 (b) Any transfer of real property to the Medicaid
17 Agency shall be void unless the Commissioner of Medicaid
18 agrees to the transfer in a signed memorandum recorded with
19 the deed or by execution of the deed by the Commissioner of
20 Medicaid acknowledging the Commissioner of Medicaid's
21 acceptance recorded in the records of the judge of probate of
22 the county in which the property is located.

23 (c) The Medicaid Agency shall initiate efforts to
24 dispose of real property, in accordance with Article 3,
25 Chapter 15, of Title 9 of Code of Alabama 1975, within 24
26 months of acquiring the property.

1 Section 6. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.