

1 SB76
2 197478-2
3 By Senators Orr, Holley and Allen
4 RFD: Governmental Affairs
5 First Read: 05-MAR-19

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Medicaid estate recovery program, to
12 require that specific notice be provided to Medicaid at the
13 commencement of a probate proceeding and bar payments of
14 claims in the sixth order of preference as well as summary
15 distributions until proof of such notice has been filed and
16 Medicaid has timely responded to the notice; and to provide a
17 uniform mechanism for Medicaid to commence probate proceeding
18 around the state.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. (a) The personal representative, or
21 person filing to initiate a proceeding in accordance with the
22 Alabama Small Estates Act, Division 10, Article 18, Chapter 2
23 of Title 43 of the Code of Alabama 1975, shall give notice of
24 their appointment, or the filing of a petition in accordance
25 with Section 43-2-692, to the Alabama Medicaid Agency. The
26 notice shall include all of the following information:

- 27 (1) The full legal name of the deceased.

- 1 (2) The date of birth of the deceased.
- 2 (3) The date of death of the deceased.
- 3 (4) The social security number of the deceased.
- 4 (5) The marital status of the deceased at the time
5 of death.
- 6 (6) The name, address, and phone number of the
7 spouse of the deceased, if applicable.
- 8 (7) The court in which a probate estate has been
9 opened.
- 10 (8) The probate case number.
- 11 (9) The date on which letters testamentary or
12 letters of administration were issued by the probate court.
- 13 (10) The name, address, and phone number of the
14 person giving notice.
- 15 (11) The type of probate proceeding.
- 16 (b) The notice shall be ineffective if the
17 requirements of subsection (a) are not met.
- 18 (c) The notice shall be mailed to Alabama Medicaid
19 Agency, Attn: Estate Notice Office, P.O. Box 5624 Montgomery,
20 AL 36103-5624, or such other address as the Commissioner may
21 provide by rule. The notice shall be mailed by United States
22 Postal Service Certified Mail with instructions to forward,
23 return receipt requested, with instructions to the delivering
24 postal employee to show to whom delivered, date of delivery,
25 and address where delivered. The return receipt shall be
26 addressed to the probate court in which the estate was filed
27 and shall identify the case number of the case to which the

1 notice pertains. Upon mailing, the personal representative, or
2 person filing to initiate a proceeding in accordance with the
3 Alabama Small Estates Act, shall immediately file with the
4 probate court an affidavit of certified mailing of notice to
5 the Medicaid Agency, along with a copy of the notice sent. The
6 affidavit shall verify that the notice has been mailed by
7 certified mail in accordance with this act. The probate court
8 shall enter the return receipt into the case record.

9 (d) The Medicaid Agency shall respond to the notice
10 by sending one of the following documents to be filed in the
11 probate court:

12 (1) A claim.

13 (2) A waiver of claim.

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

15 (e) The Medicaid Agency shall send a response under
16 subsection (d) as soon as practicable, but no later than 30
17 days after the date of receipt of the notice. The claim is
18 waived if the Medicaid Agency has not delivered its response
19 to the probate court within 30 days of receipt of the notice,
20 so long as the requirements of this section have been met.

21 (f) The Medicaid Agency may create an electronic
22 system for persons to provide notice in accordance with this
23 section. If created, the electronic system shall issue a
24 serialized certificate as proof of notice. The personal
25 representative, or person filing to initiate a proceeding in
26 accordance with the Alabama Small Estates Act, shall file the
27 serialized certificate in the probate court if the electronic

1 system is utilized. If the Medicaid Agency provides such a
2 system, then the personal representative, or person filing to
3 initiate a proceeding in accordance with the Alabama Small
4 Estates Act, may choose to either provide notice through the
5 electronic system or in accordance with subsection (c), but
6 shall not be required to do both.

7 (g) The Medicaid Agency shall not be charged for
8 filing a waiver of claim or statement that no amount is due.
9 The fee for the filing of the agency's claim shall be
10 considered part of the fees and charges of administration and
11 shall be paid back to the agency without the filing of an
12 additional claim.

13 (h) The debts of the sixth order of preference, in
14 accordance with Section 43-2-371, shall not be paid, and no
15 distribution shall be made, until proof of notice, as required
16 by this section, has been filed in the probate court and 30
17 days have passed since Medicaid received notice.

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

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

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

1 (1) Nothing in this section should be construed to
2 modify current probate estate enforcement or grant a new cause
3 of action to the Alabama Medicaid Agency.

4 Section 2. (a) The Medicaid Agency may petition to
5 open the probate estate of a Medicaid recipient by filing a
6 petition to appoint a third party administrator and issue
7 letters of administration, pursuant to the timing limitations
8 of Section 43-2-43.

9 (b) The petition shall contain all of the following
10 information:

11 (1) The date the recipient died.

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

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

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

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

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

24 (d) If the petition contains the information
25 required in subsection (b), or statements in accordance with
26 subsection (c), the court shall appoint a third party
27 administrator in accordance with Section 43-2-42, Code of

1 Alabama 1975, and require that administrator to procure a bond
2 in accordance with Article 4, Chapter 2, of Title 43 of the
3 Code of Alabama 1975. Once the court is satisfied that an
4 appropriate bond has been procured, the court shall issue
5 letters of administration to the administrator.

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

8 (f) When appointing an administrator pursuant to
9 this section, the probate court shall not appoint an employee
10 of the Medicaid Agency as an administrator of the estate of a
11 Medicaid recipient.

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

16 Section 3. (a) In accordance with applicable federal
17 law and regulations, including 42 U.S.C. §1396p, the Medicaid
18 Agency may file a claim against the estate of a Medicaid
19 recipient for the amount of any medical assistance payments
20 made on the recipient's behalf.

21 (b) The claim shall be filed pursuant to Article 15,
22 Chapter 2, of Title 43 of the Code of Alabama 1975, unless
23 otherwise provided by law. The claim shall be filed with an
24 affidavit stating the amount the Medicaid Agency spent and the
25 time period in which the amount was spent. The affidavit shall
26 be completed by the Commissioner of Medicaid or a designee.
27 The affidavit shall be competent evidence of the claim and

1 shall be prima facie genuine and authentic when signed by the
2 Commissioner or a designee.

3 (c) This section 3 shall apply both prospectively
4 and retrospectively to all persons who have had, or will have,
5 medical assistance paid on their behalf under the Alabama
6 Medicaid Agency State Plan.

7 Section 4. The Medicaid Agency conducts a liens
8 program in accordance with 42 U.S.C. §1396p. The liens program
9 is operated within the federal law restrictions. Nothing in
10 this Section shall shrink or expand the Medicaid Agency's
11 federal law authority or grant a new cause of action that is
12 not currently available under state or federal law. The
13 Medicaid Agency shall always remain in compliance with 42
14 U.S.C. §1396p.

15 Section 5. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Governmental Affairs..... 05-MAR-19

Read for the second time and placed on the calen-
dar..... 19-MAR-19

Read for the third time and passed as amended 16-APR-19

Yeas 24
Nays 3

Patrick Harris,
Secretary.