

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

8 SYNOPSIS: Under existing federal law, the Medicaid
9 Agency must administer an estate recovery program.
10 Medicaid currently does not receive all required
11 notices at the commencement of probate proceedings.

12 This bill would require specific notice to
13 Medicaid at the commencement of a probate
14 proceeding and would bar payments of claims in the
15 sixth order of preference as well as summary
16 distributions until proof of such notice has been
17 filed and Medicaid has timely responded to the
18 notice. This bill would also provide a uniform
19 mechanism for Medicaid to commence probate
20 proceedings around the state.
21

22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

26 Relating to the Medicaid estate recovery program, to
27 require that specific notice be provided to Medicaid at the

1 commencement of a probate proceeding and bar payments of
2 claims in the sixth order of preference as well as summary
3 distributions until proof of such notice has been filed and
4 Medicaid has timely responded to the notice; and to provide a
5 uniform mechanism for Medicaid to commence probate proceeding
6 around the state.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. (a) The personal representative, or
9 person filing to initiate a proceeding in accordance with the
10 Alabama Small Estates Act, Division 10, Article 18, Chapter 2
11 of Title 43 of the Code of Alabama 1975, shall give notice of
12 their appointment, or the filing of a petition in accordance
13 with Section 43-2-692, to the Alabama Medicaid Agency. The
14 notice shall include all of the following information:

- 15 (1) The full legal name of the deceased.
- 16 (2) The date of birth of the deceased.
- 17 (3) The date of death of the deceased.
- 18 (4) The social security number of the deceased.
- 19 (5) The marital status of the deceased at the time
20 of death.
- 21 (6) The name, address, and phone number of the
22 spouse of the deceased, if applicable.
- 23 (7) The court in which a probate estate has been
24 opened.
- 25 (8) The probate case number.
- 26 (9) The date on which letters testamentary or
27 letters of administration were issued by the probate court.

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

3 (11) The type of probate proceeding.

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

6 (c) The notice shall be mailed to Alabama Medicaid
7 Agency, Attn: Estate Notice Office, P.O. Box 5624 Montgomery,
8 AL 36103-5624, or such other address as the Commissioner may
9 provide by rule. The notice shall be mailed by United States
10 Postal Service Certified Mail with instructions to forward,
11 return receipt requested, with instructions to the delivering
12 postal employee to show to whom delivered, date of delivery,
13 and address where delivered. The return receipt shall be
14 addressed to the probate court in which the estate was filed
15 and shall identify the case number of the case to which the
16 notice pertains. Upon mailing, the personal representative, or
17 person filing to initiate a proceeding in accordance with the
18 Alabama Small Estates Act, shall immediately file with the
19 probate court an affidavit of certified mailing of notice to
20 the Medicaid Agency, along with a copy of the notice sent. The
21 affidavit shall verify that the notice has been mailed by
22 certified mail in accordance with this act. The probate court
23 shall enter the return receipt into the case record.

24 (d) The Medicaid Agency shall respond to the notice
25 by sending one of the following documents to be filed in the
26 probate court:

27 (1) A claim.

1 (2) A waiver of claim.

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

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

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

22 (g) The Medicaid Agency shall not be charged for
23 filing a waiver of claim or statement that no amount is due.
24 The fee for the filing of the agency's claim shall be
25 considered part of the fees and charges of administration and
26 shall be paid back to the agency without the filing of an
27 additional claim.

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

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

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

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

15 Section 2. (a) The Medicaid Agency may petition to
16 open the probate estate of a Medicaid recipient by filing a
17 petition to appoint a third party administrator and issue
18 letters of administration.

19 (b) The petition shall contain all of the following
20 information:

21 (1) The date the recipient died.

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

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

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

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

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

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

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

18 (f) When appointing an administrator pursuant to
19 this section, the probate court shall not appoint an employee
20 of the Medicaid Agency as an administrator of the estate of a
21 Medicaid recipient.

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

26 Section 3. (a) In accordance with applicable federal
27 law and regulations, including Title XIX of the federal Social

1 Security Act, the Medicaid Agency may file a claim against the
2 estate of a Medicaid recipient for the amount of any medical
3 assistance payments made on the recipient's behalf.

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

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

17 Section 4. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.