

1 SB325
2 183994-1
3 By Senator Orr
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 15-MAR-17

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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 or personal property of the
13 recipient or by filing a claim against the estate
14 of a recipient.

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

20
21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

16 (e) The lien, once recorded, shall be valid against
17 all persons asserting any right, title, or interest in the
18 property recorded at a later time, unless otherwise provided
19 by law.

20 (f) The lien shall run with the property until it is
21 satisfied or terminated. The lien shall not expire due to
22 passage of time. The lien may be satisfied by the recipient,
23 the recipient's heirs, or any party who has an interest in the
24 property by paying the amount of the lien or the fair market
25 value of the property, whichever is less. The lien is
26 terminated by foreclosure of a superior lien or prior mortgage

1 which absorbs the entire value of the property or by a lien
2 release signed by the Commissioner of Medicaid or a designee.

3 (g) The Medicaid Agency may foreclose or otherwise
4 enforce a lien by filing a petition for sale of the real
5 property in the circuit court of the county in which the
6 property is located. The Medicaid Agency shall give notice of
7 any proceeding under this section to any person with recorded
8 interest in the property or a recorded lien or mortgage.
9 Notice of the commencement of the proceeding shall be in
10 accordance with the Alabama Rules of Civil Procedure.

11 (h) This section shall apply both prospectively and
12 retrospectively to all liens filed by the Medicaid Agency.

13 Section 2. (a) The personal representative, or
14 person filing to initiate a proceeding in accordance with the
15 Alabama Small Estates Act, Division 10, Article 18, Chapter 2
16 of Title 43 of the Code of Alabama 1975, shall give notice to
17 the Medicaid Agency of the commencement of any estate
18 proceeding. The notice shall include all of the following
19 information:

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

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

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

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

24 (5) The marital status of the deceased at the time
25 of death.

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

1 (7) The court in which a probate estate has been
2 opened.

3 (8) The probate case number.

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

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

8 (11) The type of probate proceeding.

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

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

1 certified mail in accordance with this act. The probate court
2 shall enter the return receipt into the case record.

3 (d) The Medicaid Agency shall respond to the notice
4 by sending one of the following documents to be filed in the
5 probate court:

6 (1) A claim.

7 (2) A waiver of claim.

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

9 (e) The Medicaid Agency shall send a response under
10 subsection (d) as soon as practicable, but no later than 30
11 days after the date of receipt of the notice. If the Medicaid
12 Agency has not delivered its response to the probate court
13 within 30 days of receipt of the notice, the probate court
14 shall determine that the agency has waived any claim, so long
15 as the requirements of this section have been met.

16 (f) The Medicaid Agency may create an electronic
17 system for persons to provide notice in accordance with this
18 section. If created, the electronic system shall issue a
19 serialized certificate as proof of notice. The personal
20 representative, or person filing to initiate a proceeding in
21 accordance with the Alabama Small Estates Act, shall file the
22 serialized certificate in the probate court if the electronic
23 system is utilized. If the Medicaid Agency provides such a
24 system, then the personal representative, or person filing to
25 initiate a proceeding in accordance with the Alabama Small
26 Estates Act, may choose to either provide notice through the

1 electronic system or in accordance with subsection (c), but
2 shall not be required to do both.

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

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

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

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

20 Section 3. (a) The Medicaid Agency may petition to
21 open the probate estate of a Medicaid recipient by filing a
22 petition to appoint a third party administrator and issue
23 letters of administration.

24 (b) The petition shall contain all of the following
25 information:

26 (1) The date the recipient died.

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

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

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

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

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

13 (d) If the petition contains the information
14 required in subsection (b), or statements in accordance with
15 subsection (c), the court shall appoint an administrator and
16 require that administrator to procure a bond in accordance
17 with Article 4, Chapter 2 of Title 43 of the Code of Alabama
18 1975. Once the court is satisfied that an appropriate bond has
19 been procured, the court shall issue letters of administration
20 to the administrator.

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

23 (f) The probate court shall not appoint an employee
24 of the Medicaid Agency as an administrator of the estate of a
25 Medicaid recipient.

26 (g) The filing fee for the filing of the agency's
27 petition under this section shall be considered part of the

1 fees and charges of administration and shall be paid back to
2 Medicaid without the filing of an additional claim.

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

8 (b) The claim shall be filed with an affidavit
9 stating the amount the Medicaid Agency spent and the time
10 period in which the amount was spent. The affidavit shall be
11 completed by the Commissioner of Medicaid or a designee. The
12 affidavit shall be competent evidence of the claim and shall
13 be prima facie genuine and authentic when signed by the
14 commissioner or a designee.

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

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

21 (b) Any transfer of real property to the Medicaid
22 Agency shall be void unless the commissioner agrees to the
23 transfer in a signed memorandum recorded with the deed in the
24 records of the judge of probate of the county in which the
25 property is located.

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.