

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

1 SB76

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4 ENROLLED, An Act,

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

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

- 21 (1) The full legal name of the deceased.  
22 (2) The date of birth of the deceased.  
23 (3) The date of death of the deceased.  
24 (4) The social security number of the deceased.

1                   (5) The marital status of the deceased at the time  
2 of death.

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

5                   (7) The court in which a probate estate has been  
6 opened.

7                   (8) The probate case number.

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

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

12                   (11) The type of probate proceeding.

13                   (b) The notice shall be effective, provided the  
14 information in subdivisions (1), (2), and (3) of subsection  
15 (a) are included.

16                   (c) The notice shall be mailed to Alabama Medicaid  
17 Agency, Attn: Estate Notice Office, P.O. Box 5624 Montgomery,  
18 AL 36103-5624, or such other address as the Commissioner may  
19 provide by rule. The notice shall be mailed by United States  
20 Postal Service Certified Mail with instructions to forward,  
21 return receipt requested, with instructions to the delivering  
22 postal employee to show to whom delivered, date of delivery,  
23 and address where delivered. The return receipt shall be  
24 addressed to the probate court in which the estate was filed  
25 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 (f) The Medicaid Agency may create an electronic  
21 system for persons to provide notice in accordance with this  
22 section. If created, the electronic system shall issue a  
23 serialized certificate as proof of notice. The personal  
24 representative, or person filing to initiate a proceeding in  
25 accordance with the Alabama Small Estates Act, shall file the

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

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

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

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

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

24               (k) All notices provided to the Medicaid Agency and  
25       all reports, records, databases, or other documents generated

1 by the Medicaid Agency shall be exempt from disclosure  
2 pursuant to Section 36-12-40, Code of Alabama 1975.

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

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

11 (b) The petition shall contain all of the following  
12 information:

13 (1) The date the recipient died.

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

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

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

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

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

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

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

12           (f) When appointing an administrator pursuant to  
13 this section, the probate court shall not appoint an employee  
14 of the Medicaid Agency as an administrator of the estate of a  
15 Medicaid recipient.

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

20           Section 3. (a) The Medicaid Agency may file a claim  
21 against the estate of a Medicaid recipient for the amount of  
22 any medical assistance payments made on behalf of the  
23 recipient, but only as allowed by 42 U.S.C. §1396p, except  
24 that the Medicaid Agency shall not file a claim that includes  
25 medical assistance payments made at any time for Medicare

1 cost-sharing or for benefits under the Medicare Savings  
2 Programs described in 42 U.S.C §1396a(10) (E).

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

12 (c) This section 3 shall apply prospectively.

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

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



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB76  
Senate 16-APR-19  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 31-MAY-19

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Senate concurred in House amendment 31-MAY-19

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By: Senator Orr