

2  
3 SENATE FINANCE AND TAXATION GENERAL FUND COMMITTEE SUBSTITUTE  
4 FOR SB93

5  
6  
7  
8  
9 SYNOPSIS: Under existing federal law, the state  
10 Medicaid Agency operates a narrowly tailored estate  
11 recovery program, and there are no provisions under  
12 state law governing an estate recovery program.

13 This bill would establish procedures by  
14 which the state Medicaid Agency could recover from  
15 estates. This bill would also provide authority in  
16 state law for the liens the state Medicaid Agency  
17 currently files under federal law.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 Relating to Medicaid; to establish procedures by  
24 which the state Medicaid Agency may place a lien on the  
25 property of a recipient or file a claim against the estate of  
26 a deceased recipient.

27 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 the Alabama  
27 Medicaid Agency, Attn: Estate Notice Office, P.O. Box 5624,

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

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

21 (1) A claim.

22 (2) A waiver of claim.

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

24 (e) The Medicaid Agency shall send a response under  
25 subsection (d) as soon as practicable, but no later than 30  
26 days after the date of receipt of the notice. The claim is  
27 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, Code of Alabama 1975, shall  
24 not be paid, or an order directing a summary distribution  
25 shall not be made, until proof of notice, as required by this  
26 section, has been filed in the probate court and 30 days has  
27 passed since Medicaid received notice.

1           (i) This section shall only apply to cases initiated  
2 on or after the effective date of this act.

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

7           (k) For the purpose of this section, personal  
8 representative shall be have the same meaning as provided in  
9 Section 43-8-1, 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, Code of  
19 Alabama 1975.

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

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

24           (5) A listing of the recipient's possible heirs,  
25 including contact information, if known, of which the Medicaid  
26 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, Code of Alabama 1975.

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 applies both prospectively and  
11 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 the 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.