

1 SB93  
2 189884-3  
3 By Senators Orr, Reed and Whatley  
4 RFD: Finance and Taxation General Fund  
5 First Read: 09-JAN-18

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to Medicaid; to establish procedures by  
12 which the state Medicaid Agency may place a lien on the  
13 property of a recipient or file a claim against the estate of  
14 a deceased recipient.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 (b) In accordance with applicable federal law and  
19 regulations, including Title XIX of the federal Social  
20 Security Act, the Medicaid Agency may file real property liens  
21 against the property of a Medicaid recipient.

22 (c) The lien shall include the name of the recipient  
23 and the legal description of the property owned by the  
24 recipient.

25 (d) The lien shall be in the amount of any medical  
26 assistance payments made on behalf of the recipient. The  
27 amount of the lien shall be calculated on a continuing basis

1 for so long as the Medicaid Agency makes payments on behalf of  
2 the recipient.

3 (e) The lien, once recorded, shall be subordinate to  
4 all mortgages, liens, or encumbrances recorded earlier in  
5 time.

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

14 (g) This section shall apply both prospectively and  
15 retrospectively to all liens filed by the Medicaid Agency.

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

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

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

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

26 (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 ineffective if the  
14 requirements of subsection (a) are not met.

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

1 shall immediately file with the probate court an affidavit of  
2 certified mailing of notice to the Medicaid Agency, along with  
3 a copy of the notice sent. The affidavit shall verify that the  
4 notice has been mailed by certified mail in accordance with  
5 this act. The probate court shall enter the return receipt  
6 into the case record.

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

10 (1) A claim.

11 (2) A waiver of claim.

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

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

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

1 initiate a proceeding in accordance with the Alabama Small  
2 Estates Act, may choose to either provide notice through the  
3 electronic system or in accordance with subsection (c), but  
4 shall not be required to do both.

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

11 (h) The debts of the sixth order of preference, in  
12 accordance with Section 43-2-371, Code of Alabama 1975, shall  
13 not be paid, or an order directing a summary distribution  
14 shall not be made, until proof of notice, as required by this  
15 section, has been filed in the probate court and 30 days has  
16 passed since Medicaid received notice.

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

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

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

26 Section 3. (a) The Medicaid Agency may petition to  
27 open the probate estate of a Medicaid recipient by filing a

1 petition to appoint a third party administrator and issue  
2 letters of administration.

3 (b) The petition shall contain all of the following  
4 information:

5 (1) The date the recipient died.

6 (2) An explanation of why the petition is filed in  
7 the proper court in accordance with Section 43-2-40, Code of  
8 Alabama 1975.

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

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

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

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

19 (d) If the petition contains the information  
20 required in subsection (b), or statements in accordance with  
21 subsection (c), the court shall appoint a third party  
22 administrator in accordance with Section 43-2-42, Code of  
23 Alabama 1975, and require that administrator to procure a bond  
24 in accordance with Article 4, Chapter 2, of Title 43 of the  
25 Code of Alabama 1975. Once the court is satisfied that an  
26 appropriate bond has been procured, the court shall issue  
27 letters of administration to the administrator.

1 (e) The administrator shall be compensated in  
2 accordance with Section 43-2-848, Code of Alabama 1975.

3 (f) The probate court shall not appoint an employee  
4 of the Medicaid Agency as an administrator of the estate of a  
5 Medicaid recipient.

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

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

15 (b) The claim shall be filed pursuant to Article 15,  
16 Chapter 2, of Title 43 of the Code of Alabama 1975, unless  
17 otherwise provided by law. The claim shall be filed with an  
18 affidavit stating the amount the Medicaid Agency spent and the  
19 time period in which the amount was spent. The affidavit shall  
20 be completed by the Commissioner of Medicaid or a designee.  
21 The affidavit shall be competent evidence of the claim and  
22 shall be prima facie genuine and authentic when signed by the  
23 commissioner or a designee.

24 (c) This section applies both prospectively and  
25 retrospectively to all persons who have had, or will have,  
26 medical assistance paid on their behalf under the Alabama  
27 Medicaid Agency State Plan.



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

3                   (b) Any transfer of real property to the Medicaid  
4 Agency shall be void unless the Commissioner of Medicaid  
5 agrees to the transfer in a signed memorandum recorded with  
6 the deed or by execution of the deed by the Commissioner of  
7 Medicaid acknowledging the Commissioner of Medicaid's  
8 acceptance recorded in the records of the judge of probate of  
9 the county in which the property is located.

10                  (c) The Medicaid Agency shall initiate efforts to  
11 dispose of real property, in accordance with Article 3,  
12 Chapter 15, of Title 9 of the Code of Alabama 1975, within 24  
13 months of acquiring the property.

14                  Section 6. This act shall become effective on the  
15 first day of the third month following its passage and  
16 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 Finance and Taxation General Fund ... 09-JAN-18

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 18-JAN-18

Read for the third time and passed as amended .... 25-JAN-18

Yeas 25  
Nays 0

Patrick Harris,  
Secretary.