



## **ALABAMA MEDICAID GETS SERIOUS ABOUT PROBATE ESTATE RECOVERY**

Federal law has required state Medicaid agencies to pursue estate recovery since 1993. However, Alabama did not actively begin pursuing estate recovery until around 2014. In 2016, Alabama Medicaid issued estate recovery regulations and has been working aggressively toward estate recovery since that time.

ACT #2019-489 becomes effective September 1, 2019 and requires that Notice be given to Alabama Medicaid of every decedent's estate, including summary distributions, opened on or after that date.

The Notice to be given Alabama Medicaid must be given in a precise manner and include substantial information about the decedent. The Notice must be mailed to "Alabama Medicaid Agency, Attn: Estate Notice Office, P.O. Box 5624 Montgomery, AL 36103-5624," "by United States Postal Service, certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered." Additionally, the return receipt must be addressed to the probate court for the decedent's estate and must include the case number for the estate. Finally, upon mailing the Notice, an Affidavit certifying that the Notice has been properly issued to Alabama Medicaid, along with a copy of the Notice, must be filed with the probate court.

Alabama Medicaid must respond to a Notice within thirty (30) days from the receipt of the notice [Note: this will largely depend on when the certified notice is retrieved from the post office]. Alabama Medicaid may file a claim, waiver of claim, or statement that no claim exists with the probate court. If Alabama Medicaid does not file a response within thirty (30) days from the receipt of notice, it waives its claim.

While waiting on a response from Alabama Medicaid, the law states

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

Clayton Davis, Board President for Alabama Family Trust, assisted with the drafting of the new law and has created a Notice form and an Affidavit form to comply with the new law's requirements.

Alabama Family Trust is happy to provide these forms to you to help you in your probate practice. We will also be preparing additional whitepaper materials, articles, and CLE on this matter, including more in-depth analysis of estate recovery.

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