

## **NEW ALABAMA MEDICAID NOTICE LAW (Act 2019-489)**

### **Effective Date of the Act**

Act 2019-489 goes into effect on September 1, 2019. It does NOT affect any case initiated prior to September 1, 2019.

### **Content of the Notice**

The Act requires the personal representative (“PR”) of the estate or the person petitioning under the Small Estates Act to provide notice to the Alabama Medicaid Agency (“Medicaid”).<sup>1</sup> The notice is required to contain the following 11 items:

- (1) The full legal name of the deceased.
- (2) The date of birth of the deceased.
- (3) The date of death of the deceased.
- (4) The social security number of the deceased.
- (5) The marital status of the deceased at the time of death.
- (6) The name, address, and phone number of the spouse of the deceased, if applicable.
- (7) The court in which a probate estate has been opened.
- (8) The probate case number.
- (9) The date on which letters testamentary or letters of administration were issued by the probate court.
- (10) The name, address, and phone number of the person giving notice.
- (11) The type of probate proceeding.

However, the notice is considered legally effective as long as it contains just the following three items:

- (1) The full legal name of the deceased.
- (2) The date of birth of the deceased.
- (3) The date of death of the deceased.

### **Time Period for Providing Notice / Consequences for Delaying Notice**

The PR must provide notice to Medicaid after the Court issues Letters Testamentary or Letters of Administration. There is not a time-based deadline for when the PR must issue this notice.

Debts of the 6<sup>th</sup> order of preference (as described in 43-2-371) cannot be paid and no distributions can be made until proof of notice to Medicaid has been filed in probate court AND

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<sup>1</sup> For purposes of this summary, all references to “PR” include either a personal representative of an estate or a person petitioning under the Small Estates Act.

30 days have passed since Medicaid received notice. Accordingly, funeral expenses, fees and charges of administration, expenses of the last sickness, taxes assessed on the estate of the decedent prior to decedent's death, and debts due to employees for services rendered the year of the death of the decedent may be paid PRIOR to the PR complying with the notice provisions of this act. However, other debts of the decedent cannot be paid and distributions cannot be made until the PR complies with these notice provisions.

### **Method of Providing Notice**

The PR chooses one of the following two options for providing notice:

- 1.) Certified Mail (instructions to forward, return receipt requested, with instructions to postal employee to show to whom delivered, date of delivery, and address where delivered).
  - a. Return receipt is addressed to probate court and identifies the case number.
  - b. Return receipt is entered into the case record by probate court.
  - c. At time of mailing, PR files with probate court:
    - i. An affidavit of certified mailing of notice to Medicaid, and
    - ii. Copy of notice sent
  
- 2.) Electronic Notice (assuming Medicaid decides to create this system since Medicaid is authorized to create it but not required to create it)
  - a. Electronic system issues a serialized certificate as proof of notice
  - b. PR files the serialized certificate with probate court

### **Response of Medicaid**

Medicaid is required to deliver its response to probate court within 30 days of receiving notice. Medicaid has three response options: 1.) claim, 2.) waiver of claim, or 3.) statement that no amount is due. Any claim of Medicaid is waived if the response is not delivered to probate court within 30 days of receiving notice. Medicaid's 30-day window to submit a claim is separate from, and unaffected by, the 6-month window for creditors to file estate claims.

Medicaid will pay the filing fee IF Medicaid does file a claim, but the fee will be considered part of the fees and charges of administration and shall be paid back to the agency without the filing of an additional claim.

### **Claim of Medicaid**

The claim must specify the amount spent by Medicaid and the time period in which it was spent. It also must be accompanied by an affidavit, signed by the Medicaid Commissioner or designee, that shall be "competent evidence" of the claim and shall be "prima facie genuine and authentic" when signed by the Commissioner or designee.