

SENATE FILE 394  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 250)

Passed Senate, <sup>(p. 896)</sup> Date 3/30/93 Passed House, Date 4-19-93  
Vote: Ayes 49 Nays 0 Vote: Ayes 98 Nays 0

Re-passed Senate Approved May 5, 1993  
48-0 4/27/93 (p. 1361)

A BILL FOR

1 An Act relating to establishing a debt due for medical assistance  
2 resulting from a transfer of assets, and to allowable claims  
3 against a conservatorship for the cost of medical care or  
4 services provided to a recipient of medical assistance.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 394

1 Section 1. NEW SECTION. 249F.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Medical assistance" means "medical assistance",  
5 "additional medical assistance", "discretionary medical  
6 assistance", or "medicare cost sharing" as each is defined in  
7 section 249A.2 which is provided to an individual pursuant to  
8 chapter 249A and Title XIX of the federal Social Security Act.

9 2. a. "Transfer of assets" means any transfer or  
10 assignment of a legal or equitable interest in property, as  
11 defined in section 702.14, for less than fair consideration,  
12 with the intent, on the part of the transferee, of enabling  
13 the transferor to obtain or maintain eligibility for medical  
14 assistance. A transfer or assignment of property for less  
15 than fair consideration made within five years of application  
16 for medical assistance by the transferor, or while the  
17 transferor is receiving medical assistance, is presumed to be  
18 made with the intent, on the part of the transferee, of  
19 enabling the transferor to obtain or maintain eligibility for  
20 medical assistance. This presumption is rebuttable only by  
21 clear and convincing evidence that the transferor's  
22 eligibility or potential eligibility for medical assistance  
23 was no part of the transferee's reason for accepting the  
24 transfer or assignment. A transfer to a spouse by an  
25 institutionalized spouse pursuant to section 1924(f)(1) of the  
26 federal Social Security Act is exempt from the provisions of  
27 this chapter.

28 b. However, transfer of assets does not include the  
29 following:

30 (1) Transfers, other than the transfer of a dwelling, to  
31 or for the sole benefit of the transferor's spouse, except  
32 those made after the transferor's spouse has established on-  
33 going eligibility for medical assistance as an  
34 institutionalized spouse pursuant to section 1924 of the  
35 federal Social Security Act.

1 (2) Transfers, other than the transfer of a dwelling, to  
2 or for the sole benefit of the transferor's child who is blind  
3 or disabled as defined in section 1614 of the federal Social  
4 Security Act.

5 (3) Transfer of a dwelling to a child of the transferor  
6 under twenty-one years of age.

7 (4) Transfer of a dwelling, after the transferor is  
8 institutionalized, to either of the following:

9 (a) A sibling of the transferor who has an equity interest  
10 in the dwelling and who was residing in the dwelling for a  
11 period of at least one year immediately prior to the date the  
12 transferor became institutionalized.

13 (b) A child of the transferor who was residing in the  
14 dwelling for a period of at least two years immediately prior  
15 to the date the transferor became institutionalized and who  
16 provided care to the transferor which permitted the transferor  
17 to reside at the dwelling rather than in an institution or  
18 facility.

19 (5) Transfers of less than two thousand dollars, and  
20 transfers of less than ten thousand dollars made more than  
21 five years before an application for medical assistance is  
22 submitted by the transferor. For purposes of this chapter,  
23 all transfers by the same transferor during a calendar year  
24 will be aggregated.

25 3. "Transferor" means the person who makes a transfer of  
26 assets.

27 4. "Transferee" means the person who receives a transfer  
28 of assets.

29 Sec. 2. NEW SECTION. 249F.2 CREATION OF DEBT.

30 Notwithstanding section 249A.3, subsection 9, a transfer of  
31 assets creates a debt due and owing to the department of human  
32 services from the transferee in an amount equal to medical  
33 assistance provided to or on behalf of the transferor, on or  
34 after the date of the transfer of assets, but not exceeding  
35 the fair market value of the transferred assets.

1 Sec. 3. NEW SECTION. 249F.3 NOTICE OF DEBT -- FAILURE TO  
2 RESPOND -- HEARING -- ORDER.

3 1. The department of inspections and appeals may issue a  
4 notice establishing and demanding payment of an accrued or  
5 accruing debt due and owing to the department of human  
6 services as provided in section 249F.2. The notice shall be  
7 served upon the transferee in accordance with the rules of  
8 civil procedure. The notice shall include all of the  
9 following:

10 a. The amount of medical assistance provided to the  
11 transferor to date which creates the debt.

12 b. A computation of the debt due and owing.

13 c. A demand for immediate payment of the debt.

14 d. (1) A statement that if the transferee desires to  
15 discuss the notice, the transferee, within ten days after  
16 being served, may contact the department of inspections and  
17 appeals and request an informal conference.

18 (2) A statement that if a conference is requested, the  
19 transferee has until ten days after the date set for the  
20 conference or until twenty days after the date of service of  
21 the original notice, whichever is later, to send a request for  
22 a hearing to the department of inspections and appeals.

23 (3) A statement that after the holding of the conference,  
24 the department of inspections and appeals may issue a new  
25 notice to be sent to the transferee by first class mail  
26 addressed to the transferee at the transferee's last known  
27 address, or if applicable, to the transferee's attorney at the  
28 last known address of the transferee's attorney.

29 (4) A statement that if the department of inspections and  
30 appeals issues a new notice, the transferee has until ten days  
31 after the date of mailing of the new notice or until twenty  
32 days after the date of service of the original notice,  
33 whichever is later, to send a request for a hearing to the  
34 department of inspections and appeals.

35 e. A statement that if the transferee objects to all or

1 any part of the original notice and no conference is  
2 requested, the transferee has until twenty days after the date  
3 of service of the original notice to send a written response  
4 setting forth any objections and requesting a hearing to the  
5 department of inspections and appeals.

6 f. A statement that if a timely written request for a  
7 hearing is received by the department of inspections and  
8 appeals, the transferee has the right to a hearing to be held  
9 in district court as provided in section 249F.4; and that if  
10 no timely written request for hearing is received, the  
11 department of inspections and appeals will enter an order in  
12 accordance with the latest notice.

13 g. A statement, that as soon as the order is entered, the  
14 property of the transferee is subject to collection action,  
15 including but not limited to wage withholding, garnishment,  
16 attachment of a lien, or execution.

17 h. A statement that the transferee must notify the  
18 department of inspections and appeals of any change of address  
19 or employment.

20 i. A statement that if the transferee has any questions  
21 concerning the transfer of assets, the transferee should  
22 contact the department of inspections and appeals or consult  
23 an attorney.

24 j. Other information as the department of human services  
25 finds appropriate.

26 2. If a timely written request for hearing is received by  
27 the department of inspections and appeals, a hearing shall be  
28 held in district court.

29 3. If a timely written request for hearing is not received  
30 by the department of inspections and appeals, the department  
31 may enter an order in accordance with the latest notice, and  
32 the order shall specify all of the following:

33 a. The amount to be paid with directions as to the manner  
34 of payment.

35 b. The amount of the debt accrued and accruing in favor of

1 the department of human services.

2 c. Notice that the property of the transferee is subject  
3 to collection action, including but not limited to wage  
4 withholding, garnishment, attachment of a lien, and execution.

5 4. The transferee shall be sent a copy of the order by  
6 first class mail addressed to the transferee at the  
7 transferee's last known address, or if applicable, to the  
8 transferee's attorney at the last known address of the  
9 transferee's attorney. The order is final, and action by the  
10 department of human services or the department of inspections  
11 and appeals to enforce and collect upon the order may be taken  
12 from the date of the issuance of the order.

13 Sec. 4. NEW SECTION. 249F.4 CERTIFICATION TO COURT --  
14 HEARING -- DEFAULT.

15 1. If a timely written request for a hearing is received,  
16 the department of inspections and appeals shall certify the  
17 matter to the district court in the county where the  
18 transferee resides.

19 2. The certification shall include true copies of the  
20 original notice, the return of service, any request for an  
21 informal conference, any subsequent notices, the written  
22 request for hearing, and true copies of any administrative  
23 orders previously entered.

24 3. The department of inspections and appeals may also  
25 request a hearing on its own motion regarding the  
26 determination of a debt, at any time prior to entry of an  
27 administrative order.

28 4. The district court shall set the matter for hearing and  
29 notify the parties of the time and place of hearing.

30 5. If a party fails to appear at the hearing, upon a  
31 showing of proper notice to the party, the district court may  
32 find the party in default and enter an appropriate order.

33 Sec. 5. NEW SECTION. 249F.5 FILING AND DOCKETING OF  
34 ORDER -- ORDER EFFECTIVE AS COURT DECREE.

35 1. A true copy of an order entered by the department of

1 inspections and appeals pursuant to this chapter, along with a  
2 true copy of the return of service, if applicable, may be  
3 filed in the office of the clerk of the district court in the  
4 county in which the transferee resides or, if the transferee  
5 resides in another state, in the office of the district court  
6 in the county in which the transferor resides.

7 2. The department of inspections and appeals' order shall  
8 be presented, ex parte, to the district court for review and  
9 approval. Unless defects appear on the face of the order or  
10 on the attachments, the district court shall approve the  
11 order. The approved order shall have all force, effect, and  
12 attributes of a docketed order or decree of the district  
13 court.

14 3. Upon filing, the clerk shall enter the order in the  
15 judgment docket.

16 Sec. 6. NEW SECTION. 249F.6 INTEREST ON DEBTS.

17 Interest accrues on a debt established under this chapter  
18 at the rate provided in section 535.3 for court judgments.  
19 The department of human services may collect the accrued  
20 interest, but is not required to maintain interest balance  
21 accounts. The department of human services may waive payment  
22 of the interest if the waiver will facilitate the collection  
23 of the debt.

24 Sec. 7. NEW SECTION. 249F.7 SECURITY FOR PAYMENT OF DEBT -  
25 - FORFEITURE.

26 Upon entry of a court order or upon the failure of a  
27 transferee to make payments pursuant to a court order, the  
28 court may require the transferee to provide security, a bond,  
29 or other guarantee which the court determines is satisfactory  
30 to secure the payment of the debt under the court order. If  
31 the transferee fails to make payments pursuant to the court  
32 order, the court may declare the security, bond, or other  
33 guarantee forfeited.

34 Sec. 8. NEW SECTION. 249F.8 ADMINISTRATION.

35 As provided in this chapter, the establishment of a debt

1 for medical assistance due to transfer of assets shall be  
2 administered by the department of inspections and appeals,  
3 subject to the supervision and direction of the department of  
4 human services. All administrative discretion in the  
5 administration of this chapter shall be exercised by the  
6 department of human services, and any state administrative  
7 rules implementing or interpreting this chapter shall be  
8 adopted by the department of human services.

9 Sec. 9. NEW SECTION. 249F.9 INCONSISTENCY WITH FEDERAL  
10 LAWS.

11 If it is determined by the attorney general that any  
12 provision of this chapter would cause denial of funds from the  
13 United States government under Title XIX of the federal Social  
14 Security Act, or would otherwise be inconsistent or conflict  
15 with the requirements of federal law for state participation  
16 in the Title XIX program, such provision shall be suspended,  
17 but only to the extent necessary to prevent denial of such  
18 funds or to eliminate the inconsistency or conflict with the  
19 requirements of federal law. If the attorney general makes  
20 such a suspension determination, the attorney general shall  
21 report it to the general assembly at its next session. This  
22 report shall include any recommendations in regard to  
23 corrective legislation needed to conform this chapter with  
24 federal law.

25 Sec. 10. NEW SECTION. 633.653A CLAIMS FOR COST OF  
26 MEDICAL CARE OR SERVICES.

27 The provision of medical care or services to a ward who is  
28 a recipient of medical assistance under chapter 249A creates a  
29 claim against the conservatorship for the amount owed to the  
30 provider under the medical assistance program for the care or  
31 services. The amount of the claim, after being allowed or  
32 established as provided in this part, shall be paid by the  
33 conservator from the assets of the conservatorship.

34 EXPLANATION

35 This bill enacts new chapter 249F which relates to the

1 transfer of assets between individuals which would enable the  
2 transferor to obtain or maintain eligibility for medical  
3 assistance pursuant to chapter 249A. The bill provides that  
4 such transfer of assets establishes a debt to the department  
5 of human services from the transferee in an amount equal to  
6 the medical assistance provided, but not in excess of the fair  
7 market value of the assets transferred. The bill establishes  
8 a procedure for notice and hearing through the department of  
9 inspections and appeals, and for certification of the final  
10 order to the court. The bill provides that interest on such  
11 debts is to accrue pursuant to section 535.3. The bill  
12 provides that if the attorney general determines that a  
13 provision of this chapter would result in the denial of  
14 federal funds or would otherwise be inconsistent with federal  
15 law, the provision is to be suspended and the attorney general  
16 is to report this fact to the general assembly with any  
17 recommendations for corrective legislation. The bill exempts  
18 certain transfers from the provisions of this chapter  
19 including transfers for the sole benefit of the transferor's  
20 spouse or child, the transfer of a dwelling to a child under  
21 21 years of age, and the transfer of a dwelling to certain  
22 individuals after the transferor is institutionalized.

23 This bill also creates a new section 633.653A which  
24 provides that the provision of medical care or services to a  
25 person eligible to receive medical assistance under chapter  
26 249A creates a claim against the person's conservatorship for  
27 the amount due. The conservator is required to pay the amount  
28 due under the program, after that amount is allowed or  
29 established, from the assets of the conservatorship.

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## SENATE FILE 394

H-3632

- 1 Amend Senate File 394, as passed by the Senate, as  
2 follows:
- 3 1. Page 1, by striking lines 11 through 17 and  
4 inserting the following: "defined in section 702.14,  
5 from a transferor to a transferee for less than fair  
6 consideration, made while the transferor is receiving  
7 medical assistance or within five years prior to  
8 application for medical assistance by the transferor.  
9 Any such transfer or assignment is presumed to be".
- 10 2. Page 1, by striking lines 24 through 27 and  
11 inserting the following: "transfer or assignment."
- 12 3. Page 1, by striking lines 30 through 35 and  
13 inserting the following:  
14 "(1) Transfers to or for the sole benefit of the  
15 transferor's spouse, including a transfer to a spouse  
16 by an institutionalized spouse pursuant to section  
17 1924(f)(1) of the federal Social Security Act."  
18 4. Page 2, line 19, by striking the words  
19 "dollars, and" and inserting the following:  
20 "dollars."  
21 5. Page 2, by striking lines 20 through 22 and  
22 inserting the following: "For purposes of this  
23 chapter,".  
24 6. Page 2, by inserting after line 24 the  
25 following:  
26 "(6) Transfers of property that would, at the time  
27 of the transferor's application for medical  
28 assistance, have been exempt from consideration as a  
29 resource if it had been retained by the transferor,  
30 pursuant to 42 U.S.C. § 1382b(a), as implemented by  
31 regulations adopted by the secretary of the United  
32 States department of health and human services, and  
33 pursuant to section 561.16 and chapter 627."  
34 7. Page 2, by striking line 30 and inserting the  
35 following:  
36 "A transfer of".  
37 8. Page 2, by striking line 35 and inserting the  
38 following: "the assets which are not exempt under  
39 section 249F.1."  
40 9. Page 6, by striking lines 16 through 23.  
41 10. Renumber as necessary.

By MILLAGE of Scott

H-3632 FILED APRIL 1, 1993

*Adopted*  
*4-19-93*  
*(P.1403)*

HOUSE AMENDMENT TO  
SENATE FILE 394

S-3527

- 1 Amend Senate File 394, as passed by the Senate, as  
2 follows:
- 3 1. Page 1, by striking lines 11 through 17 and  
4 inserting the following: "defined in section 702.14,  
5 from a transferor to a transferee for less than fair  
6 consideration, made while the transferor is receiving  
7 medical assistance or within five years prior to  
8 application for medical assistance by the transferor.  
9 Any such transfer or assignment is presumed to be".
- 10 2. Page 1, by striking lines 24 through 27 and  
11 inserting the following: "transfer or assignment."
- 12 3. Page 1, by striking lines 30 through 35 and  
13 inserting the following:  
14 "(1) Transfers to or for the sole benefit of the  
15 transferor's spouse, including a transfer to a spouse  
16 by an institutionalized spouse pursuant to section  
17 1924(f)(1) of the federal Social Security Act."
- 18 4. Page 2, line 19, by striking the words  
19 "dollars, and" and inserting the following:  
20 "dollars."
- 21 5. Page 2, by striking lines 20 through 22 and  
22 inserting the following: "For purposes of this  
23 chapter,".
- 24 6. Page 2, by inserting after line 24 the  
25 following:  
26 "(6) Transfers of property that would, at the time  
27 of the transferor's application for medical  
28 assistance, have been exempt from consideration as a  
29 resource if it had been retained by the transferor,  
30 pursuant to 42 U.S.C. § 1382b(a), as implemented by  
31 regulations adopted by the secretary of the United  
32 States department of health and human services, and  
33 pursuant to section 561.16 and chapter 627."
- 34 7. Page 2, by striking line 30 and inserting the  
35 following:  
36 "A transfer of".
- 37 8. Page 2, by striking line 35 and inserting the  
38 following: "the assets which are not exempt under  
39 section 249F.1."
- 40 9. Page 6, by striking lines 16 through 23.
- 41 10. Renumber as necessary.

RECEIVED FROM THE HOUSE

S-3527 FILED APRIL 20, 1993

*Senate concurred 4/27/93 (p. 1361)*

## SENATE FILE 394

S-3642

1 Amend the House amendment, S-3527, to Senate File  
2 394, as passed by the Senate, as follows:  
3 1. Page 1, by inserting after line 39, the  
4 following:  
5 "\_\_\_\_". Page 3, line 3, by striking the words  
6 "inspections and appeals" and inserting the following:  
7 "human services".  
8 \_\_\_\_\_. Page 3, lines 16 and 17, by striking the  
9 words "inspections and appeals" and inserting the  
10 following: "human services".  
11 \_\_\_\_\_. Page 3, line 22, by striking the words  
12 "inspections and appeals" and inserting the following:  
13 "human services".  
14 \_\_\_\_\_. Page 3, line 24, by striking the words  
15 "inspections and appeals" and inserting the following:  
16 "human services".  
17 \_\_\_\_\_. Page 3, lines 29 and 30, by striking the  
18 words "inspections and appeals" and inserting the  
19 following: "human services".  
20 \_\_\_\_\_. Page 3, line 34, by striking the words  
21 "inspections and appeals" and inserting the following:  
22 "human services".  
23 \_\_\_\_\_. Page 4, line 5, by striking the words  
24 "inspections and appeals" and inserting the following:  
25 "human services".  
26 \_\_\_\_\_. Page 4, lines 7 and 8, by striking the words  
27 "inspections and appeals" and inserting the following:  
28 "human services".  
29 \_\_\_\_\_. Page 4, line 11, by striking the words  
30 "inspections and appeals" and inserting the following:  
31 "human services".  
32 \_\_\_\_\_. Page 4, line 18, by striking the words  
33 "inspections and appeals" and inserting the following:  
34 "human services".  
35 \_\_\_\_\_. Page 4, line 22, by striking the words  
36 "inspections and appeals" and inserting the following:  
37 "human services".  
38 \_\_\_\_\_. Page 4, line 27, by striking the words  
39 "inspections and appeals" and inserting the following:  
40 "human services".  
41 \_\_\_\_\_. Page 4, line 30, by striking the words  
42 "inspections and appeals" and inserting the following:  
43 "human services".  
44 \_\_\_\_\_. Page 5, lines 10 and 11, by striking the  
45 words "or the department of inspections and appeals".  
46 \_\_\_\_\_. Page 5, line 16, by striking the words  
47 "inspections and appeals" and inserting the following:  
48 "human services".  
49 \_\_\_\_\_. Page 5, line 24, by striking the words  
50 "inspections and appeals" and inserting the following:

S-3642

-1-

S-3642

Page 2

- 1 "human services".
- 2 \_\_\_\_\_. Page 6, line 1, by striking the words
- 3 "inspections and appeals" and inserting the following:
- 4 "human services".
- 5 \_\_\_\_\_. Page 6, line 7, by striking the words
- 6 "inspections and appeals'" and inserting the
- 7 following: "human services'"."
- 8 2. Page 1, by inserting after line 40, the
- 9 following:
- 10 "\_\_\_\_\_. Page 7, by striking lines 2 through 4 and
- 11 inserting the following: "administered by the
- 12 department of human services. All administrative
- 13 discretion in the"."
- 14 3. Renumber as necessary.

By RICHARD VARN

S-3642 FILED APRIL 27, 1993

ADOPTED (p.1361)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 394  
H-4214

1 Amend the House amendment, S-3527, to Senate File  
2 394, as passed by the Senate, as follows:  
3 1. Page 1, by inserting after line 39, the  
4 following:  
5 "\_\_\_\_. Page 3, line 3, by striking the words  
6 "inspections and appeals" and inserting the following:  
7 "human services".  
8 \_\_\_\_\_. Page 3, lines 16 and 17, by striking the  
9 words "inspections and appeals" and inserting the  
10 following: "human services".  
11 \_\_\_\_\_. Page 3, line 22, by striking the words  
12 "inspections and appeals" and inserting the following:  
13 "human services".  
14 \_\_\_\_\_. Page 3, line 24, by striking the words  
15 "inspections and appeals" and inserting the following:  
16 "human services".  
17 \_\_\_\_\_. Page 3, lines 29 and 30, by striking the  
18 words "inspections and appeals" and inserting the  
19 following: "human services".  
20 \_\_\_\_\_. Page 3, line 34, by striking the words  
21 "inspections and appeals" and inserting the following:  
22 "human services".  
23 \_\_\_\_\_. Page 4, line 5, by striking the words  
24 "inspections and appeals" and inserting the following:  
25 "human services".  
26 \_\_\_\_\_. Page 4, lines 7 and 8, by striking the words  
27 "inspections and appeals" and inserting the following:  
28 "human services".  
29 \_\_\_\_\_. Page 4, line 11, by striking the words  
30 "inspections and appeals" and inserting the following:  
31 "human services".  
32 \_\_\_\_\_. Page 4, line 18, by striking the words  
33 "inspections and appeals" and inserting the following:  
34 "human services".  
35 \_\_\_\_\_. Page 4, line 22, by striking the words  
36 "inspections and appeals" and inserting the following:  
37 "human services".  
38 \_\_\_\_\_. Page 4, line 27, by striking the words  
39 "inspections and appeals" and inserting the following:  
40 "human services".  
41 \_\_\_\_\_. Page 4, line 30, by striking the words  
42 "inspections and appeals" and inserting the following:  
43 "human services".  
44 \_\_\_\_\_. Page 5, lines 10 and 11, by striking the  
45 words "or the department of inspections and appeals".  
46 \_\_\_\_\_. Page 5, line 16, by striking the words  
47 "inspections and appeals" and inserting the following:  
48 "human services".  
49 \_\_\_\_\_. Page 5, line 24, by striking the words  
50 "inspections and appeals" and inserting the following:

H-4214

H-4214

Page 2

- 1 "human services".
- 2 \_\_\_\_\_. Page 6, line 1, by striking the words
- 3 "inspections and appeals" and inserting the following:
- 4 "human services".
- 5 \_\_\_\_\_. Page 6, line 7, by striking the words
- 6 "inspections and appeals'" and inserting the
- 7 following: "human services'"."
- 8 2. Page 1, by inserting after line 40, the
- 9 following:
- 10 "\_\_\_\_\_. Page 7, by striking lines 2 through 4 and
- 11 inserting the following: "administered by the
- 12 department of human services. All administrative
- 13 discretion in the"."
- 14 3. Renumber as necessary.

RECEIVED FROM THE SENATE

H-4214 FILED APRIL 27, 1993

*House Concurred*  
*4-28-93* (P. 1775)

VARD, CH.  
SZYMONIAK  
KRAMER

SSB 250

HUMAN RESOURCES

SENATE/HOUSE FILE 394  
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

### A BILL FOR

1 An Act relating to establishing a debt due for medical assistance  
2 resulting from a transfer of assets, and to allowable claims  
3 against a conservatorship for the cost of medical care or  
4 services provided to a recipient of medical assistance.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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TL5B 1454XL 75

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1 Section 1. NEW SECTION. 249F.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Medical assistance" means "medical assistance",  
5 "additional medical assistance", "discretionary medical  
6 assistance", or "medicare cost sharing" as each is defined in  
7 section 249A.2 which is provided to an individual pursuant to  
8 chapter 249A and Title XIX of the federal Social Security Act.

9 2. a. "Transfer of assets" means any transfer or  
10 assignment of a legal or equitable interest in property, as  
11 defined in section 702.14, for less than fair consideration,  
12 with the intent, on the part of the transferee, of enabling  
13 the transferor to obtain or maintain eligibility for medical  
14 assistance. A transfer or assignment of property for less  
15 than fair consideration made within five years of application  
16 for medical assistance by the transferor, or while the  
17 transferor is receiving medical assistance, is presumed to be  
18 made with the intent, on the part of the transferee, of  
19 enabling the transferor to obtain or maintain eligibility for  
20 medical assistance. This presumption is rebuttable only by  
21 clear and convincing evidence that the transferor's  
22 eligibility or potential eligibility for medical assistance  
23 was no part of the transferee's reason for accepting the  
24 transfer or assignment. A transfer to a spouse by an  
25 institutionalized spouse pursuant to section 1924(f)(1) of the  
26 federal Social Security Act is exempt from the provisions of  
27 this chapter.

28 b. However, transfer of assets does not include the  
29 following:

30 (1) Transfers, other than the transfer of a dwelling, to  
31 or for the sole benefit of the transferor's spouse, except  
32 those made after the transferor's spouse has established on-  
33 going eligibility for medical assistance as an  
34 institutionalized spouse pursuant to section 1924 of the  
35 federal Social Security Act.

1 (2) Transfers, other than the transfer of a dwelling, to  
2 or for the sole benefit of the transferor's child who is blind  
3 or disabled as defined in section 1614 of the federal Social  
4 Security Act.

5 (3) Transfer of a dwelling to a child of the transferor  
6 under twenty-one years of age.

7 (4) Transfer of a dwelling, after the transferor is  
8 institutionalized, to either of the following:

9 (a) A sibling of the transferor who has an equity interest  
10 in the dwelling and who was residing in the dwelling for a  
11 period of at least one year immediately prior to the date the  
12 transferor became institutionalized.

13 (b) A child of the transferor who was residing in the  
14 dwelling for a period of at least two years immediately prior  
15 to the date the transferor became institutionalized and who  
16 provided care to the transferor which permitted the transferor  
17 to reside at the dwelling rather than in an institution or  
18 facility.

19 (5) Transfers of less than two thousand dollars, and  
20 transfers of less than ten thousand dollars made more than  
21 five years before an application for medical assistance is  
22 submitted by the transferor. For purposes of this chapter,  
23 all transfers by the same transferor during a calendar year  
24 will be aggregated.

25 3. "Transferor" means the person who makes a transfer of  
26 assets.

27 4. "Transferee" means the person who receives a transfer  
28 of assets.

29 Sec. 2. NEW SECTION. 249F.2 CREATION OF DEBT.

30 Notwithstanding section 249A.3, subsection 9, a transfer of  
31 assets creates a debt due and owing to the department of human  
32 services from the transferee in an amount equal to medical  
33 assistance provided to or on behalf of the transferor, on or  
34 after the date of the transfer of assets, but not exceeding  
35 the fair market value of the transferred assets.

1     Sec. 3. NEW SECTION. 249F.3 NOTICE OF DEBT -- FAILURE TO  
2 RESPOND -- HEARING -- ORDER.

3     1. The department of inspections and appeals may issue a  
4 notice establishing and demanding payment of an accrued or  
5 accruing debt due and owing to the department of human  
6 services as provided in section 249F.2. The notice shall be  
7 served upon the transferee in accordance with the rules of  
8 civil procedure. The notice shall include all of the  
9 following:

10    a. The amount of medical assistance provided to the  
11 transferor to date which creates the debt.

12    b. A computation of the debt due and owing.

13    c. A demand for immediate payment of the debt.

14    d. (1) A statement that if the transferee desires to  
15 discuss the notice, the transferee, within ten days after  
16 being served, may contact the department of inspections and  
17 appeals and request an informal conference.

18    (2) A statement that if a conference is requested, the  
19 transferee has until ten days after the date set for the  
20 conference or until twenty days after the date of service of  
21 the original notice, whichever is later, to send a request for  
22 a hearing to the department of inspections and appeals.

23    (3) A statement that after the holding of the conference,  
24 the department of inspections and appeals may issue a new  
25 notice to be sent to the transferee by first class mail  
26 addressed to the transferee at the transferee's last known  
27 address, or if applicable, to the transferee's attorney at the  
28 last known address of the transferee's attorney.

29    (4) A statement that if the department of inspections and  
30 appeals issues a new notice, the transferee has until ten days  
31 after the date of mailing of the new notice or until twenty  
32 days after the date of service of the original notice,  
33 whichever is later, to send a request for a hearing to the  
34 department of inspections and appeals.

35    e. A statement that if the transferee objects to all or

1 any part of the original notice and no conference is  
2 requested, the transferee has until twenty days after the date  
3 of service of the original notice to send a written response  
4 setting forth any objections and requesting a hearing to the  
5 department of inspections and appeals.

6 f. A statement that if a timely written request for a  
7 hearing is received by the department of inspections and  
8 appeals, the transferee has the right to a hearing to be held  
9 in district court as provided in section 249F.5; and that if  
10 no timely written request for hearing is received, the  
11 department of inspections and appeals will enter an order in  
12 accordance with the latest notice.

13 g. A statement, that as soon as the order is entered, the  
14 property of the transferee is subject to collection action,  
15 including but not limited to wage withholding, garnishment,  
16 attachment of a lien, or execution.

17 h. A statement that the transferee must notify the  
18 department of inspections and appeals of any change of address  
19 or employment.

20 i. A statement that if the transferee has any questions  
21 concerning the transfer of assets, the transferee should  
22 contact the department of inspections and appeals or consult  
23 an attorney.

24 j. Other information as the department of human services  
25 finds appropriate.

26 2. If a timely written request for hearing is received by  
27 the department of inspections and appeals, a hearing shall be  
28 held in district court.

29 3. If a timely written request for hearing is not received  
30 by the department of inspections and appeals, the department  
31 may enter an order in accordance with the latest notice, and  
32 the order shall specify all of the following:

33 a. The amount to be paid with directions as to the manner  
34 of payment.

35 b. The amount of the debt accrued and accruing in favor of

1 the department of human services.

2 c. Notice that the property of the transferee is subject  
3 to collection action, including but not limited to wage  
4 withholding, garnishment, attachment of a lien, and execution.

5 4. The transferee shall be sent a copy of the order by  
6 first class mail addressed to the transferee at the  
7 transferee's last known address, or if applicable, to the  
8 transferee's attorney at the last known address of the  
9 transferee's attorney. The order is final, and action by the  
10 department of human services or the department of inspections  
11 and appeals to enforce and collect upon the order may be taken  
12 from the date of the issuance of the order.

13 Sec. 4. NEW SECTION. 249F.4 CERTIFICATION TO COURT --  
14 HEARING -- DEFAULT.

15 1. If a timely written request for a hearing is received,  
16 the department of inspections and appeals shall certify the  
17 matter to the district court in the county where the  
18 transferee resides.

19 2. The certification shall include true copies of the  
20 original notice, the return of service, any request for an  
21 informal conference, any subsequent notices, the written  
22 request for hearing, and true copies of any administrative  
23 orders previously entered.

24 3. The department of inspections and appeals may also  
25 request a hearing on its own motion regarding the  
26 determination of a debt, at any time prior to entry of an  
27 administrative order.

28 4. The district court shall set the matter for hearing and  
29 notify the parties of the time and place of hearing.

30 5. If a party fails to appear at the hearing, upon a  
31 showing of proper notice to the party, the district court may  
32 find the party in default and enter an appropriate order.

33 Sec. 5. NEW SECTION. 249F.5 FILING AND DOCKETING OF  
34 ORDER -- ORDER EFFECTIVE AS COURT DECREE.

35 1. A true copy of an order entered by the department of

1 inspections and appeals pursuant to this chapter, along with a  
2 true copy of the return of service, if applicable, may be  
3 filed in the office of the clerk of the district court in the  
4 county in which the transferee resides or, if the transferee  
5 resides in another state, in the office of the district court  
6 in the county in which the transferor resides.

7 2. The department of inspections and appeals' order shall  
8 be presented, ex parte, to the district court for review and  
9 approval. Unless defects appear on the face of the order or  
10 on the attachments, the district court shall approve the  
11 order. The approved order shall have all force, effect, and  
12 attributes of a docketed order or decree of the district  
13 court.

14 3. Upon filing, the clerk shall enter the order in the  
15 judgment docket.

16 Sec. 6. NEW SECTION. 249F.6 INTEREST ON DEBTS.

17 Interest accrues on a debt established under this chapter  
18 at the rate provided in section 535.3 for court judgments.  
19 The department of human services may collect the accrued  
20 interest, but is not required to maintain interest balance  
21 accounts. The department of human services may waive payment  
22 of the interest if the waiver will facilitate the collection  
23 of the debt.

24 Sec. 7. NEW SECTION. 249F.7 SECURITY FOR PAYMENT OF DEBT -  
25 - FORFEITURE.

26 Upon entry of a court order or upon the failure of a  
27 transferee to make payments pursuant to a court order, the  
28 court may require the transferee to provide security, a bond,  
29 or other guarantee which the court determines is satisfactory  
30 to secure the payment of the debt under the court order. If  
31 the transferee fails to make payments pursuant to the court  
32 order, the court may declare the security, bond, or other  
33 guarantee forfeited.

34 Sec. 8. NEW SECTION. 249F.8 ADMINISTRATION.

35 As provided in this chapter, the establishment of a debt



1 transfer of assets between individuals which would enable the  
2 transferor to obtain or maintain eligibility for medical  
3 assistance pursuant to chapter 249A. The bill provides that  
4 such transfer of assets establishes a debt to the department  
5 of human services from the transferee in an amount equal to  
6 the medical assistance provided, but not in excess of the fair  
7 market value of the assets transferred. The bill establishes  
8 a procedure for notice and hearing through the department of  
9 inspections and appeals, and for certification of the final  
10 order to the court. The bill provides that interest on such  
11 debts is to accrue pursuant to section 535.3. The bill  
12 provides that if the attorney general determines that a  
13 provision of this chapter would result in the denial of  
14 federal funds or would otherwise be inconsistent with federal  
15 law, the provision is to be suspended and the attorney general  
16 is to report this fact to the general assembly with any  
17 recommendations for corrective legislation. The bill exempts  
18 certain transfers from the provisions of this chapter  
19 including transfers for the sole benefit of the transferor's  
20 spouse or child, the transfer of a dwelling to a child under  
21 21 years of age, and the transfer of a dwelling to certain  
22 individuals after the transferor is institutionalized.

23 This bill also creates a new section 633.653A which  
24 provides that the provision of medical care or services to a  
25 person eligible to receive medical assistance under chapter  
26 249A creates a claim against the person's conservatorship for  
27 the amount due. The conservator is required to pay the amount  
28 due under the program, after that amount is allowed or  
29 established, from the assets of the conservatorship.

30  
31  
32  
33  
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SENATE FILE 394

AN ACT

RELATING TO ESTABLISHING A DEBT DUE FOR MEDICAL ASSISTANCE  
RESULTING FROM A TRANSFER OF ASSETS, AND TO ALLOWABLE  
CLAIMS AGAINST A CONSERVATORSHIP FOR THE COST OF MEDICAL  
CARE OR SERVICES PROVIDED TO A RECIPIENT OF MEDICAL  
ASSISTANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 249P.1 DEFINITIONS.

As used in this chapter, unless the context otherwise  
requires:

1. "Medical assistance" means "medical assistance",  
"additional medical assistance", "discretionary medical  
assistance", or "medicare cost sharing" as each is defined in  
section 249A.2 which is provided to an individual pursuant to  
chapter 249A and Title XIX of the federal Social Security Act.

2. a. "Transfer of assets" means any transfer or  
assignment of a legal or equitable interest in property, as  
defined in section 702.14, from a transferor to a transferee  
for less than fair consideration, made while the transferor is  
receiving medical assistance or within five years prior to

application for medical assistance by the transferor. Any  
such transfer or assignment is presumed to be made with the  
intent, on the part of the transferee, of enabling the  
transferor to obtain or maintain eligibility for medical  
assistance. This presumption is rebuttable only by clear and  
convincing evidence that the transferor's eligibility or  
potential eligibility for medical assistance was no part of  
the transferee's reason for accepting the transfer or  
assignment.

b. However, transfer of assets does not include the  
following:

(1) Transfers to or for the sole benefit of the  
transferor's spouse, including a transfer to a spouse by an  
institutionalized spouse pursuant to section 1924(f)(1) of the  
federal Social Security Act.

(2) Transfers, other than the transfer of a dwelling, to  
or for the sole benefit of the transferor's child who is blind  
or disabled as defined in section 1614 of the federal Social  
Security Act.

(3) Transfer of a dwelling to a child of the transferor  
under twenty-one years of age.

(4) Transfer of a dwelling, after the transferor is  
institutionalized, to either of the following:

(a) A sibling of the transferor who has an equity interest  
in the dwelling and who was residing in the dwelling for a  
period of at least one year immediately prior to the date the  
transferor became institutionalized.

(b) A child of the transferor who was residing in the  
dwelling for a period of at least two years immediately prior  
to the date the transferor became institutionalized and who  
provided care to the transferor which permitted the transferor  
to reside at the dwelling rather than in an institution or  
facility.

(5) Transfers of less than two thousand dollars. For  
purposes of this chapter, all transfers by the same transferor  
during a calendar year will be aggregated.

(6) Transfers of property that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if it had been retained by the transferor, pursuant to 42 U.S.C. § 1382b(a), as implemented by regulations adopted by the secretary of the United States department of health and human services, and pursuant to section 561.16 and chapter 627.

3. "Transferor" means the person who makes a transfer of assets.

4. "Transferee" means the person who receives a transfer of assets.

Sec. 2. NEW SECTION. 249P.2 CREATION OF DEBT.

A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of the transferor, on or after the date of the transfer of assets, but not exceeding the assets which are not exempt under section 249F.1.

Sec. 3. NEW SECTION. 249P.3 NOTICE OF DEBT -- FAILURE TO RESPOND -- HEARING -- ORDER.

1. The department of human services may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department of human services as provided in section 249F.2. The notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the transferor to date which creates the debt.

b. A computation of the debt due and owing.

c. A demand for immediate payment of the debt.

d. (1) A statement that if the transferee desires to discuss the notice, the transferee, within ten days after being served, may contact the department of human services and request an informal conference.

(2) A statement that if a conference is requested, the transferee has until ten days after the date set for the conference or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

(3) A statement that after the holding of the conference, the department of human services may issue a new notice to be sent to the transferee by first class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney.

(4) A statement that if the department of human services issues a new notice, the transferee has until ten days after the date of mailing of the new notice or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

e. A statement that if the transferee objects to all or any part of the original notice and no conference is requested, the transferee has until twenty days after the date of service of the original notice to send a written response setting forth any objections and requesting a hearing to the department of human services.

f. A statement that if a timely written request for a hearing is received by the department of human services, the transferee has the right to a hearing to be held in district court as provided in section 249P.4; and that if no timely written request for hearing is received, the department of human services will enter an order in accordance with the latest notice.

g. A statement, that as soon as the order is entered, the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, or execution.

h. A statement that the transferee must notify the department of human services of any change of address or employment.

i. A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department of human services or consult an attorney.

j. Other information as the department of human services finds appropriate.

2. If a timely written request for hearing is received by the department of human services, a hearing shall be held in district court.

3. If a timely written request for hearing is not received by the department of human services, the department may enter an order in accordance with the latest notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the debt accrued and accruing in favor of the department of human services.

c. Notice that the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The transferee shall be sent a copy of the order by first class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney. The order is final, and action by the department of human services to enforce and collect upon the order may be taken from the date of the issuance of the order.

Sec. 4. NEW SECTION. 249F.4 CERTIFICATION TO COURT -- HEARING -- DEFAULT.

1. If a timely written request for a hearing is received, the department of human services shall certify the matter to the district court in the county where the transferee resides.

2. The certification shall include true copies of the original notice, the return of service, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

3. The department of human services may also request a hearing on its own motion regarding the determination of a debt, at any time prior to entry of an administrative order.

4. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

5. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

Sec. 5. NEW SECTION. 249F.5 FILING AND DOCKETING OF ORDER -- ORDER EFFECTIVE AS COURT DECREE.

1. A true copy of an order entered by the department of human services pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides.

2. The department of human services order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

Sec. 6. NEW SECTION. 249F.7 SECURITY FOR PAYMENT OF DEBT -- FORFEITURE.

Upon entry of a court order or upon the failure of a transferee to make payments pursuant to a court order, the

court may require the transferee to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the debt under the court order. If the transferee fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

Sec. 7. NEW SECTION. 249F.8 ADMINISTRATION.

As provided in this chapter, the establishment of a debt for medical assistance due to transfer of assets shall be administered by the department of human services. All administrative discretion in the administration of this chapter shall be exercised by the department of human services, and any state administrative rules implementing or interpreting this chapter shall be adopted by the department of human services.

Sec. 8. NEW SECTION. 249F.9 INCONSISTENCY WITH FEDERAL LAWS.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds from the United States government under Title XIX of the federal Social Security Act, or would otherwise be inconsistent or conflict with the requirements of federal law for state participation in the Title XIX program, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or to eliminate the inconsistency or conflict with the requirements of federal law. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with federal law.

Sec. 9. NEW SECTION. 633.653A CLAIMS FOR COST OF MEDICAL CARE OR SERVICES.

The provision of medical care or services to a ward who is a recipient of medical assistance under chapter 249A creates a

claim against the conservatorship for the amount owed to the provider under the medical assistance program for the care or services. The amount of the claim, after being allowed or established as provided in this part, shall be paid by the conservator from the assets of the conservatorship.

\_\_\_\_\_  
LEONARD L. BOSWELL  
President of the Senate

\_\_\_\_\_  
HAROLD VAN MAANEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 394, Seventy-fifth General Assembly.

\_\_\_\_\_  
JOHN F. DWYER  
Secretary of the Senate

Approved Moyes, 1993

\_\_\_\_\_  
TERRY E. BRANSTAD  
Governor