

CHAPTER 89
DEBTS DUE FROM TRANSFERS OF ASSETS

PREAMBLE

This chapter provides for the establishment of a debt for medical assistance due to a transfer of assets for less than fair market value. These rules allow the department to establish a debt against a person who receives the transferred assets from a Medicaid applicant or recipient within five years prior to an application for medical assistance if the applicant is approved for Medicaid. The debt is established against the transferee in an amount equal to the medical assistance provided, but not in excess of the fair market value of the assets transferred.

441—89.1(249F) Definitions.

“*Department*” shall mean the department of human services.

“*Dwelling*” shall mean real property in which a person has an ownership interest and which serves as the person’s principal place of residence. Real property shall include the shelter in which the person lives, the land on which the shelter is located and related buildings on the land.

“*Fair market value*” shall mean the price for which property or an item could have been sold on the open market at the time of transfer.

“*Medical assistance*” shall mean “medical assistance,” “additional medical assistance,” “discretionary medical assistance” or “Medicare cost sharing” as each is defined in Iowa Code section 249A.2 which is provided to a person pursuant to Iowa Code chapter 249A and Title XIX of the federal Social Security Act.

“*Property*” shall mean anything of value, including both tangible and intangible property, real property and personal property.

“*Transfer*” shall mean the disposal of property for less than fair market value through gifting, sale or any transfer or assignment of a legal or equitable interest in property.

“*Transferee*” shall mean the person who receives a transfer or assignment of a legal or equitable interest in property for less than fair market value.

“*Transferor*” shall mean the person who makes a transfer of a legal or equitable interest in property for less than fair market value.

441—89.2(249F) Creation of debt.

89.2(1) *Transfer of property.* Except as provided in rule 441—89.3(249F), any transfer of property for less than fair market value creates a debt due and owing to the department from the transferee if:

a. The transfer is made while the transferor is receiving medical assistance or within five years prior to application for medical assistance and on or after July 1, 1993.

b. The transfer is made with the intent on the part of the transferee of enabling the transferor to obtain or maintain eligibility for medical assistance.

89.2(2) *Amount of debt.* The amount of the debt is the lesser of:

a. An amount equal to the medical assistance provided to or on behalf of the transferor on or after the date of the transfer.

b. The difference between the fair market value of the property at the time of transfer and the value of any consideration received.

441—89.3(249F) Exceptions. Notwithstanding rule 441—89.2(249F), exceptions for transfers that occur between July 1, 1993, and June 30, 1996, are in accordance with the rules during that time period. Notwithstanding rule 441—89.2(249F), the following exceptions apply to transfers that occur on or after July 1, 1996. The following transfers do not create a debt to the department:

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 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, which serves as the transferor's home as defined in 20 CFR Section 416.1212, as amended to August 23, 1994, to a child of the transferor under 21 years of age.

4. Transfer of a dwelling, which serves as the transferor's home as defined in 20 CFR Section 416.1212, as amended to August 23, 1994, after the transferor is institutionalized, to either of the following:

- 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.

- 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 \$2,000. All transfers by the same transferor during the five-year period prior to the application for medical assistance by the transferor shall be aggregated. If a transferor transfers property to more than one transferee during the five-year period prior to application for medical assistance by the transferor, the \$2,000 exemption shall be divided equally between the transferees for the five-year period prior to application for medical assistance.

6. Transfers that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if they had been retained by the transferor, pursuant to 42 U.S.C. Section 1382(b)(a).

7. Transfers to a trust established solely for the benefit of the transferor's child who is blind or permanently and totally disabled as defined in Section 1614 of the federal Social Security Act.

8. Transfers to a trust established solely for the benefit of a person under 65 years of age who is disabled, as defined in Section 1614 of the federal Social Security Act.

9. Rescinded IAB 11/29/00, effective 1/3/01.

441—89.4(249F) Presumption of intent. Any transfer of property for less than fair market consideration made while the transferor is receiving medical assistance or within five years prior to an application for medical assistance 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 can be rebutted 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 of property.

441—89.5(249F) Notice of debt. The department may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department as provided in rule 441—89.2(249F). The notice shall be sent by restricted certified mail, as defined in Iowa Code section 618.15, to the transferee at the transferee's last-known address. If service of the notice is unable to be completed by restricted certified mail, the notice shall be served upon the transferee in accordance with the Iowa Rules of Civil Procedure. The notice shall include all of the following:

89.5(1) Amount of debt. The amount of medical assistance provided to the transferor to date which creates the debt.

89.5(2) Computation of debt. A computation of the debt due and owing.

89.5(3) Demand for payment. A demand for immediate payment of the debt.

89.5(4) Request for conference.

a. A statement that if the transferee desires to discuss the notice, the transferee may contact the department and request an informal conference.

b. A statement that, if a conference is requested, the transferee has until 10 days after the date set for the conference or until 20 days after the date of service of the original notice, whichever is later, to send a written request for a hearing to the department.

c. A statement that after the conference, the department may issue a new notice to be sent to the transferee or the transferee's attorney.

d. A statement that if the department issues a new notice the transferee has until 10 days after the date of mailing of the new notice or until 20 days after the date of service of the original notice to send a written request for a hearing to the department.

89.5(5) *Request for hearing without conference.* A statement that the transferee has until 20 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.

89.5(6) *Hearing in district court.* A statement that if a timely written request for a hearing is received by the department, the transferee has the right to a hearing to be held in district court; and if no timely written request for hearing is received, the department shall enter an order in accordance with the latest notice.

89.5(7) *Collection action.* 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, issuance of a distress warrant, or execution.

89.5(8) *Responsibilities of transferee.* A statement that the transferee must give the department written notice of any change of address or employment.

89.5(9) *Questions.* A statement that if the transferee has any questions regarding the transfer of assets, the transferee should contact the department or consult an attorney.

89.5(10) *Other information.* Other information as the department finds appropriate.

441—89.6(249F) No timely request of a hearing.

89.6(1) *Entering of order.* If a timely written request for hearing is not received by the department, the department may enter an order in accordance with the latest notice. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

89.6(2) *Order.* 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 shall specify:

- 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.
- 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, issuance of a distress warrant, and execution.

441—89.7(249F) Timely request for a hearing. If a timely written request for a hearing is received by the department, the department shall certify the matter for hearing to the district court where the transferee resides or to the district court where the transferor resides if the transferee is not an Iowa resident. If neither the transferor nor the transferee resides in Iowa, the order may be filed in any county in which the transferor formerly resided.

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

441—89.8(249F) Department-requested hearing. The department 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.

441—89.9(249F) Filing and docketing of the order. A true copy of an order entered by the department, 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. The department's order shall be presented, *ex parte*, to the district court for review and approval.

441—89.10(249F) Exemption from Iowa Code chapter 17A. Actions initiated under Iowa Code chapter 249F are not subject to Iowa Code chapter 17A. Review by the district court shall be an original hearing before the district court.

These rules are intended to implement Iowa Code chapter 249F as amended by 2000 Iowa Acts, chapter 1060.

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