Regulatory Analysis

Notice of Intended Action to be published: 441—Chapter 89
"Debts Due From Transfers of Assets"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 249F

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 249F, 42 U.S.C. Section 1396p(3), and Pub. L. No. 109-171 sections 6011 and 6016

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 19, 2024 2 p.m.	Microsoft Teams Meeting ID: 222 143 545 89 Passcode: Ythqof

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

Purpose and Summary

These proposed 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.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

No costs have been identified.

- **Classes of persons that will benefit from the proposed rulemaking:**

None have been identified.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

These rules facilitated the imposition of 129 transfer of assets penalties from January 1, 2023, through January 1, 2024.

- **Qualitative description of impact:**

These rules play an important role in providing additional context, specificity and structure to the Iowa Code that is unique to the Department.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs will be borne by the Department beyond those already appropriated.

- **Anticipated effect on state revenues:**

There is no impact.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The absence of these rules entirely could lead to confusion or lack of clarity and precision for all parties involved in the establishment of debt for medical assistance due to a transfer of assets for less than fair market value.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

A less costly method has not been identified to achieve the purpose of these rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Department supports the establishment of debts due from transfers of assets in accordance with the Iowa Code. This chapter provides additional context and clarifies specific procedures but only within the scope and as defined in the Iowa Code.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

This chapter only creates rules within the scope defined by Iowa Code.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 89 and adopt the following **new** chapter in lieu thereof:

CHAPTER 89
DEBTS DUE FROM TRANSFERS OF ASSETS

441—89.1(249F) Definitions.

"Fair market value" means the price for which property or an item could have been sold on the open market at the time of transfer.

"Medical assistance" means the same as defined in Iowa Code section 249F.1.

"Property" means the same as defined in Iowa Code section 702.14.

"Transfer" means 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" means the person who receives a transfer or assignment of a legal or equitable interest in property for less than fair market value.

"Transferor" means 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 between July 1, 1993, and December 31, 2018.

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), transfers detailed in Iowa Code section 249F.1(3)*"b"* that occur on or after July 1, 1996, do not create a debt to the department.

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) pursuant to Iowa Code section 249F.3(1).

441—89.6(249F) No timely request of a hearing. If a timely written request for hearing is not received by the department, the department may enter an order pursuant to Iowa Code sections 249F.3(3) and 249F.3(4).

441—89.7(249F) Timely request for a hearing. If a timely written request for a hearing is received by the department, the department will certify the matter for hearing to the district court pursuant to Iowa Code section 249F.4.

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. An order may be filed pursuant to Iowa Code section 249F.5(1). 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.