

3. Notwithstanding this section, restrictions upon the amount of money used to support administrative expenses by the department of economic development and the office of renewable fuels and coproducts shall continue to apply to moneys deposited in the value-added agricultural products and processes financial assistance fund and the renewable fuels and coproducts fund, pursuant to section 423.24, as provided in this Act, after June 30, 2000.

4. a. Any unencumbered or unobligated moneys in the value-added agricultural products and processes financial assistance fund derived from moneys deposited pursuant to section 423.24, which are in excess of three million six hundred fifty thousand dollars of the unencumbered or unobligated moneys in the fund deposited pursuant to that section, and which are remaining on June 30, 2000, shall be credited on August 31, 2000, to the road use tax fund as created in section 312.1.

b. Any unencumbered or unobligated moneys in the renewable fuels and coproducts fund derived from moneys deposited pursuant to section 423.24, which are in excess of three hundred fifty thousand dollars of the unencumbered or unobligated moneys in the fund deposited pursuant to that section, and which are remaining on June 30, 2000, shall be credited on August 31, 2000, to the road use tax fund as created in section 312.1.

5. The Code editor is directed to eliminate provisions within sections of the Code as provided in this Act wherever references to section 423.24, subsection 1, paragraph "b", appear in those provisions.

6. This section takes effect on July 1, 2000.

**Sec. 37. REPEALS.**

1. 1992 Iowa Acts, chapter 1099, section 11, is repealed.
2. Section 159A.8, Code 1993, is repealed.

**Sec. 38. EFFECTIVE DATE.** This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 26, 1994

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## CHAPTER 1120

### MEDICAL ASSISTANCE — TRUSTS AND OTHER MATTERS

*H.F. 2372*

**AN ACT** relating to medical assistance including medical assistance trusts, transfers of assets related to medical assistance and special education services provided through medical assistance fundings, and psychiatric medical institution for children services funded under medical assistance and providing an effective date and for retroactive applicability.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I

#### Medical Assistance — Trusts

Section 1. Section 249A.3, Code Supplement 1993, is amended by adding the following new subsections:

**NEW SUBSECTION. 12.** In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub.L. No. 99-272, section 9506(a), as amended by the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, section 9435(c).

**NEW SUBSECTION. 13.** In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. section 1396p(d) and sections 633.708 and 633.709.

Sec. 2. Section 249A.12, Code 1993, is amended by adding the following new subsection:

**NEW SUBSECTION. 3.** If a county reimburses the department for medical assistance provided under this section and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633.707, the department shall reimburse the county on a proportionate basis.

Sec. 3. **NEW SECTION. 633.707 DEFINITIONS.**

For purposes of this division, unless the context otherwise requires:

1. "Available monthly income" means in reference to a medical assistance income trust beneficiary, any income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance and any amounts paid to or otherwise made available to the beneficiary by the trustee pursuant to section 633.709, subsection 1, paragraph "b", or section 633.709, subsection 2, paragraph "b".

2. "Beneficiary" means the original beneficiary of a medical assistance special needs trust or medical assistance income trust, whose assets funded the trust.

3. "Institutionalized individual" means an individual receiving nursing facility services, a level of care in any institution equivalent to nursing facility services, or home and community-based services under the medical assistance home and community-based waiver program.

4. "Maximum monthly medical assistance payment rate for services in an intermediate care facility for the mentally retarded" means the allowable rate established by the department of human services and as published in the Iowa administrative bulletin.

5. "Medical assistance" means medical assistance as defined in section 249A.2.

6. "Medical assistance income trust" means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. section 1396p(d)(4)(B)(i)-(ii).

7. "Medical assistance special needs trust" means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. section 1396p(d)(4)(A) or (C).

8. "Special needs of the beneficiary attributable to the beneficiary's disability" means only those needs that would not exist but for the beneficiary's disability, not including ordinary needs, such as ordinary support and maintenance, education, and entertainment, that would exist regardless of disability.

9. "Statewide average charge for state mental health institute care" means the statewide average charge for such care as calculated by the department of human services and as published in the Iowa administrative bulletin.

10. "Statewide average charge to private-pay patients for hospital-based, medicare-certified, skilled nursing facility care" means the statewide average charge for such care, excluding nonhospital-based, medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

11. "Statewide average charge to private-pay patients for nonhospital-based, medicare-certified, skilled nursing facility care" means the statewide average charge for such care, excluding hospital-based, medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

12. "Statewide average charge for nursing facility services" means the statewide average charge for such care, excluding charges by medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

13. "Statewide average charge to private-pay patients for psychiatric medical institutions for children care" means the statewide average charge for such care as calculated by the department of human services and as published in the administrative bulletin.

14. "Total monthly income" means in reference to a medical assistance income trust beneficiary, income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance, income of the beneficiary received by the trust that would otherwise count as income in determining the beneficiary's eligibility for medical assistance, and income or earnings of the trust received by the trust.

**Sec. 4. NEW SECTION. 633.708 DISPOSITION OF MEDICAL ASSISTANCE SPECIAL NEEDS TRUSTS.**

Regardless of the terms of a medical assistance special needs trust, any property received or held by the trust may be expended, during the life of the beneficiary, only for reasonable and necessary expenses of the trust, not to exceed ten dollars per month without court approval, for special needs of the beneficiary attributable to the beneficiary's disability and approved by the district court, for medical care or services that would otherwise be covered by medical assistance under chapter 249A, or to reimburse the state for medical assistance paid on behalf of the beneficiary.

**Sec. 5. NEW SECTION. 633.709 DISPOSITION OF MEDICAL ASSISTANCE INCOME TRUSTS.**

1. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is less than the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, and in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. From the remaining principal or income of the trust, an amount sufficient to bring the beneficiary's available income up to three hundred percent of the benefit for an individual under the federal supplemental security income program shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

c. If the beneficiary is an institutionalized individual, the remaining principal or income of the trust shall be paid directly to the provider of institutional care, on a monthly basis, for any cost not paid by the beneficiary from the beneficiary's available income, to reduce any amount paid as medical assistance under chapter 249A.

d. Any remaining principal or income of the trust may, at the trustee's discretion or as directed by the terms of the trust, be paid directly to providers of other medical care or services that would otherwise be covered by medical assistance, paid to the state as reimbursement for medical assistance paid on behalf of the beneficiary, or retained by the trust.

2. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is at or above the average statewide charge for nursing facility services to a private pay resident, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. All remaining property received or held by the trust shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

3. Subsections 1 and 2 shall apply to the following beneficiaries, however, the following amounts indicated shall be applied in lieu of the statewide average charge for nursing facility services:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for the mentally retarded and who either resides in an intermediate care facility for the mentally retarded or is eligible for medical assistance home

and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the maximum monthly medical assistance payment rate for services in an intermediate care facility for the mentally retarded.

b. For a beneficiary who meets the medical assistance level of care requirements for hospital-based, medicare-certified, skilled nursing facility care and who either resides in a hospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for hospital-based, medicare-certified, skilled nursing facility care.

c. For a beneficiary who meets the medical assistance level of care requirements for nonhospital-based, medicare-certified, skilled nursing facility care and who either resides in a nonhospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for nonhospital-based, medicare-certified, skilled nursing facility care.

d. For a beneficiary who meets the medical assistance level of care requirements for services in a psychiatric medical institution for children and who resides in a psychiatric medical institution for children, the applicable rate is the statewide average charge to private-pay patients for psychiatric medical institution for children care.

e. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

Sec. 6. NEW SECTION. 633.710 OTHER POWERS OF TRUSTEES.

1. Sections 633.708 and 633.709 shall not be construed to limit the authority of the trustees to invest, sell, or otherwise manage property held in trust.

2. The trustee of a medical assistance income trust or a medical assistance special needs trust is a fiduciary for purposes of this chapter and, in the exercise of the trustee's fiduciary duties, the state shall be considered a beneficiary of the trust. Regardless of the terms of the trust, the trustee shall not take any action that is not prudent in light of the state's interest in the trust.

Sec. 7. NEW SECTION. 633.711 COOPERATION.

1. The department of human services shall cooperate with the trustee of a medical assistance special needs trust or a medical assistance income trust in determining the appropriate disposition of the trust under sections 633.708 and 633.709.

2. The trustee of a medical assistance special needs trust or medical assistance income trust shall cooperate with the department of human services in supplying information regarding a trust established under this division.

DIVISION II  
Transfers of Assets

Sec. 8. Section 249A.3, subsection 7, Code Supplement 1993, is amended to read as follows:

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1992 1989 and prior to August 11, 1993, which are nonexempt resources or interests in resources, owned by the transferor within the preceding sixty months which the transferor gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter, to the extent consistent with the federal Social Security Act, section 1917(e), as codified in 42 U.S.C. § 1396p(e), as amended as provided by the federal Medicare Catastrophic

Coverage Act of 1988, Pub. L. No. 100-360, section 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, section 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, section 6411(e)(1).

Sec. 9. Section 249A.3, Code Supplement 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 11. a. In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. section 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. section 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. section 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

### DIVISION III Estate Recovery

Sec. 10. Section 249A.5, Code 1993, is amended to read as follows:

#### 249A.5 RECOVERY OF PAYMENT.

1. Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2, unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.

2. The provision of medical assistance to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for the mentally retarded, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.

a. The department shall waive the collection of the debt created under this subsection from the estate of a recipient of medical assistance to the extent that collection of the debt would result in either of the following:

(1) Reduction in the amount received from the recipient's estate by a surviving spouse, or by a surviving child who was under age twenty-one, blind, or permanently and totally disabled at the time of the individual's death.

(2) Otherwise work an undue hardship as determined on the basis of criteria established pursuant to 42 U.S.C. section 1396p(b)(3).

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph "a", subparagraph (1), the amount waived shall be a debt due from the estate of the recipient's surviving spouse or blind or disabled child, upon the death of the spouse or child, or due from a surviving child who was under twenty-one years of age at the time of the recipient's death, upon the child reaching age twenty-one, to the extent the recipient's estate is received by the surviving spouse or child.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property and interests in trusts.

d. For purposes of collection of a debt created by this subsection, all assets included in the estate of a medical assistance recipient, surviving spouse, or surviving child pursuant to paragraph "c" are subject to probate.

e. Interest shall accrue on a debt due under this subsection, at the rate provided pursuant to section 535.3, beginning six months after the death of a medical assistance recipient, surviving spouse, or surviving child.

Sec. 11. Section 633.425, Code 1993, is amended by adding the following new subsection:  
NEW SUBSECTION. 6A. Any debt for medical assistance paid pursuant to section 249A.5, subsection 2.

#### DIVISION IV

##### Area Education Agencies – Educational Services

Sec. 12. Section 256B.15, subsection 7, Code 1993, is amended to read as follows:

7. a. ~~Except as otherwise provided in this subsection, all reimbursements received by the area education agencies for eligible services shall be paid annually to the treasurer of state~~ The treasurer of the state shall credit receipts received under this section to the department of human services to pay contractual fees incurred by the department to maximize federal funding for special education services. All remaining receipts in excess of the amount necessary to pay contractual fees shall be credited to the general fund of the state.

b. The area education agencies shall, after determining the administrative costs associated with the implementation of medical assistance reimbursement for the eligible services, be permitted to retain up to twenty-five percent of the federal portion of the total amount reimbursed to pay for the administrative costs. Funds received under this ~~subsection~~ section shall not be considered or included as part of the area education agencies' budgets when calculating funds that are to be received by area education agencies during a fiscal year. ~~Except as otherwise provided in this subsection, the treasurer of state shall credit all receipts received under this subsection to the general fund of the state.~~

Sec. 13. **EFFECTIVE DATE.** The section of this division of this Act which amends Code section 256B.15, being deemed of immediate importance, takes effect upon enactment and is retroactive to July 1, 1993.

#### DIVISION V

##### Psychiatric Medical Institutions for Children

Sec. 14. Section 135H.1, subsection 6, Code 1993, is amended by striking the subsection.

Sec. 15. Section 135H.1, subsection 9, Code 1993, is amended to read as follows:

9. "Psychiatric medical institution for children" or "psychiatric institution" means a ~~n~~n~~on~~on~~se~~se~~ure~~ure an institution providing more than twenty-four hours of continuous care involving long-term psychiatric services to three or more children in residence for expected periods of fourteen or more days for diagnosis and evaluation or for expected periods of ninety days or more for treatment.

#### DIVISION VI

Sec. 16. Section 249A.3, subsection 1, paragraph g, Code Supplement 1993, is amended to read as follows:

g. (1) Is a child who is less than eight one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1987 1989, Pub. L. No. 100-203 § 4101 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child born after September 30, 1983, who has attained six years of age but has not attained nineteen years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 4601, whose income is not more than one hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

Approved April 26, 1994

## CHAPTER 1121

### FRAUDULENT TRANSFERS

*H.F. 2384*

**AN ACT** relating to commercial transactions, by enacting the Uniform Fraudulent Transfer Act, and providing for the repeal of certain Code sections, and providing an effective and applicability date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 322D.6, Code 1993, is amended to read as follows:  
322D.6 SECURITY INTERESTS NOT AFFECTED.

The provisions of this chapter shall not be construed to affect, in any way, the existence or enforcement of any security interest which a supplier, any financial institution or any other person may have in the inventory of the retailer, and any repurchase of inventory which is made hereunder shall not be subject to the bulk sales provisions of chapter 554, article 6, of the uniform commercial code.

Sec. 2. Section 322F.4, Code 1993, is amended to read as follows:  
322F.4 SECURITY INTERESTS NOT AFFECTED.

This chapter shall not be construed to affect the existence or enforcement of a security interest which any person, including a supplier or financial institution, may have in the inventory of the dealer. The repurchase of inventory which is made under this chapter shall not be subject to the bulk sales provision of chapter 554, article 6 of the uniform commercial code.

Sec. 3. Section 554.1105, subsection 2, Code 1993, is amended to read as follows:

2. Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 554.2402.

Applicability of the Article on Bank Deposits and Collections. Section 554.4102.

~~Bulk transfers subject to the Article on Bulk Transfers. Section 554.6102.~~

Applicability of the Article on Investment Securities. Section 554.8106.

Perfection provisions of the Article on Secured Transactions. Section 554.9103.

Governing law in the Article on Funds Transfers. Section 554.12507.

Sec. 4. Section 554.2403, subsection 4, Code 1993, is amended to read as follows:

4. The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), ~~Bulk Transfers (Article 6)~~ and Documents of Title (Article 7).