

## TRANSFER OF ASSETS MEDICAL ASSISTANCE DEBT

### 249F.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 to or for the sole benefit of the transferor's child who is blind or has a disability 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 C.F.R. § 416.1212, to a child of the transferor under twenty-one years of age.

(4) Transfer of a dwelling, which serves as the transferor's home as defined in 20 C.F.R. § 416.1212, 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. However, all transfers by the same transferor during the five-year period prior to 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 two thousand dollar exemption shall be divided equally between the transferees.

(6) Transfers of assets that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if 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.

(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 the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

(8) Transfers to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled, as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

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

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

93 Acts, ch 106, §1; 96 Acts, ch 1107, § 3; 96 Acts, ch 1129, §66; 97 Acts, ch 23, § 23; 2000 Acts, ch 1060, §4, 5

#### **249F.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 fair market value of the assets at the time of the transfer.

93 Acts, ch 106, §2; 96 Acts, ch 1107, § 4

#### **249F.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 sent by restricted certified mail as defined in 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 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 249F.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.

93 Acts, ch 106, §3; 99 Acts, ch 52, §1

#### **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, if applicable, 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.

93 Acts, ch 106, §4; 99 Acts, ch 52, §2

#### **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.

93 Acts, ch 106, §5

#### **249F.6 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.

93 Acts, ch 106, §6

#### **249F.6A Exemption from chapter 17A.**

Actions initiated under this chapter are not subject to chapter 17A. Review by the district court shall be an original hearing before the district court.

2000 Acts, ch 1060, §6

#### **249F.7 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.

93 Acts, ch 106, §7

#### **249F.8 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.

