

CHAPTER 75
DIVESTITURE UNIT

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 of inspections and appeals to establish a debt against a person who receives transferred assets from a Medicaid applicant or recipient within 60 months 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.

481—75.1(10A) Definitions.

“*Department*” means the department of inspections and appeals.

“*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 “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*” means both tangible and intangible property, real property and personal property.

“*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 title or interest in property.

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

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

481—75.2(10A) Referral process. The department shall establish a case when the divestiture unit of the department receives a referral form from the department of human services (DHS). The referral shall specify which assets have been divested, the transferor, the transferee(s), the date of the transfer, if known, and any other relevant information.

481—75.3(10A) Referral review. The divestiture unit shall review the referral and determine whether the department shall proceed with a case to establish a medical assistance debt.

481—75.4(10A) Investigation. A divestiture unit investigator shall conduct an investigation and collect evidence for each case as needed.

481—75.5(10A) Organizing information. The divestiture unit investigator shall compile and organize all case information and evidence in a case file. Once the appropriate information has been investigated and collected, the investigator shall refer the case file to the individual in the divestiture unit responsible for issuing notices to the transferee.

481—75.6(10A) Computation of debt. The divestiture unit shall prepare all computations of the medical assistance debt due and owing.

481—75.7(10A) Issuing notices. The divestiture unit shall issue a notice establishing and demanding payments of an accrued or accruing debt due and owing to the department of human services. The notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

75.7(1) Amount of debt. The amount of medical assistance provided to the transferor to date which creates the debt.

75.7(2) *Computation of debt.* A computation of the debt due and owing.

75.7(3) *Demand for payment.* A demand for immediate payment of the debt.

75.7(4) *Request for informal conference.*

a. A statement that if the transferee desires to discuss the notice, the transferee, within 10 days after being served, 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 to the department for a hearing in the district court.

c. A statement that after the holding of the conference, the department 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.

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, whichever is later, to send a written request for a hearing to the department.

75.7(5) *Request for hearing without informal conference.* 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 20 days after the date of service of the original notice to send a written response to the department setting forth any objections and requesting a hearing in the district court.

75.7(6) *Collection action.* A statement that as soon as the district court 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, and execution.

75.7(7) *Responsibilities of transferee.* A statement that the transferee must send written notice to the department of any change of address or employment.

75.7(8) *Questions.* A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department or consult an attorney.

75.7(9) *Other information.* Other information as the department finds appropriate.

481—75.8(10A) Conducting informal conferences. If the transferee requests a conference within the appropriate time period, the department shall conduct an informal conference with the transferee regarding the medical assistance debt accrued and accruing.

481—75.9(10A) Failure to timely request hearing.

75.9(1) *Order entered by department.* If a timely written request for a 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. 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.

75.9(2) *Order.* 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.

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.

481—75.10(10A) District court hearing.

75.10(1) *Certification.* If a timely written request for a hearing is received, the department shall certify the matter to the district court in the county where the transferee resides. If the transferee resides in another state, the department shall certify the matter to the district court in the county in which the transferor resides. 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.

75.10(2) *Hearing request by department.* 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.

75.10(3) *Notice of hearing time and location.* The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

75.10(4) *Default order.* 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.

481—75.11(10A) Filing and docketing of the order. A true copy of an order entered by the department pursuant to this rule, along with a true copy of the return of service, if applicable, shall 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 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.

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

481—75.12(10A,22) Confidentiality. All information compiled during the investigative or collection process is confidential in accordance with Iowa Code section 10A.105. Any request for information should be sent to the department of human services.

These rules are intended to implement Iowa Code sections 10A.104(7), 10A.105(2), 10A.402(7), and 22.11.

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