THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

May 2, 2003

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby transmit:

House File 619, an Act relating to health care including reimbursement of health care facilities based on resident program eligibility and providing effective dates and a contingent effective date.

The above House File is hereby approved this date.

Sincerely,

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House

STATE CAPITOL DES MOINES, IOWA 50319 515 281-5211 FAX 515-281-6611

HOUSE FILE 619

AN ACT

RELATING TO HEALTH CARE INCLUDING REIMBURSEMENT OF HEALTH CARE FACILITIES BASED ON RESIDENT PROGRAM ELIGIBILITY AND PROVIDING EFFECTIVE DATES AND A CONTINGENT EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 135.131 INTERAGENCY PHARMACEUTICALS BULK PURCHASING COUNCIL.

1. For the purposes of this section, "interagency pharmaceuticals bulk purchasing council" or "council" means the interagency pharmaceuticals bulk purchasing council created in this section.

2. An interagency pharmaceuticals bulk purchasing council is created within the Iowa department of public health. The department shall provide staff support to the council and the department of pharmaceutical care of the university of Iowa hospitals and clinics shall act in an advisory capacity to the council. The council shall be composed of all of the following members:

a. The director of public health, or the director's designee.

b. The director of human services, or the director's designee.

c. The director of the department of personnel, or the director's designee.

d. A representative of the state board of regents.

e. The director of the department of corrections, or the director's designee.

f. The director, or the director's designee, of any other agency that purchases pharmaceuticals designated to be included as a member by the director of public health.

3. The council shall select a chairperson annually from its membership. A majority of the members of the council shall constitute a quorum.

4. The council shall do all of the following:

a. Develop procedures that member agencies must follow in purchasing pharmaceuticals. However, a member agency may elect not to follow the council's procedures if the agency is able to purchase the pharmaceuticals for a lower price than the price available through the council. An agency that does not follow the council's procedures shall report all of the following to the council:

(1) The purchase price for the pharmaceuticals.

(2) The name of the wholesaler, retailer, or manufacturer selling the pharmaceuticals.

b. Designate a member agency as the central purchasing agency for purchasing of pharmaceuticals.

c. Use existing distribution networks, including wholesale and retail distributors, to distribute the pharmaceuticals.

d. Investigate options that maximize purchasing power, including expanding purchasing under the medical assistance program, qualifying for participation in purchasing programs under 42 U.S.C. § 256b, as amended, and utilizing rebate programs, hospital disproportionate share purchasing, multistate purchasing alliances, and health department and federally qualified health center purchasing.

e. In collaboration with the department of pharmaceutical care of the university of Iowa hospitals and clinics, make recommendations to member agencies regarding drug utilization review, prior authorization, the use of restrictive formularies, the use of mail order programs, and copayment structures. This paragraph shall not apply to the medical assistance program but only to the operations of the member agencies.

5. The central purchasing agency may enter into agreements with a local governmental entity to purchase pharmaceuticals for the local governmental entity.

6. The council shall develop procedures under which the council may disclose information relating to the prices manufacturers or wholesalers charge for pharmaceuticals by category of pharmaceutical. The procedure shall prohibit the council from disclosing information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.

Sec. 2. NEW SECTION. 135C.31A ASSESSMENT OF RESIDENTS -- PROGRAM ELIGIBILITY.

Beginning July 1, 2003, a health care facility receiving reimbursement through the medical assistance program under chapter 249A shall assist the Iowa commission of veterans affairs in determining, prior to the initial admission of a resident, the prospective resident's eligibility for benefits through the federal department of veterans affairs. The health care facility shall also assist the Iowa commission of veterans affairs in determining such eligibility for residents residing in the facility on July 1, 2003. The department of inspections and appeals, in cooperation with the department of human services, shall adopt rules to administer this section, including a provision that ensures that if a resident is eligible for benefits through the federal department of veterans affairs or other third-party payor, the payor of last resort for reimbursement to the health care facility is the medical assistance program. This section shall not apply to the admission of an individual to a state mental health institute for acute psychiatric care.

Sec. 3. NEW SECTION. 249A.20A PREFERRED DRUG LIST PROGRAM.

1. The department shall establish and implement a preferred drug list program under the medical assistance program. The department shall submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services, no later than May 1, 2003, to implement the program.

2. a. A medical assistance pharmaceutical and therapeutics committee shall be established within the department by July 1, 2003, for the purpose of developing and providing ongoing review of the preferred drug list.

b. (1) The members of the committee shall be appointed by the governor and shall include health care professionals who possess recognized knowledge and expertise in one or more of the following:

(a) The clinically appropriate prescribing of covered outpatient drugs.

(b) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

(c) Drug use review, evaluation, and intervention.

(d) Medical quality assurance.

(2) The membership of the committee shall be comprised of at least one third but not more than fifty-one percent licensed and actively practicing physicians and at least one third licensed and actively practicing pharmacists.

c. The members shall be appointed to terms of two years. Members may be appointed to more than one term. The department shall provide staff support to the committee. Committee members shall select a chairperson and vice chairperson annually from the committee membership.

3. The pharmaceutical and therapeutics committee shall recommend a preferred drug list to the department. The committee shall develop the preferred drug list by considering each drug's clinically meaningful therapeutic advantages in terms of safety, effectiveness, and clinical outcome. The committee shall use evidence-based research methods in selecting the drugs to be included on the preferred drug list. The committee shall periodically review all drug classes included on the preferred drug list and may amend the list to ensure that the list provides for medically appropriate drug therapies for medical assistance recipients and achieves cost savings to the medical assistance program. The department may procure a sole source contract with an outside entity or contractor to provide professional administrative support to the pharmaceutical and therapeutics committee in researching and recommending drugs to be placed on the preferred drug list.

4. With the exception of drugs prescribed for the treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer and drugs prescribed for mental illness with the exception of drugs and drug compounds that do not have a significant variation in a therapeutic profile or side effect profile within a therapeutic class, prescribing and dispensing of prescription drugs not included on the preferred drug list shall be subject to prior authorization.

5. The department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

6. The department shall publish and disseminate the preferred drug list to all medical assistance providers in this state.

7. Until such time as the pharmaceutical and therapeutics committee is operational, the department shall adopt and utilize a preferred drug list developed by a midwestern state that has received approval for its medical assistance state plan amendment from the centers for Medicare and Medicaid services of the United States department of health and human services.

8. The department may procure a sole source contract with an outside entity or contactor to participate in a pharmaceutical pooling program with midwestern or other states to provide for an enlarged pool of individuals for the purchase of pharmaceutical products and services for medical assistance recipients.

9. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section.

10. Any savings realized under this section may be used to the extent necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the legislative fiscal committee on a quarterly basis.

Sec. 4. NEW SECTION. 249A.20B NURSING FACILITY QUALITY ASSURANCE ASSESSMENT.

1. The department may assess nursing facilities a quality assurance assessment not to exceed six percent of the total annual revenue of the facility.

2. The department of human services shall submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services to effectuate the nursing facility quality assurance assessment.

3. The department of human services shall submit an application to the secretary of the United States department of health and human services to request a waiver of the uniform tax requirement pursuant to 42 U.S.C. § 1396b(w)(3)(E) and 42 C.F.R. § 433.68(e)(2).

4. The quality assurance assessment shall be paid to the department in equal monthly amounts on or before the fifteenth

day of each month. The department may deduct the monthly assessment amount from medical assistance payments to a nursing facility. The amount deducted from payments shall not exceed the total amount of the fee due.

5. Revenue generated from the quality assurance assessment shall be deposited in the senior living trust fund created in section 249H.4. The revenues shall only be used for services for which federal financial participation under the medical assistance program is available to match state funds.

6. If federal financial participation to match the assessments made under subsection 1 becomes unavailable under federal law, the department shall terminate the imposition of the assessment beginning on the date that the federal statutory, regulatory, or interpretive change takes effect.

7. The department may procure a sole source contract to implement the provisions of this section.

8. For the purposes of this section, "nursing facility" means nursing facility as defined in section 135C.1, excluding residential care facilities and nursing facilities that are operated by the state.

9. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section.

Sec. 5. NEW SECTION. 249A.29A HOME AND COMMUNITY-BASED SERVICES WAIVER -- ELIGIBILITY DETERMINATIONS.

1. A level of care eligibility determination of an individual seeking approval by the department to receive services under a waiver shall be completed only by a person not participating as a provider of services under a waiver. For the purposes of this section, "provider" and "waiver" mean provider and waiver as defined in section 249A.29.

2. Funds appropriated to the department of elder affairs for the purpose of conducting level of care eligibility determinations shall be transferred and made available to the department of human services.

3. The department of human services may procure a sole source contract with an outside entity or contractor to conduct level-of-care eligibility determinations.

4. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section.

Sec. 6. Section 249B.3, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The department ~~may~~ shall issue a notice establishing and demanding payment of an accrued or accruing spousal support debt due and owing to the department. The notice shall be served upon the community spouse in accordance with the rules of civil procedure. The notice shall include all of the following:

Sec. 7. MEDICAL ASSISTANCE PROGRAM -- PHARMACEUTICALS -- RECIPIENT REQUIREMENTS.

1. The department of human services shall reimburse pharmacy dispensing fees using a single rate of $4.26 per prescription or the pharmacy's usual and customary fee, whichever is lower.

2. The department of human services shall require recipients of medical assistance to pay the following copayment on each prescription filled for a covered prescription drug, including on each refill of such prescription, as follows:

a. A copayment of $1 for each covered generic prescription drug.

b. A copayment of 50 cents for each covered brand-name prescription drug for which the cost to the state is $10 or less.

c. A copayment of $1 for each covered brand-name prescription drug for which the cost to the state is more than $10 and up to and including $25.

d. A copayment of $2 for each covered brand-name prescription drug for which the cost to the state is more than $25 and up to and including $50.

e. A copayment of $3 for each covered brand-name prescription drug for which the cost to the state is over $50.

3. The department of human services shall establish an ingredient reimbursement basis equal to the average wholesale price minus 12 percent for pharmacy reimbursement for prescription drugs under the medical assistance program.

4. a. The department of human services shall continue the sole source contract relative to the state maximum allowable cost (SMAC) program as authorized in 2001 Iowa Acts, chapter 191, section 31, subsection 1, paragraph "b", subparagraph (5). The department shall expand the state maximum allowable cost program for prescription drugs to the greatest extent possible as determined under the contract.

b. Pharmacies and providers that are enrolled in the medical assistance program shall make available drug acquisition cost information, product availability information, and other information deemed necessary by the department for the determination of reimbursement rates and the efficient operation of the pharmacy benefit. Pharmacies and providers shall produce and submit the requested information in the manner and format requested by the department or its designee at no cost to the department or designee. Pharmacies and providers shall submit information to the department or its designee within thirty days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

c. The state maximum allowable cost shall be established at the average wholesale acquisition cost for a prescription drug and all equivalent products, adjusted by a multiplier of 1.4. The department shall update the state maximum allowable cost every two months, or more often if necessary, to ensure adequate product availability.

d. The department shall review its current method for determining which prescription drugs are to be included in the SMAC program and shall adjust the method to maximize the cost savings realized through the SMAC program.

e. The department shall report any savings realized through the SMAC program to the legislative fiscal committee on a monthly basis.

5. The department of human services shall require recipients of medical assistance to pay a copayment of $3 for each physician office visit.

6. The department of human services shall maximize expansion of prior authorization of prescription drugs under the medical assistance program beyond the 25 current categories of medications.

7. The department of human services shall establish a fixed-fee reimbursement schedule for home health agencies under the medical assistance program.

8. The department may adopt emergency rules to implement this section.

Sec. 8. HOME AND COMMUNITY-BASED SERVICES WAIVERS CONSOLIDATION -- BUDGET NEUTRALITY. It is the intent of the general assembly that the consolidation of home and community-

based services waivers by the department of human services be designed in a manner that does not result in additional cost, with the exception of any services added to the waivers through legislative enactment. The department of human services shall submit an initial report regarding the cost neutrality and status of the waiver consolidation to the legislative fiscal committee no later than January 31, 2004, and a subsequent report no later than July 31, 2004.

Sec. 9. NURSING FACILITY REIMBURSEMENT. Notwithstanding 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c", and subsection 3, paragraph "a", subparagraph (2), if projected state fund expenditures for reimbursement of nursing facilities for the fiscal year beginning July 1, 2003, in accordance with the reimbursement rate specified in 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c", exceeds $147,252,856, the department shall adjust the inflation factor of the reimbursement rate calculation to provide reimbursement within the amount projected.

Sec. 10. UTILIZATION MANAGEMENT AND TARGETED AUDITS.

1. The department of human services shall conduct ongoing review of recipients and providers of medical assistance services to determine the appropriateness of the scope, duration, and utilization of services. If inappropriate usage is identified, the department shall implement procedures necessary to restrict utilization.

2. The department of human services shall conduct a review of selected medical assistance services categories and providers for state fiscal years beginning July 1, 2001, July 1, 2002, and July 1, 2003. The review shall include intense data analysis to test compliance with rules, regulations, and policies and selected on-site audits.

3. The review required under subsection 2 shall attempt to identify any incorrectly paid billings or claims for the state medical assistance program. If inappropriate payments are identified, provider billings shall be adjusted accordingly. If there is substantiated evidence to suggest fraudulent activity, the department shall submit the audit data regarding the medical assistance provider or recipient to the department of inspections and appeals for further action.

4. The department of human services may procure a sole source contract to implement the provisions of this section.

5. Any savings realized under this section may be used to the extent necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the chairpersons of the joint appropriations subcommittee on health and human services.

Sec. 11. MEDICAL ASSISTANCE -- CERTAIN PUBLICLY OWNED HOSPITALS -- PHYSICIAN SUPPLEMENTAL PAYMENTS.

1. For the fiscal year beginning July 1, 2003, and for each fiscal year thereafter, the department of human services shall institute a supplemental payment adjustment applicable to physician services provided to medical assistance recipients at publicly owned acute care teaching hospitals. The adjustment shall generate supplemental payments to physicians which are equal to the difference between the physician's charge and the physician's fee schedule under the medical assistance program. To the extent of the supplemental payments, a qualifying hospital shall, after receipt of the payments, transfer to the department of human services an amount equal to the actual supplemental payments that were made in that month. The department of human services shall deposit these payments in the department's medical assistance account. The department of human services shall amend the medical assistance state plan as necessary to implement this section. The department may adopt emergency rules to implement this section.

2. The department may use any savings realized under this section to the extent necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the chairpersons of the joint appropriations subcommittee on health and human services.

3. The department of human services shall, in any compilation of data or other report distributed to the public concerning payments to providers under the medical assistance program, set forth reimbursements to physicians of the university of Iowa college of medicine through supplemental adjustments as a separate item and shall not include such payments in the amounts otherwise reported as the reimbursement to a physician for services to medical assistance recipients.

Sec. 12. CHRONIC CARE MANAGEMENT.

1. The department of human services shall aggressively pursue chronic disease management in order to improve care and reduce costs under the medical assistance program.

2. The department of human services, in cooperation with the department's fiscal agent and in consultation with a chronic care management resource group, shall profile medical assistance recipients within a select number of disease diagnosis categories. The assessment shall focus on those diagnosis areas that present the greatest opportunity for impact to improved care and cost reduction.

3. The department of human services, in consultation with a chronic care management resource group, shall conduct a chronic disease management pilot project for a select number of individuals who are participants in the medical assistance program. The project shall focus on a select number of chronic diseases which may include congestive heart failure, diabetes, and asthma. The initial pilot project shall be implemented by October 1, 2003.

4. The department of human services shall issue a request for proposals or otherwise solicit bids from potential vendors to manage individuals with select chronic diseases following the conclusion of the profiling of medical assistance recipients. The management of chronic diseases for individuals under this subsection may be coordinated with the pilot project established in subsection 3.

5. The department of human services shall amend the medical assistance state plan and seek any waivers necessary from the centers for Medicare and Medicaid services of the United States department of health and human services to implement this section.

6. The department of human services shall submit a progress report regarding chronic disease management measures undertaken pursuant to this section to the governor and the general assembly by November 1, 2003. The report shall include recommendations regarding incorporating chronic disease management programming into the medical assistance system and the potential improvements in care and reductions in costs that may be obtained through chronic disease management.

7. The department of human services may adopt emergency rules to implement this section.

8. Any savings realized under this section may be used as necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the chairpersons of the joint appropriations subcommittee on health and human services.

Sec. 13. CONTINGENT EFFECTIVE DATE.

1. Section 249A.20B, as enacted in this Act, shall not take effect unless the department of human services receives approval of both the medical assistance state plan amendment from the centers for Medicare and Medicaid services of the United States department of health and human services to effectuate the nursing facility quality assurance assessment and of the application to the secretary of the United States department of health and human services for a waiver of the uniform tax requirement pursuant to 42 U.S.C. § 1396b(w)(3)(E) and 42 C.F.R. § 433.68(e)(2). If both approvals are received, section 249A.20B shall take effect upon the date that both approvals have been received by the department and the department shall notify the Code editor of the date of receipt of the approvals.

2. If both approvals described in subsection 1 are not received by June 30, 2004, the section of this Act enacting section 249A.20B shall not take effect.

Sec. 14. EFFECTIVE DATES.

1. The section of this Act enacting section 249A.20A takes effect upon enactment.

2. The portion of the section of this Act relating to the state maximum allowable cost (SMAC) program, being deemed of immediate importance, takes effect upon enactment.

3. The section of this Act relating to physician supplemental payments at certain publicly owned hospitals, being deemed of immediate importance, takes effect upon enactment.

4. The section of this Act relating to chronic disease management, being deemed of immediate importance, takes effect upon enactment.

5. The portions of the section of this Act enacting section 249A.20B relating to directing the department of human services to submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the

United States department of health and human services to effectuate the nursing facility quality assurance assessment and directing the department of human services to submit an application to the secretary of the United States department of health and human services for a waiver of the uniform tax requirement pursuant to 42 U.S.C. § 1396b(w)(3)(E) and 42 C.F.R. § 433.68(e)(2), being deemed of immediate importance, take effect upon enactment.

CHRISTOPHER C. RANTS
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 619, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved May 2, 2003

THOMAS J. VILSACK
Governor