

MAR 7 1994

HOUSE FILE 2372  
BY COMMITTEE ON HUMAN  
RESOURCES

Place On Calendar

(SUCCESSOR TO HSB 677)

Passed House, <sup>(p. 780)</sup> Date 3-21-94 Passed Senate, <sup>(p. 1066)</sup> Date 4-6-94  
Vote: Ayes 95 Nays 0 Vote: Ayes 49 Nays 0  
Approved April 26, 1994

A BILL FOR

1 An Act relating to medical assistance including medical  
2 assistance trusts, transfers of assets related to medical  
3 assistance and special education services provided through  
4 medical assistance fundings, and psychiatric medical  
5 institution for children services funded under medical  
6 assistance and providing an effective date and for retroactive  
7 applicability.

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

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HOUSE FILE 2372

H-5445

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1 Amend House File 2372 as follows:  
2 1. Page 2, by striking line 18 and inserting the  
3 following:  
4 "8. "Average statewide cost of nursing facility  
5 services to a private pay resident" means".  
6 2. Page 3, line 11, by striking the word  
7 "provided".  
8 3. Page 4, line 5, by striking the word  
9 "provided".

By MEYER of Sac

H-5445 FILED MARCH 17, 1994

Adopted 3-21-94 (p. 780)

HF 2372

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. 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

1 institution equivalent to nursing facility services, or home  
2 and community-based services under the medical assistance home  
3 and community-based waiver program.

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

6 5. "Medical assistance income trust" means a trust or  
7 similar legal instrument or device that meets the criteria of  
8 42 U.S.C. section 1396p(d)(4)(B)(i)-(ii).

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

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

18 8. "Statewide average cost of nursing facility care" means  
19 the average cost calculated and published by the Iowa  
20 department of human services.

21 9. "Total monthly income" means in reference to a medical  
22 assistance income trust beneficiary, income received directly  
23 by the beneficiary, not from the trust, that counts as income  
24 in determining eligibility for medical assistance, income of  
25 the beneficiary received by the trust that would otherwise  
26 count as income in determining the beneficiary's eligibility  
27 for medical assistance, and income or earnings of the trust  
28 received by the trust.

29 Sec. 3. NEW SECTION. 633.708 DISPOSITION OF MEDICAL  
30 ASSISTANCE SPECIAL NEEDS TRUSTS.

31 Regardless of the terms of a medical assistance special  
32 needs trust, any property received or held by the trust may be  
33 expended, during the life of the beneficiary, only for  
34 reasonable and necessary expenses of the trust, not to exceed  
35 ten dollars per month without court approval, for special

1 needs of the beneficiary attributable to the beneficiary's  
2 disability and approved by the district court, for medical  
3 care or services that would otherwise be covered by medical  
4 assistance under chapter 249A, or to reimburse the state for  
5 medical assistance paid on behalf of the beneficiary.

6 Sec. 4. NEW SECTION. 633.709 DISPOSITION OF MEDICAL  
7 ASSISTANCE INCOME TRUSTS.

8 i. Regardless of the terms of a medical assistance income  
9 trust, if the beneficiary's total monthly income is less than  
10 the average statewide cost of nursing facility services  
11 provided to a private pay resident of a nursing facility,  
12 then, during the life of the beneficiary, any property  
13 received or held by the trust shall be expended only as  
14 follows, as applicable, and in the following order of  
15 priority:

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

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

26 c. If the beneficiary is an institutionalized individual,  
27 any remainder shall be paid directly to the provider of  
28 institutional care, on a monthly basis, for any cost not paid  
29 by the beneficiary from the beneficiary's available income, to  
30 reduce any amount paid as medical assistance under chapter  
31 249A.

32 d. Any remainder may be paid directly to providers of  
33 other medical care or services that would otherwise be covered  
34 by medical assistance, paid to the state as reimbursement for  
35 medical assistance paid on behalf of the beneficiary, or

1 retained by the trust.

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

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

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

17 Sec. 5. NEW SECTION. 633.710 OTHER POWERS OF TRUSTEES.

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

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

28 Sec. 6. NEW SECTION. 633.711 COOPERATION.

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

33 2. The trustee of a medical assistance special needs trust  
34 or medical assistance income trust shall cooperate with the  
35 department of human services in supplying information

1 regarding a trust established under this division.

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DIVISION II

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Transfers of Assets

4 Sec. 7. Section 249A.3, subsection 7, Code Supplement  
5 1993, is amended to read as follows:

6 7. In determining the eligibility of an individual for  
7 medical assistance under this chapter, the department shall  
8 consider resources transferred to the individual's spouse on  
9 or after October 1, 1989, or to a person other than the  
10 individual's spouse on or after July 1, ~~1992~~ 1989 and prior to  
11 August 11, 1993, which are nonexempt resources or interests in  
12 ~~resources, owned by the transferor within the preceding sixty~~  
13 ~~months which the transferor gave away or sold at less than~~  
14 ~~fair market value for the purpose of establishing eligibility~~  
15 ~~for medical assistance under this chapter, to the extent~~  
16 ~~consistent with the federal Social Security Act, section~~  
17 ~~1917(c), as codified in 42 U.S.C. § 1396p(c), as amended as~~  
18 provided by the federal Medicare Catastrophic Coverage Act of  
19 1988, Pub. L. No. 100-360, section 303(b), as amended by the  
20 federal Family Support Act of 1988, Pub. L. No. 100-485,  
21 section 608(d)(16)(B), (D), and the federal Omnibus Budget  
22 Reconciliation Act of 1989, Pub. L. No. 101-239, section  
23 6411(e)(1).

24 Sec. 8. Section 249A.3, Code Supplement 1993, is amended  
25 by adding the following new subsection:

26 NEW SUBSECTION. 11. a. In determining the eligibility of  
27 an individual for medical assistance, the department shall  
28 consider transfers of assets made on or after August 11, 1993,  
29 as provided by the federal Social Security Act, section  
30 1917(c), as codified in 42 U.S.C. section 1396p(c).

31 b. The department shall exercise the option provided in 42  
32 U.S.C. section 1396p(c) to provide a period of ineligibility  
33 for medical assistance due to a transfer of assets by a  
34 noninstitutionalized individual or the spouse of a  
35 noninstitutionalized individual. For noninstitutionalized

1 individuals, the number of months of ineligibility shall be  
2 equal to the total, cumulative uncompensated value of all  
3 assets transferred by the individual or the individual's  
4 spouse on or after the look-back date specified in 42 U.S.C.  
5 section 1396p(c)(1)(B)(i), divided by the average monthly cost  
6 to a private patient for nursing facility services in Iowa at  
7 the time of application. The services for which  
8 noninstitutionalized individuals shall be made ineligible  
9 shall include any long-term care services for which medical  
10 assistance is otherwise available. Notwithstanding section  
11 17A.4, the department may adopt rules providing a period of  
12 ineligibility for medical assistance due to a transfer of  
13 assets by a noninstitutionalized individual or the spouse of a  
14 noninstitutionalized individual without notice of opportunity  
15 for public comment, to be effective immediately upon filing  
16 under section 17A.5, subsection 2, paragraph "b", subparagraph  
17 (1).

18 DIVISION III

19 Estate Recovery

20 Sec. 9. Section 249A.5, Code 1993, is amended to read as  
21 follows:

22 249A.5 RECOVERY OF PAYMENT.

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

31 2. The provision of medical assistance to an individual  
32 who is fifty-five years of age or older, or who is a resident  
33 of a nursing facility, intermediate care facility for the  
34 mentally retarded, or mental health institute, who cannot  
35 reasonably be expected to be discharged and return to the

1 individual's home, creates a debt due the department from the  
2 individual's estate for all medical assistance provided on the  
3 individual's behalf, upon the individual's death.

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

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

12 (2) Otherwise work an undue hardship as determined on the  
13 basis of criteria established pursuant to 42 U.S.C. section  
14 1396p(b)(3).

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

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

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



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

5 Sec. 10. Section 633.425, Code 1993, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 6A. Any debt for medical assistance paid  
8 pursuant to section 249A.5, subsection 2.

9 DIVISION IV

10 Area Education Agencies - Educational Services

11 Sec. 11. Section 2563.15, subsection 7, Code 1993, is  
12 amended to read as follows:

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

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

35 Sec. 12. EFFECTIVE DATE. The section of this division of

1 this Act which amends Code section 256B.15, being deemed of  
2 immediate importance, takes effect upon enactment and is  
3 retroactive to July 1, 1993.

4 DIVISION V

5 Psychiatric Medical Institutions for Children

6 Sec. 13. Section 135H.1, subsection 6, Code 1993, is  
7 amended by striking the subsection.

8 Sec. 14. Section 135H.1, subsection 9, Code 1993, is  
9 amended to read as follows:

10 9. "Psychiatric medical institution for children" or  
11 "psychiatric institution" means ~~a nonsecure~~ an institution  
12 providing more than twenty-four hours of continuous care  
13 involving long-term psychiatric services to three or more  
14 children in residence for expected periods of fourteen or more  
15 days for diagnosis and evaluation or for expected periods of  
16 ninety days or more for treatment.

17 DIVISION VI

18 Sec. 15. Section 249A.3, subsection 1, paragraph g, Code  
19 Supplement 1993, is amended to read as follows:

20 g. (1) Is a child who is ~~less than eight~~ one through five  
21 years of age as prescribed by the federal Omnibus Budget  
22 Reconciliation Act of ~~1987~~ 1989, Pub. L. No. ~~100-203-§-4101~~  
23 101-239, § 6401, whose income is not more than one hundred  
24 thirty-three percent of the federal poverty level as defined  
25 by the most recently revised poverty income guidelines  
26 published by the United States department of health and human  
27 services.

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

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## EXPLANATION

This bill provides for changes related to medical assistance. The bill provides for regulation of certain special needs and income trusts established by recipients of or applicants for medical assistance with their own assets as allowed under federal law.

The bill also increases the look-back period for transfers of assets, considered when establishing eligibility for medical assistance, from 30 to 36 months, and increases the penalty period for ineligibility for payment of services. The bill provides for recovery of medical assistance benefits from the estate of the recipient and provides for prioritization of these claims against the estate. The bill also allows the department of human services to receive moneys to pay for contractual fees related to special education services, retroactive to July 1, 1993. The bill updates the eligibility requirements for recipients of medical assistance as required by federal law and redefines psychiatric medical institutions for children to include both nonsecure and secure facilities under medical assistance.

HOUSE FILE 2372  
FISCAL NOTE

REQ. BY SENATOR RENSINK

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A fiscal note for Amendment S-5323 to HF 2372 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Amendment S-5323 to HF 2372 establishes a maximum reimbursement rate for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) at the 80th percentile of total per diem reimbursement rates of all participating facilities. For FY 1995, facilities with costs above the 80th percentile would have reimbursement rates adjusted upward to cover 50 percent of the difference between the actual costs and the 80th percentile rate. Beginning in FY 1996, the maximum reimbursement rate would be the 80th percentile.

Fiscal Estimate:

Amendment S-5323 would have no State General Fund impact because the counties pay the entire nonfederal share of ICF/MR expenditures. The amendment would have an impact on the counties of \$316,000 due to the FY 1995 allowance that ICF/MR facilities would be reimbursed for 50.0% of their costs above the 80th percentile. The implementation of the 80th percentile cap was projected to save the counties approximately \$632,000 in FY 1995. Allowing 50.0% reimbursement for costs above the 80th percentile would reduce the savings by half, or \$316,000. There would be no FY 1996 impact upon the counties because the amendment would return to the 80th percentile ranking method of reimbursement.

Source: Department of Human Services

(LSB 3302hv.2, LCS)

FILED MARCH 31, 1994

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2372  
FISCAL NOTE

A fiscal note for House File 2372 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2372 provides for changes related to the Medical Assistance (MA) Program. The bill provides for regulation of certain special needs and income trusts established by or for recipients of MA. The bill increases the look-back period for transfers of assets, considered when establishing eligibility for MA, from 30 to 36 months and increases the penalty period for ineligibility for payment of services. The bill provides for recovery of MA benefits from the estate of the recipient and provides for prioritization of these claims against the estate. The bill also allows for the Department of Human Services (DHS) to receive moneys to pay for contractual fees related to special education services.

Assumptions:

1. Medicaid trusts will increase the number of recipients by 0.9% based on the experience of Colorado.
2. Iowa has approximately 30,000 nursing facility beds for a total of 270 additional persons (0.9% x 30,000 beds).
3. The average nursing facility MA Program rate is \$1,680 per month.
4. The average MA Program cost per person will be \$409 for nursing facility care after client participation is paid by the recipient, and \$135 per month for other MA Program services for a total cost of \$544 per month. This cost will increase by 7.0% in FY 1996 to \$582 per month.
5. The cost of 1 Iowa Foundation for Medical Care (IFMC) review in FY 1995 is projected to be \$24.91. It is assumed that due to turnover, there will be 2 reviews per year for the total number of eligibles.
6. According to the DHS, the bill would require an additional half time attorney to handle trusts, related policy issues, and litigation and an additional field staff FTE position. In FY 1996, an additional field staff FTE position would be required (for a total of 2 field staff FTE positions).

Fiscal Effect:

The fiscal effect of HF 2372 is a net General Fund cost of \$700,974 in FY 1995 and \$1,409,015 in FY 1996.

Total State/Federal additional FY 1995 costs of \$1,846,680 are broken down as follows:

1. Salaries - \$51,940
2. Support - \$32,180
3. Program costs - \$1,762,560 (\$544 per month cost x 270 persons x 12 months)

PAGE 2 , FISCAL NOTE, HOUSE FILE 2372

-2-

Total State/Federal additional FY 1996 costs of \$3,384,569 are broken down as follows:

1. Salaries - \$79,949
2. Support - \$32,742
3. Program costs - \$3,771,878 (\$582 per month cost x 540 persons x 12 months)

Total additional FY 1995 revenues of \$1,145,706, and \$2,475,554 for FY 1996 would be recovered from the federal government due to the MA match rate on MA Program expenditures.

Source: Department of Human Services

(LSB 3302hv, LCS)

FILED MARCH 11, 1994

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2372  
BY COMMITTEE ON HUMAN  
RESOURCES

(SUCCESSOR TO HSB 677)

(As Amended and Passed by the House March 21, 1994)

Passed House, Date <sup>(P. 1378)</sup> 4-11-94 Passed Senate, Date <sup>(P. 1066)</sup> 4-6-94  
Vote: Ayes 99 Nays 0 Vote: Ayes 49 Nays 0  
Approved April 26, 1994

A BILL FOR

1 An Act relating to medical assistance including medical  
2 assistance trusts, transfers of assets related to medical  
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4 medical assistance fundings, and psychiatric medical  
5 institution for children services funded under medical  
6 assistance and providing an effective date and for retroactive  
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8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

Deleted Language\*

1 DIVISION I

2 Medical Assistance - Trusts

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5 NEW SUBSECTION. 12. In determining the eligibility of an  
6 individual for medical assistance, the department shall  
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12 Budget Reconciliation Act of 1986, Pub. L. No. 99-509, section  
13 9435(c).

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15 individual for medical assistance, the department shall  
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17 instruments or devices established after August 10, 1993, as  
18 available to the individual, in accordance with 42 U.S.C.  
19 section 1396p(d) and sections 633.708 and 633.709.

20 Sec. 2. NEW SECTION. 633.707 DEFINITIONS.

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

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

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

34 3. "Institutionalized individual" means an individual  
35 receiving nursing facility services, a level of care in any



1 institution equivalent to nursing facility services, or home  
2 and community-based services under the medical assistance home  
3 and community-based waiver program.

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

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7 similar legal instrument or device that meets the criteria of  
8 42 U.S.C. section 1396p(d)(4)(B)(i)-(ii).

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13 beneficiary's disability" means only those needs that would  
14 not exist but for the beneficiary's disability, not including  
15 ordinary needs, such as ordinary support and maintenance,  
16 education, and entertainment, that would exist regardless of  
17 disability.

18 8. "Average statewide cost of nursing facility services to  
19 a private pay resident" means the average cost calculated and  
20 published by the Iowa department of human services.

21 9. "Total monthly income" means in reference to a medical  
22 assistance income trust beneficiary, income received directly  
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24 in determining eligibility for medical assistance, income of  
25 the beneficiary received by the trust that would otherwise  
26 count as income in determining the beneficiary's eligibility  
27 for medical assistance, and income or earnings of the trust  
28 received by the trust.

29 Sec. 3. NEW SECTION. 633.708 DISPOSITION OF MEDICAL  
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31 Regardless of the terms of a medical assistance special  
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33 expended, during the life of the beneficiary, only for  
34 reasonable and necessary expenses of the trust, not to exceed  
35 ten dollars per month without court approval, for special

1 needs of the beneficiary attributable to the beneficiary's  
2 disability and approved by the district court, for medical  
3 care or services that would otherwise be covered by medical  
4 assistance under chapter 249A, or to reimburse the state for  
5 medical assistance paid on behalf of the beneficiary.

6 Sec. 4. NEW SECTION. 633.709 DISPOSITION OF MEDICAL  
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8 1. Regardless of the terms of a medical assistance income  
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10 the average statewide cost of nursing facility services to a  
\*11 private pay resident of a nursing facility, then, during the  
12 life of the beneficiary, any property received or held by the  
13 trust shall be expended only as follows, as applicable, and in  
14 the following order of priority:

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

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

25 c. If the beneficiary is an institutionalized individual,  
26 any remainder shall be paid directly to the provider of  
27 institutional care, on a monthly basis, for any cost not paid  
28 by the beneficiary from the beneficiary's available income, to  
29 reduce any amount paid as medical assistance under chapter  
30 249A.

31 d. Any remainder may be paid directly to providers of  
32 other medical care or services that would otherwise be covered  
33 by medical assistance, paid to the state as reimbursement for  
34 medical assistance paid on behalf of the beneficiary, or  
35 retained by the trust.

1 2. Regardless of the terms of a medical assistance income  
2 trust, if the beneficiary's total monthly income is at or  
3 above the average statewide cost of nursing facility services  
\*4 to a private pay resident, then, during the life of the  
5 beneficiary, any property received or held by the trust shall  
6 be expended only as follows, as applicable, in the following  
7 order of priority:

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

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

16 Sec. 5. NEW SECTION. 633.710 OTHER POWERS OF TRUSTEES.

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

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

27 Sec. 6. NEW SECTION. 633.711 COOPERATION.

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

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

## 1 DIVISION II

## 2 Transfers of Assets

3 Sec. 7. Section 249A.3, subsection 7, Code Supplement  
4 1993, is amended to read as follows:

5 7. In determining the eligibility of an individual for  
6 medical assistance under this chapter, the department shall  
7 consider resources transferred to the individual's spouse on  
8 or after October 1, 1989, or to a person other than the  
9 individual's spouse on or after July 1, 1992 1989 and prior to  
10 August 11, 1993, which-are-nonexempt-resources-or-interests-in  
11 resources,-owned-by-the-transferor-within-the-preceding-sixty  
12 months-which-the-transferor-gave-away-or-sold-at-less-than  
13 fair-market-value-for-the-purpose-of-establishing-eligibility  
14 for-medical-assistance-under-this-chapter,-to-the-extent  
15 consistent-with-the-federal-Social-Security-Act,-section  
16 1917(c),-as-codified-in-42-U.S.C.-§-1396p(c),-as-amended as  
17 provided by the federal Medicare Catastrophic Coverage Act of  
18 1988, Pub. L. No. 100-360, section 303(b), as amended by the  
19 federal Family Support Act of 1988, Pub. L. No. 100-485,  
20 section 608(d)(16)(B), (D), and the federal Omnibus Budget  
21 Reconciliation Act of 1989, Pub. L. No. 101-239, section  
22 6411(e)(1).

23 Sec. 8. Section 249A.3, Code Supplement 1993, is amended  
24 by adding the following new subsection:

25 NEW SUBSECTION. 11. a. In determining the eligibility of  
26 an individual for medical assistance, the department shall  
27 consider transfers of assets made on or after August 11, 1993,  
28 as provided by the federal Social Security Act, section  
29 1917(c), as codified in 42 U.S.C. section 1396p(c).

30 b. The department shall exercise the option provided in 42  
31 U.S.C. section 1396p(c) to provide a period of ineligibility  
32 for medical assistance due to a transfer of assets by a  
33 noninstitutionalized individual or the spouse of a  
34 noninstitutionalized individual. For noninstitutionalized  
35 individuals, the number of months of ineligibility shall be

1 equal to the total, cumulative uncompensated value of all  
 2 assets transferred by the individual or the individual's  
 3 spouse on or after the look-back date specified in 42 U.S.C.  
 4 section 1396p(c)(1)(B)(i), divided by the average monthly cost  
 5 to a private patient for nursing facility services in Iowa at  
 6 the time of application. The services for which  
 7 noninstitutionalized individuals shall be made ineligible  
 8 shall include any long-term care services for which medical  
 9 assistance is otherwise available. Notwithstanding section  
 10 17A.4, the department may adopt rules providing a period of  
 11 ineligibility for medical assistance due to a transfer of  
 12 assets by a noninstitutionalized individual or the spouse of a  
 13 noninstitutionalized individual without notice of opportunity  
 14 for public comment, to be effective immediately upon filing  
 15 under section 17A.5, subsection 2, paragraph "b", subparagraph  
 16 (1).

17 DIVISION III

18 Estate Recovery

19 Sec. 9. Section 249A.5, Code 1993, is amended to read as  
 20 follows:

21 249A.5 RECOVERY OF PAYMENT.

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

30 2. The provision of medical assistance to an individual  
 31 who is fifty-five years of age or older, or who is a resident  
 32 of a nursing facility, intermediate care facility for the  
 33 mentally retarded, or mental health institute, who cannot  
 34 reasonably be expected to be discharged and return to the  
 35 individual's home, creates a debt due the department from the

1 individual's estate for all medical assistance provided on the  
2 individual's behalf, upon the individual's death.

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

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

11 (2) Otherwise work an undue hardship as determined on the  
12 basis of criteria established pursuant to 42 U.S.C. section  
13 1396p(b)(3).

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

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

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

35 e. Interest shall accrue on a debt due under this

1 subsection, at the rate provided pursuant to section 535.3,  
 2 beginning six months after the death of a medical assistance  
 3 recipient, surviving spouse, or surviving child.

4 Sec. 10. Section 633.425, Code 1993, is amended by adding  
 5 the following new subsection:

6 NEW SUBSECTION. 6A. Any debt for medical assistance paid  
 7 pursuant to section 249A.5, subsection 2.

8 DIVISION IV

9 Area Education Agencies - Educational Services

10 Sec. 11. Section 256B.15, subsection 7, Code 1993, is  
 11 amended to read as follows:

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

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

34 Sec. 12. EFFECTIVE DATE. The section of this division of  
 35 this Act which amends Code section 256B.15, being deemed of

1 immediate importance, takes effect upon enactment and is  
2 retroactive to July 1, 1993.

3 DIVISION V

4 Psychiatric Medical Institutions for Children

5 Sec. 13. Section 135H.1, subsection 6, Code 1993, is  
6 amended by striking the subsection.

7 Sec. 14. Section 135H.1, subsection 9, Code 1993, is  
8 amended to read as follows:

9 9. "Psychiatric medical institution for children" or  
10 "psychiatric institution" means ~~a nonsecure~~ an institution  
11 providing more than twenty-four hours of continuous care  
12 involving long-term psychiatric services to three or more  
13 children in residence for expected periods of fourteen or more  
14 days for diagnosis and evaluation or for expected periods of  
15 ninety days or more for treatment.

16 DIVISION VI

17 Sec. 15. Section 249A.3, subsection 1, paragraph g, Code  
18 Supplement 1993, is amended to read as follows:

19 g. (1) Is a child who is less-than-eight one through five  
20 years of age as prescribed by the federal Omnibus Budget  
21 Reconciliation Act of 1987 1989, Pub. L. No. 100-203-§-4101  
22 101-239, § 6401, whose income is not more than one hundred  
23 thirty-three percent of the federal poverty level as defined  
24 by the most recently revised poverty income guidelines  
25 published by the United States department of health and human  
26 services.

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

35



## HOUSE FILE 2372

S-5298

1 Amend House File 2372, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, by inserting after line 3, the  
4 following:

5 "\_\_\_\_\_. "Maximum monthly medical assistance payment  
6 rate for services in an intermediate care facility for  
7 the mentally retarded" means the allowable rate  
8 established by the department of human services not to  
9 exceed the eightieth percentile of participating  
10 facilities and as published in the Iowa administrative  
11 bulletin."

12 2. Page 2, by striking lines 18 through 20, and  
13 inserting the following:

14 "\_\_\_\_\_. "Statewide average charge for state mental  
15 health institute care" means the statewide average  
16 charge for such care as calculated by the department  
17 of human services and as published in the Iowa  
18 administrative bulletin.

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

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

33 "\_\_\_\_\_. "Statewide average charge for nursing  
34 facility services" means the statewide average charge  
35 for such care, excluding charges by medicare-  
36 certified, skilled nursing facilities, as calculated  
37 by the department of human services and as published  
38 in the Iowa administrative bulletin.

39 "\_\_\_\_\_. "Statewide average charge to private-pay  
40 patients for psychiatric medical institutions for  
41 children care" means the statewide average charge for  
42 such care as calculated by the department of human  
43 services and as published in the administrative  
44 bulletin."

45 3. Page 3, line 10, by striking the words "cost  
46 of" and inserting the following: "charge for".

47 4. Page 3, line 18, by striking the word  
48 "remainder" and inserting the following: "remaining  
49 principal or income of the trust".

50 5. Page 3, line 26, by striking the words "any

S-5298

S-5298

Page 2

1 remainder" and inserting the following: "the  
2 remaining principal or income of the trust".

3 6. Page 3, by striking line 31, and inserting the  
4 following:

5 "d. Any remaining principal or income of the trust  
6 may, at the trustee's discretion or as directed by the  
7 terms of the trust, be paid directly to providers of".

8 7. Page 4, line 3, by striking the words "cost  
9 of" and inserting the following: "charge for".

10 8. Page 4, by inserting after line 15 the  
11 following:

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

17 a. For a beneficiary who meets the medical  
18 assistance level of care requirements for services in  
19 an intermediate care facility for the mentally  
20 retarded and who resides in an intermediate care  
21 facility for the mentally retarded or who is eligible  
22 for medical assistance home and community-based waiver  
23 services except that the beneficiary's income exceeds  
24 the allowable maximum, the applicable rate is the  
25 maximum monthly medical assistance payment rate for  
26 services in an intermediate care facility for the  
27 mentally retarded.

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

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

48 d. For a beneficiary who meets the medical  
49 assistance level of care requirements for services in  
50 a psychiatric medical institution for children and who

S-5298

-2-

S-5298

Page 3

1 resides in a psychiatric medical institution for  
2 children, the applicable rate is the statewide average  
3 charge to private-pay patients for psychiatric medical  
4 institution for children care.  
5 e. For a beneficiary who meets the medical  
6 assistance level of care requirements for services in  
7 a state mental health institute and who resides in a  
8 state mental health institute or who is eligible for  
9 medical assistance home and community-based waiver  
10 services except that the beneficiary's income exceeds  
11 the allowable maximum, the applicable rate is the  
12 statewide average charge for state mental health  
13 institute care."  
14 9. By renumbering as necessary.

By ELAINE SZYMONIAK

S-5298 FILED MARCH 24, 1994

*Adopted 4-6-94**(P. 1066)*

## HOUSE FILE 2372

S-5323

1 Amend House File 2372 as amended, passed, and  
2 reprinted by the House as follows:

3 1. Page 9, by inserting after line 34 the  
4 following:

## "DIVISION VII

6 Sec. \_\_\_\_ . NEW SECTION. 135C.49 REIMBURSEMENT  
7 RATES -- INTERMEDIATE CARE FACILITIES FOR THE MENTALLY  
8 RETARDED.

9 Intermediate care facilities for the mentally  
10 retarded which are reimbursed by the department of  
11 human services shall be reimbursed at a maximum  
12 medical assistance reimbursement rate which is the  
13 eightieth percentile of the total per diem  
14 reimbursement of all participating facilities with  
15 established base rates as adjusted on July 1,  
16 annually, based upon cost reports submitted and on  
17 file with the department of human services on December  
18 31 of the previous year. However, for the year  
19 beginning July 1, 1994, for facilities with costs  
20 above the eightieth percentile, the reimbursement rate  
21 shall be adjusted upward to cover fifty percent of the  
22 difference between the eightieth percentile maximum  
23 rate and the actual costs incurred by the facility.  
24 Beginning July 1, 1995, the maximum reimbursement rate  
25 for all participating facilities is the eightieth  
26 percentile as computed under this section.

27 Sec. \_\_\_\_ . STUDY -- PERSONS WITH MENTAL RETARDATION  
28 AND DEVELOPMENTAL DISABILITIES. The department of  
29 human services shall conduct a study of the needs of  
30 persons with mental retardation and developmental  
31 disabilities who require an intermediate level of  
32 care. The study shall include but is not limited to  
33 an analysis of the effect of a maximum medical  
34 assistance reimbursement rate which is the eightieth  
35 percentile as calculated pursuant to section 135C.49  
36 and recommendations concerning the intermediate care  
37 facility program for these populations and services  
38 provided through the home and community-based services  
39 waiver. Participants in the study shall include but  
40 are not limited to representatives from the department  
41 of human services, the department of inspections and  
42 appeals, the association for retarded citizens of  
43 Iowa, the governor's planning council for  
44 developmental disabilities, and the Iowa association  
45 of rehabilitation and residential facilities."

46 2. Title page, line 4, by inserting after the  
47 word "fundings," the following: ", reimbursement  
48 rates for intermediate care facilities for the  
49 mentally retarded,".

50 3. By renumbering as necessary:

By JOHN P. KIBBIE  
WILMER RENSINK

WITHDRAWN  
4-6-94

## HOUSE FILE 2372

S-5329

1 Amend House File 2372, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 7, by striking line 8 and inserting the  
4 following: "estate by a surviving spouse, or by a  
5 surviving child who was".

By MERLIN E. BARTZ

S-5329 FILED MARCH 29, 1994

*Adopted 4-6-94 (P. 1066)*

## HOUSE FILE 2372

S-5368

1 Amend the amendment, S-5298, to House File 2372, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, by inserting after line 2 the  
5 following:  
6 "\_\_\_\_. Page 1, by inserting after line 19 the  
7 following:  
8 "Sec. \_\_\_\_ Section 249A.12, Code 1993, is amended  
9 by adding the following new subsection:  
10 NEW SUBSECTION. 3. If a county reimburses the  
11 department for medical assistance provided under this  
12 section and the amount of medical assistance is  
13 subsequently repaid through a medical assistance  
14 income trust or a medical assistance special needs  
15 trust as defined in section 633.707, the department  
16 shall reimburse the county on a proportionate basis."  
17 2. Page 1, by striking lines 8 through 10 and  
18 inserting the following: "established by the  
19 department of human services and as published in the  
20 Iowa administrative".  
21 3. By renumbering as necessary.

By AL STURGEON

S-5368 FILED MARCH 30, 1994

*out of order 4-6-94*

IOWA SENATE

## HOUSE FILE 2372

S-5323

1 Amend House File 2372 as amended, passed, and  
2 reprinted by the House as follows:

3 1. Page 9, by inserting after line 34 the  
4 following:

## "DIVISION VII

6 Sec. . . . NEW SECTION. 135C.49 REIMBURSEMENT  
7 RATES -- INTERMEDIATE CARE FACILITIES FOR THE MENTALLY  
8 RETARDED.

9 Intermediate care facilities for the mentally  
10 retarded which are reimbursed by the department of  
11 human services shall be reimbursed at a maximum  
12 medical assistance reimbursement rate which is the  
13 eightieth percentile of the total per diem  
14 reimbursement of all participating facilities with  
15 established base rates as adjusted on July 1,  
16 annually, based upon cost reports submitted and on  
17 file with the department of human services on December  
18 31 of the previous year. However, for the year  
19 beginning July 1, 1994, for facilities with costs  
20 above the eightieth percentile, the reimbursement rate  
21 shall be adjusted upward to cover fifty percent of the  
22 difference between the eightieth percentile maximum  
23 rate and the actual costs incurred by the facility.  
24 Beginning July 1, 1995, the maximum reimbursement rate  
25 for all participating facilities is the eightieth  
26 percentile as computed under this section.

27 Sec. . . . STUDY -- PERSONS WITH MENTAL RETARDATION  
28 AND DEVELOPMENTAL DISABILITIES. The department of  
29 human services shall conduct a study of the needs of  
30 persons with mental retardation and developmental  
31 disabilities who require an intermediate level of  
32 care. The study shall include but is not limited to  
33 an analysis of the effect of a maximum medical  
34 assistance reimbursement rate which is the eightieth  
35 percentile as calculated pursuant to section 135C.49  
36 and recommendations concerning the intermediate care  
37 facility program for these populations and services  
38 provided through the home and community-based services  
39 waiver. Participants in the study shall include but  
40 are not limited to representatives from the department  
41 of human services, the department of inspections and  
42 appeals, the association for retarded citizens of  
43 Iowa, the governor's planning council for  
44 developmental disabilities, and the Iowa association  
45 of rehabilitation and residential facilities."

46 2. Title page, line 4, by inserting after the  
47 word "fundings," the following: ", reimbursement  
48 rates for intermediate care facilities for the  
49 mentally retarded,".

50 3. By renumbering as necessary:

By JOHN P. KIBBIE  
WILMER RENSINK

WITHDRAWN  
4-6-94

HOUSE FILE 2372

S-5392

- 1 Amend the amendment, S-5298, to House File 2372, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, by inserting after line 2 the  
5 following:  
6 "\_\_\_\_. Page 1, by inserting after line 19 the  
7 following:  
8 "Sec. \_\_\_\_ Section 249A.12, Code 1993, is amended  
9 by adding the following new subsection:  
10 NEW SUBSECTION. 3. If a county reimburses the  
11 department for medical assistance provided under this  
12 section and the amount of medical assistance is  
13 subsequently repaid through a medical assistance  
14 income trust or a medical assistance special needs  
15 trust as defined in section 633.707, the department  
16 shall reimburse the county on a proportionate basis."  
17 2. Page 1, by striking lines 8 through 10 and  
18 inserting the following: "established by the  
19 department of human services and as published in the  
20 Iowa administrative".  
21 3. Page 2, line 20, by inserting after the word  
22 "who" the following: "either".  
23 4. Page 2, line 21, by striking the word "who".  
24 5. Page 2, line 31, by inserting after the word  
25 "who" the following: "either".  
26 6. Page 2, line 32, by striking the word "who".  
27 7. Page 2, line 42, by striking the words "or  
28 who" and inserting the following: "and who either  
29 resides in a nonhospital-based, medicare-certified,  
30 skilled nursing facility or".  
31 8. Page 3, line 7, by inserting after the word  
32 "who" the following: "either".  
33 9. Page 3, line 8, by striking the word "who".  
34 10. By renumbering as necessary.

By AL STURGEON

S-5392 FILED MARCH 31, 1994

*Adapted 4-6-94  
(P.1066)*

## SENATE AMENDMENT TO HOUSE FILE 2372

H-6036

1 Amend House File 2372, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 1, by inserting after line 19 the  
4 following:  
5 "Sec. \_\_\_\_ . Section 249A.12, Code 1993, is amended  
6 by adding the following new subsection:  
7 NEW SUBSECTION. 3. If a county reimburses the  
8 department for medical assistance provided under this  
9 section and the amount of medical assistance is  
10 subsequently repaid through a medical assistance  
11 income trust or a medical assistance special needs  
12 trust as defined in section 633.707, the department  
13 shall reimburse the county on a proportionate basis."  
14 2. Page 2, by inserting after line 3, the  
15 following:  
16 " \_\_\_\_ . "Maximum monthly medical assistance payment  
17 rate for services in an intermediate care facility for  
18 the mentally retarded" means the allowable rate  
19 established by the department of human services and as  
20 published in the Iowa administrative bulletin."  
21 3. Page 2, by striking lines 18 through 20, and  
22 inserting the following:  
23 " \_\_\_\_ . "Statewide average charge for state mental  
24 health institute care" means the statewide average  
25 charge for such care as calculated by the department  
26 of human services and as published in the Iowa  
27 administrative bulletin.  
28 \_\_\_\_ . "Statewide average charge to private-pay  
29 patients for hospital-based, medicare-certified,  
30 skilled nursing facility care" means the statewide  
31 average charge for such care, excluding nonhospital-  
32 based, medicare-certified, skilled nursing facilities,  
33 as calculated by the department of human services and  
34 as published in the Iowa administrative bulletin.  
35 \_\_\_\_ . "Statewide average charge to private-pay  
36 patients for nonhospital-based, medicare-certified,  
37 skilled nursing facility care" means the statewide  
38 average charge for such care, excluding hospital-  
39 based, medicare-certified, skilled nursing facilities,  
40 as calculated by the department of human services and  
41 as published in the Iowa administrative bulletin.  
42 \_\_\_\_ . "Statewide average charge for nursing  
43 facility services" means the statewide average charge  
44 for such care, excluding charges by medicare-  
45 certified, skilled nursing facilities, as calculated  
46 by the department of human services and as published  
47 in the Iowa administrative bulletin.  
48 \_\_\_\_ . "Statewide average charge to private-pay  
49 patients for psychiatric medical institutions for  
50 children care" means the statewide average charge for

H-6036

-1-



H-6036

Page 2

1 such care as calculated by the department of human  
2 services and as published in the administrative  
3 bulletin."

4 4. Page 3, line 10, by striking the words "cost  
5 of" and inserting the following: "charge for".

6 5. Page 3, line 18, by striking the word  
7 "remainder" and inserting the following: "remaining  
8 principal or income of the trust".

9 6. Page 3, line 26, by striking the words "any  
10 remainder" and inserting the following: "the  
11 remaining principal or income of the trust".

12 7. Page 3, by striking line 31, and inserting the  
13 following:

14 "d. Any remaining principal or income of the trust  
15 may, at the trustee's discretion or as directed by the  
16 terms of the trust, be paid directly to providers of".

17 8. Page 4, line 3, by striking the words "cost  
18 of" and inserting the following: "charge for".

19 9. Page 4, by inserting after line 15 the  
20 following:

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

26 a. For a beneficiary who meets the medical  
27 assistance level of care requirements for services in  
28 an intermediate care facility for the mentally  
29 retarded and who either resides in an intermediate  
30 care facility for the mentally retarded or is eligible  
31 for medical assistance home and community-based waiver  
32 services except that the beneficiary's income exceeds  
33 the allowable maximum, the applicable rate is the  
34 maximum monthly medical assistance payment rate for  
35 services in an intermediate care facility for the  
36 mentally retarded.

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

48 c. For a beneficiary who meets the medical  
49 assistance level of care requirements for nonhospital-  
50 based, medicare-certified, skilled nursing facility

H-6036

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H-6036

Page 3

1 care and who either resides in a nonhospital-based,  
2 medicare-certified, skilled nursing facility or is  
3 eligible for medical assistance home and community-  
4 based waiver services except that the beneficiary's  
5 income exceeds the allowable maximum, the applicable  
6 rate is the statewide average charge to private-pay  
7 patients for nonhospital-based, medicare-certified,  
8 skilled nursing facility care.

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

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

25 10. Page 7, by striking line 8 and inserting the  
26 following: "estate by a surviving spouse, or by a  
27 surviving child who was".

28 11. By renumbering, relettering, or redesignating  
29 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6036 FILED APRIL 6, 1994

*House Concurred 4-11-94*  
*(P. 1378)*

Meyer, Ch  
Hester  
Dell

HSB 677

HUMAN RESOURCES

SENATE/HOUSE FILE 2372  
BY (PROPOSED DEPARTMENT OF  
HUMAN SERVICES BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to medical assistance including medical  
2 assistance trusts, transfers of assets related to medical  
3 assistance and special education services provided through  
4 medical assistance fundings, and providing an effective date.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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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. 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

1 institution equivalent to nursing facility services, or home  
2 and community-based services under the medical assistance home  
3 and community-based waiver program.

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

6 5. "Medical assistance income trust" means a trust or  
7 similar legal instrument or device that meets the criteria of  
8 42 U.S.C. section 1396p(d)(4)(B)(i)-(ii).

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

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

18 8. "Statewide average cost of nursing facility care" means  
19 the average cost calculated and published by the Iowa  
20 department of human services.

21 9. "Total monthly income" means in reference to a medical  
22 assistance income trust beneficiary, income received directly  
23 by the beneficiary, not from the trust, that counts as income  
24 in determining eligibility for medical assistance, income of  
25 the beneficiary received by the trust that would otherwise  
26 count as income in determining the beneficiary's eligibility  
27 for medical assistance, and income or earnings of the trust  
28 received by the trust.

29 Sec. 3. NEW SECTION. 633.708 DISPOSITION OF MEDICAL  
30 ASSISTANCE SPECIAL NEEDS TRUSTS.

31 Regardless of the terms of a medical assistance special  
32 needs trust, any property received or held by the trust may be  
33 expended, during the life of the beneficiary, only for  
34 reasonable and necessary expenses of the trust, not to exceed  
35 ten dollars per month without court approval, for special

1 needs of the beneficiary attributable to the beneficiary's  
2 disability and approved by the district court, for medical  
3 care or services that would otherwise be covered by medical  
4 assistance under chapter 249A, or to reimburse the state for  
5 medical assistance paid on behalf of the beneficiary.

6 Sec. 4. NEW SECTION. 633.709 DISPOSITION OF MEDICAL  
7 ASSISTANCE INCOME TRUSTS.

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

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

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

26 c. If the beneficiary is an institutionalized individual,  
27 any remainder shall be paid directly to the provider of  
28 institutional care, on a monthly basis, for any cost not paid  
29 by the beneficiary from the beneficiary's available income, to  
30 reduce any amount paid as medical assistance under chapter  
31 249A.

32 d. Any remainder may be paid directly to providers of  
33 other medical care or services that would otherwise be covered  
34 by medical assistance, paid to the state as reimbursement for  
35 medical assistance paid on behalf of the beneficiary, or

1 retained by the trust.

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

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

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

17 Sec. 5. NEW SECTION. 633.710 OTHER POWERS OF TRUSTEES.

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

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

28 Sec. 6. NEW SECTION. 633.711 COOPERATION.

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

33 2. The trustee of a medical assistance special needs trust  
34 or medical assistance income trust shall cooperate with the  
35 department of human services in supplying information

1 regarding a trust established under this division.

2

DIVISION II

3

Transfers of Assets

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Sec. 7. Section 249A.3, subsection 7, Code Supplement  
5 1993, is amended to read as follows:

6

7. In determining the eligibility of an individual for  
7 medical assistance under this chapter, the department shall  
8 consider resources transferred to the individual's spouse on  
9 or after October 1, 1989, or to a person other than the  
10 individual's spouse on or after July 1, 1992 1989 and prior to  
11 August 11, 1993, which are nonexempt resources or interests in  
12 resources, owned by the transferor within the preceding sixty  
13 months which the transferor gave away or sold at less than  
14 fair market value for the purpose of establishing eligibility  
15 for medical assistance under this chapter, to the extent  
16 consistent with the federal Social Security Act, section  
17 1917(c), as codified in 42 U.S.C. § 1396p(c), as amended as  
18 provided by the federal Medicare Catastrophic Coverage Act of  
19 1988, Pub. L. No. 100-360, section 303(b), as amended by the  
20 federal Family Support Act of 1988, Pub. L. No. 100-485,  
21 section 608(d)(16)(B), (D), and the federal Omnibus Budget  
22 Reconciliation Act of 1989, Pub. L. No. 101-239, section  
23 6411(e)(1).

24 Sec. 8. Section 249A.3, Code Supplement 1993, is amended  
25 by adding the following new subsection:

26 NEW SUBSECTION. 11. a. In determining the eligibility of  
27 an individual for medical assistance, the department shall  
28 consider transfers of assets made on or after August 11, 1993,  
29 as provided by the federal Social Security Act, section  
30 1917(c), as codified in 42 U.S.C. section 1396p(c).

31 b. The department shall exercise the option provided in 42  
32 U.S.C. section 1396p(c) to provide a period of ineligibility  
33 for medical assistance due to a transfer of assets by a  
34 noninstitutionalized individual or the spouse of a  
35 noninstitutionalized individual. For noninstitutionalized



1 individuals, the number of months of ineligibility shall be  
2 equal to the total, cumulative uncompensated value of all  
3 assets transferred by the individual or the individual's  
4 spouse on or after the look-back date specified in 42 U.S.C.  
5 section 1396p(c)(1)(B)(i), divided by the average monthly cost  
6 to a private patient for nursing facility services in Iowa at  
7 the time of application. The services for which  
8 noninstitutionalized individuals shall be made ineligible  
9 shall include any long-term care services for which medical  
10 assistance is otherwise available. Notwithstanding section  
11 17A.4, the department may adopt rules providing a period of  
12 ineligibility for medical assistance due to a transfer of  
13 assets by a noninstitutionalized individual or the spouse of a  
14 noninstitutionalized individual without notice of opportunity  
15 for public comment, to be effective immediately upon filing  
16 under section 17A.5, subsection 2, paragraph "b", subparagraph  
17 (1).

## 18 DIVISION III

## 19 Estate Recovery

20 Sec. 9. Section 249A.5, Code 1993, is amended to read as  
21 follows:

## 22 249A.5 RECOVERY OF PAYMENT.

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

31 2. The provision of medical assistance to an individual  
32 who is fifty-five years of age or older, or who is a resident  
33 of a nursing facility, intermediate care facility for the  
34 mentally retarded, or mental health institute, who cannot  
35 reasonably be expected to be discharged and return to the

1 individual's home, creates a debt due the department from the  
2 individual's estate for all medical assistance provided on the  
3 individual's behalf, upon the individual's death.

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

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

12 (2) Otherwise work an undue hardship as determined on the  
13 basis of criteria established pursuant to 42 U.S.C. section  
14 1396p(b)(3).

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

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

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

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

5 Sec. 10. Section 633.425, Code 1993, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 6A. Any debt for medical assistance paid  
8 pursuant to section 249A.5, subsection 2.

9 DIVISION IV

10 Area Education Agencies - Educational Services

11 Sec. 11. Section 256B.15, subsection 7, Code 1993, is  
12 amended to read as follows:

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

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

35 Sec. 12. EFFECTIVE DATE. The section of this division of

1 this Act which amends Code section 256B.15, being deemed of  
2 immediate importance, takes effect upon enactment.

3

EXPLANATION

4 This bill provides for changes related to medical  
5 assistance. The bill provides for regulation of certain  
6 special needs and income trusts established by recipients of  
7 or applicants for medical assistance with their own assets as  
8 allowed under federal law.

9 The bill also increases the look-back period for transfers  
10 of assets, considered when establishing eligibility for  
11 medical assistance, from 30 to 36 months, and increases the  
12 penalty period for ineligibility for payment of services. The  
13 bill provides for recovery of medical assistance benefits from  
14 the estate of the recipient and provides for prioritization of  
15 these claims against the estate. The bill also allows the  
16 department of human services to receive moneys to pay for  
17 contractual fees related to special education services.

18

BACKGROUND STATEMENT

19

SUBMITTED BY THE AGENCY

20

DIVISION I

21

Medical Assistance - Trusts

22 The bill provides for regulation under the probate code for  
23 certain trusts allowed by recent federal legislation which  
24 enables applicants and recipients to remain eligible for  
25 medical assistance.

26 The Omnibus Budget Reconciliation Act of 1993 (OBRA),  
27 section 13611, enacted on August 10, 1993, changes the rules  
28 on trusts established by medical assistance applicants or  
29 recipients with their own assets. In general, the federal  
30 legislation tightens the rules, providing that assets  
31 transferred to a trust either continue to be included in  
32 determining medical assistance eligibility or are treated as  
33 having been divested, resulting in a period of ineligibility  
34 for medical assistance. However, there are exceptions for  
35 trusts created for disabled individuals and trusts composed

1 only of an individual's income. These trusts are included in  
2 determining medical assistance eligibility only to the extent  
3 that they are actually made available to the beneficiary by  
4 the terms of the trust or by the trustee. The department  
5 believes that the intent of these exceptions is to provide for  
6 the special needs of disabled individuals and to provide  
7 medical assistance eligibility for individuals in nursing  
8 facilities who have income above medical assistance  
9 eligibility limits (currently \$1,302, which is equal to 300  
10 percent of the federal SSI benefit rate) but below the cost of  
11 nursing facility care.

12 State legislation is needed to limit these "special needs"  
13 trusts and "income" trusts to their intended purposes.  
14 Without state legislation, "income" trusts could be  
15 established to shelter income of individuals who are already  
16 eligible for medical assistance but who are required to spend  
17 some of their own income for their care, or for individuals  
18 who are ineligible but have income sufficient to pay all their  
19 own medical expenses (including nursing facility costs).  
20 Additionally, without state legislation, "income" trusts or  
21 "special needs" trusts could be used for any purpose, e.g.,  
22 educational trust or luxury trusts. Limiting these trusts to  
23 their intended purposes will limit the cost to the medical  
24 assistance program.

25 If enacted to limit "income" trusts to their intended  
26 purpose, the fiscal impact of the income trust provision is  
27 approximately \$1,523,896. The additional fiscal impact of not  
28 adopting state legislation to prevent the trusts from being  
29 used for other purposes is dependent on how widely the trusts  
30 would be utilized.

31 DIVISION II

32 Transfers of Assets

33 This bill amends chapter 249A regarding transfers of assets  
34 in establishing eligibility for medical assistance, by  
35 increasing the lock-back period from 30 to 36 months and by

1 removing the 30-month limit on the penalty period for  
2 divestments made after August 10, 1993.

3 Chapter 249A already provides penalties for transfers of  
4 assets related to establishment of medical assistance  
5 eligibility. The existing provisions are based on existing  
6 federal law. However, OBRA 1993, section 13611, adopted in  
7 August 1993 strengthened the federal transfer of assets  
8 provisions and increased the penalties in a number of ways:  
9 it lengthened the "look-back" period during which transfers  
10 are subject to penalty, eliminated the 30-month limit on the  
11 period of ineligibility, provided that the penalty periods for  
12 multiple transfers may not overlap, and included transfers of  
13 income as well as resources in the penalty provisions. OBRA  
14 1993 also gives the state some options regarding the medical  
15 assistance services affected by the penalty and the period of  
16 ineligibility for optional services. The new provisions apply  
17 to transfers made after August 10, 1993, the date of enactment  
18 of the federal budget legislation.

19 The department must follow the mandatory provisions of OBRA  
20 1993, section 13611, even prior to enactment of any changes in  
21 the law. Iowa law must be updated to be consistent with  
22 federal law and to reflect the state options chosen from the  
23 federal law. The current provisions must be retained as  
24 applicable to transfers prior to August 10, 1993.

25 Implementation of the new look-back and penalty periods is  
26 expected to be budget-neutral in FY 95 and FY 96. Cost  
27 savings under the federal legislation will be realized 31  
28 months after enactment of OBRA 1993.

29 DIVISION III  
30 Estate Recovery

31 OBRA 1993, section 13612, enacted on August 10, 1993,  
32 requires states to recover correctly paid medical assistance  
33 benefits from the estates of individuals who were either 55  
34 years of age or older or who were institutionalized on a  
35 permanent basis when they received medical assistance. States

1 have some choices regarding the services for which payment is  
2 recovered and the inclusion of jointly held property in the  
3 estate for this purpose.

4 State legislation is needed to comply with the federal  
5 mandate and to exercise the options given to the state.

6 The department estimates cost savings from estate recovery.  
7 The amount depends on the priority given to the department's  
8 claim in probate proceedings and whether the department  
9 establishes a claim against the recipient's estate just for  
10 those services mandated in OBRA 1993 or for all medical  
11 assistance paid through medical assistance services.

12

DIVISION IV

13 Area Education Agencies Services - Educational Services

14 The area education agencies (AEAs) are enrolled as  
15 providers in the medical assistance program. The medical  
16 assistance payment consists of the federal and nonfederal  
17 share. The AEAs reimburse the nonfederal share to the medical  
18 assistance appropriation.

19 Current law allows AEAs to retain up to 25 percent of the  
20 federal share for administrative expenses, with the remaining  
21 amount refunded to the state treasurer to be deposited in the  
22 state general fund. The amount retained by the AEAs would not  
23 be changed by this proposal.

24 The proposed change allows the state treasurer to credit  
25 the department of human services in order to pay contractual  
26 fees owed to Deloitte Touche. The remaining federal dollars  
27 not credited to the department of human services would still  
28 be deposited in the state general fund.

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HOUSE FILE 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. 533.710 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(c), as codified in 42 U.S.C. § 1396p(c), 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, or

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 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 135K.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 nonsecure~~ 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.J, 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. ~~100-203-5-4101~~ 101-219, § 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.

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HAROLD VAN MAANEN  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2372, Seventy-fifth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved *April 26* 1994

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TERRY E. BRANSTAD  
Governor