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SENATE FILE **2303**
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 2168)

Passed Senate, ^(p.610) Date 3/5/96 Passed House, ^(p.1421) Date 4/8/96
Vote: Ayes 49 Nays 0 Vote: Ayes 96 Nays 0
Approved April 16, 1996

A BILL FOR

1 An Act relating to the medical assistance program including
2 provisions relating to personal liability of personal
3 representatives of medical assistance recipients, nursing
4 facility fines, and transfers of assets.

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

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S.F. 2303

1 Section 1. Section 249A.5, subsection 2, paragraph f, Code
2 Supplement 1995, is amended to read as follows:

3 f. (1) If a debt is due under this subsection from the
4 estate of a recipient, the administrator of the nursing
5 facility, intermediate care facility for the mentally
6 retarded, or mental health institute in which the recipient
7 resided at the time of the recipient's death, and the personal
8 representative of the recipient, if applicable, shall report
9 the death to the department within ten days of the death of
10 the recipient. ~~For the purposes of this paragraph, "personal~~
11 ~~representative" means a person who filed a medical assistance~~
12 ~~application on behalf of the recipient or who manages the~~
13 ~~financial affairs of the recipient.~~

14 (2) If a personal representative or executor of an estate
15 makes a distribution either in whole or in part of the
16 property of an estate to the heirs, next of kin, distributees,
17 legatees, or devisees without having executed the obligations
18 pursuant to section 633.425, the personal representative or
19 executor may be held personally liable for the amount of
20 medical assistance paid on behalf of the recipient, to the
21 full value of any property belonging to the estate which may
22 have been in the custody or control of the personal
23 representative or executor.

24 (3) For the purposes of this paragraph, "executor" means
25 executor as defined in section 633.3, and "personal
26 representative" means a person who filed a medical assistance
27 application on behalf of the recipient or who manages the
28 financial affairs of the recipient.

29 Sec. 2. Section 249A.19, Code 1995, is amended to read as
30 follows:

31 249A.19 HEALTH CARE FACILITIES -- PENALTY.

32 The department shall adopt rules pursuant to chapter 17A to
33 assess and collect, with interest, a civil penalty for each
34 day a health care facility which receives medical assistance
35 reimbursements does not comply with the requirements of the

1 federal Social Security Act, § 1919, as codified in 42 U.S.C.
2 § 1396r. A civil penalty shall not exceed the amount
3 authorized under ~~section-135C-36~~ 42 C.F.R. § 488.438 for
4 health care facility violations. Any moneys collected by the
5 department pursuant to this section shall be applied to the
6 protection of the health or property of the residents of the
7 health care facilities which are determined by the state or by
8 the federal health care financing administration to be out of
9 compliance. The purposes for which the collected moneys shall
10 be applied may include payment for the costs of relocation of
11 residents to other facilities, maintenance or operation of a
12 health care facility pending correction of deficiencies or
13 closure of the facility, and reimbursing residents for
14 personal funds lost. If a health care facility is assessed a
15 civil penalty under this section, the health care facility
16 shall not be assessed a penalty under section 135C.36 for the
17 same violation.

18 Sec. 3. Section 249F.1, subsection 2, paragraph b, Code
19 1995, is amended to read as follows:

20 b. However, transfer of assets does not include the
21 following:

22 (1) Transfers to or for the sole benefit of the
23 transferor's spouse, including a transfer to a spouse by an
24 institutionalized spouse pursuant to section 1924(f)(1) of the
25 federal Social Security Act.

26 (2) ~~Transfers, other than the transfer of a dwelling,~~ to
27 or for the sole benefit of the transferor's child who is blind
28 or disabled as defined in section 1614 of the federal Social
29 Security Act.

30 (3) Transfer of a dwelling, which serves as the
31 transferor's home as defined in 20 C.F.R. § 416.1212, to a
32 child of the transferor under twenty-one years of age.

33 (4) Transfer of a dwelling, which serves as the
34 transferor's home as defined in 20 C.F.R. § 416.1212, after
35 the transferor is institutionalized, to either of the

1 following:

2 (a) A sibling of the transferor who has an equity interest
3 in the dwelling and who was residing in the dwelling for a
4 period of at least one year immediately prior to the date the
5 transferor became institutionalized.

6 (b) A child of the transferor who was residing in the
7 dwelling for a period of at least two years immediately prior
8 to the date the transferor became institutionalized and who
9 provided care to the transferor which permitted the transferor
10 to reside at the dwelling rather than in an institution or
11 facility.

12 (5) Transfers of less than two thousand dollars. ~~For~~
13 ~~purposes-of-this-chapter,~~ However, all transfers by the same
14 transferor during a calendar year ~~will~~ shall be aggregated.
15 If a transferor transfers property to more than one transferee
16 during a calendar year, the two thousand dollar exemption
17 shall be divided equally between the transferees.

18 (6) ~~Transfers of-property~~ that would, at the time of the
19 transferor's application for medical assistance, have been
20 exempt from consideration as a resource if it had been
21 retained by the transferor, pursuant to 42 U.S.C. § 1382b(a),
22 as implemented by regulations adopted by the secretary of the
23 United States department of health and human services, ~~and~~
24 ~~pursuant-to-section-561.16-and-chapter-627.~~

25 (7) Transfers to a trust established solely for the
26 benefit of the transferor's child who is blind or permanently
27 and totally disabled as defined in the federal Social Security
28 Act, section 1614, as codified in 42 U.S.C. § 1382b.

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

33 (9) Transfer of a homestead, as defined in sections 561.1,
34 561.2, and 561.3.

35 Sec. 4. Section 249F.2, Code 1995, is amended to read as

1 follows:

2 249F.2 CREATION OF DEBT.

3 A transfer of assets creates a debt due and owing to the
4 department of human services from the transferee in an amount
5 equal to medical assistance provided to or on behalf of the
6 transferor, on or after the date of the transfer of assets,
7 but not exceeding the fair market value of the assets which
8 ~~are not exempt under section 249F.1~~ at the time of the
9 transfer.

10

EXPLANATION

11 This bill makes several changes related to medical
12 assistance.

13 The bill requires any personal representative or the
14 executor of an estate of a medical assistance recipient, whose
15 estate is subject to recovery under the medical assistance
16 program, to make distribution of the estate to the department
17 of human services prior to distributions to others who have
18 claims to assets.

19 The bill also conforms references in the Code to current
20 federal citations relating to nursing facility fines which are
21 higher than those required under current state law. The bill
22 conforms the Code to current federal requirements relating to
23 transfers of assets under the medical assistance program
24 including the defining of "homestead" for the purposes of
25 exempting the homestead from transfer of assets limitations
26 and deleting the references to exemptions for other purposes.

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Viback
Hammond
Linsman

SSB-2168
Human Resources

Succeeded By
SENATE/HOUSE FILE SE/HF 2303
BY (PROPOSED DEPARTMENT OF
HUMAN SERVICES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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2 provisions relating to personal liability of personal
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1 Section 1. Section 249A.5, subsection 2, paragraph f, Code
2 Supplement 1995, is amended to read as follows:

3 f. (1) If a debt is due under this subsection from the
4 estate of a recipient, the administrator of the nursing
5 facility, intermediate care facility for the mentally
6 retarded, or mental health institute in which the recipient
7 resided at the time of the recipient's death, and the personal
8 representative of the recipient, if applicable, shall report
9 the death to the department within ten days of the death of
10 the recipient. ~~For the purposes of this paragraph, "personal~~
11 ~~representative" means a person who filed a medical assistance~~
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13 ~~financial affairs of the recipient.~~

14 (2) If a personal representative or executor of an estate
15 makes a distribution either in whole or in part of the
16 property of an estate to the heirs, next of kin, distributees,
17 legatees, or devisees without having executed the obligations
18 pursuant to section 633.425, the personal representative or
19 executor may be held personally liable for the amount of
20 medical assistance paid on behalf of the recipient, to the
21 full value of any property belonging to the estate which may
22 have been in the custody or control of the personal
23 representative or executor.

24 (3) For the purposes of this paragraph, "executor" means
25 executor as defined in section 633.3, and "personal
26 representative" means a person who filed a medical assistance
27 application on behalf of the recipient or who manages the
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34 day a health care facility which receives medical assistance
35 reimbursements does not comply with the requirements of the

1 federal Social Security Act, § 1919, as codified in 42 U.S.C.
2 § 1396r. A civil penalty shall not exceed the amount
3 authorized under ~~section-135C-36~~ 42 C.F.R. § 488.438 for
4 health care facility violations. Any moneys collected by the
5 department pursuant to this section shall be applied to the
6 protection of the health or property of the residents of the
7 health care facilities which are determined by the state or by
8 the federal health care financing administration to be out of
9 compliance. The purposes for which the collected moneys shall
10 be applied may include payment for the costs of relocation of
11 residents to other facilities, maintenance or operation of a
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13 closure of the facility, and reimbursing residents for
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25 federal Social Security Act.

26 (2) ~~Transfers, other than the transfer of a dwelling,~~ to
27 or for the sole benefit of the transferor's child who is blind
28 or disabled as defined in section 1614 of the federal Social
29 Security Act.

30 (3) Transfer of a dwelling, which serves as the
31 transferor's home as defined in 20 C.F.R. § 416.1212, to a
32 child of the transferor under twenty-one years of age.

33 (4) Transfer of a dwelling, which serves as the
34 transferor's home as defined in 20 C.F.R. § 416.1212, after
35 the transferor is institutionalized, to either of the

1 following:

2 (a) A sibling of the transferor who has an equity interest
3 in the dwelling and who was residing in the dwelling for a
4 period of at least one year immediately prior to the date the
5 transferor became institutionalized.

6 (b) A child of the transferor who was residing in the
7 dwelling for a period of at least two years immediately prior
8 to the date the transferor became institutionalized and who
9 provided care to the transferor which permitted the transferor
10 to reside at the dwelling rather than in an institution or
11 facility.

12 (5) Transfers of less than two thousand dollars. For
13 ~~purposes of this chapter,~~ However, all transfers by the same
14 transferor during a calendar year ~~will~~ shall be aggregated.
15 If a transferor transfers property to more than one transferee
16 during a calendar year, the two thousand dollar exemption
17 shall be divided equally between the transferees.

18 (6) ~~Transfers of property~~ that would, at the time of the
19 transferor's application for medical assistance, have been
20 exempt from consideration as a resource if it had been
21 retained by the transferor, pursuant to 42 U.S.C. § 1382b(a),
22 as implemented by regulations adopted by the secretary of the
23 United States department of health and human services, ~~and~~
24 ~~pursuant to section 561.16 and chapter 627.~~

25 (7) Transfers to a trust established solely for the
26 benefit of the transferor's child who is blind or permanently
27 and totally disabled as defined in the federal Social Security
28 Act, section 1614, as codified in 42 U.S.C. § 1382b.

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

33 (9) Transfer of a homestead, as defined in sections 561.1,
34 561.2, and 561.3.

35 Sec. 4. Section 249F.2, Code 1995, is amended to read as

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2 249F.2 CREATION OF DEBT.

3 A transfer of assets creates a debt due and owing to the
4 department of human services from the transferee in an amount
5 equal to medical assistance provided to or on behalf of the
6 transferor, on or after the date of the transfer of assets,
7 but not exceeding the fair market value of the assets which
8 are-not-exempt-under-section-249F.1 at the time of the
9 transfer.

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EXPLANATION

11 This bill makes several changes related to medical
12 assistance.

13 The bill requires any personal representative or the
14 executor of an estate of a medical assistance recipient, whose
15 estate is subject to recovery under the medical assistance
16 program, to make distribution of the estate to the department
17 of human services prior to distributions to others who have
18 claims to assets.

19 The bill also conforms references in the Code to current
20 federal citations relating to nursing facility fines which are
21 higher than those required under current state law. The bill
22 conforms the Code to current federal requirements relating to
23 transfers of assets under the medical assistance program
24 including the defining of "homestead" for the purposes of
25 exempting the homestead from transfer of assets limitations
26 and deleting the references to exemptions for other purposes.

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BACKGROUND STATEMENT

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SUBMITTED BY THE AGENCY

29 PERSONAL LIABILITY OF PERSONAL REPRESENTATIVE.

30 This change requires any personal representative or the
31 executor of a deceased medical assistance recipient's estate,
32 which is subject to recovery under section 249A.5, to make
33 distribution of the estate to the department of human services
34 before making distributions to heirs, next of kin, or any
35 others listed as a lower priority claim in Code section

1 633.425.

2 Attorneys probating an estate are required to inform all
3 possible claimants that an estate is being opened. In some
4 instances a medical assistance recipient may own an interest
5 in real or personal property and an estate will not be
6 probated for the recipient. In some cases the estate is small
7 and the family does not probate the estate but divides the
8 estate before a claim is filed. The department is unable to
9 singularly track the amount in the estate that could be used
10 to repay the department for medical assistance services paid
11 on the recipient's behalf. Estate recovery action may be
12 waived until a future time because recovery would affect the
13 amount of inheritance to a recipient's surviving spouse or
14 minor, blind, or disabled child.

15 Implementing this change could result in an increase of
16 recovery of small estates, estates that consist of only liquid
17 assets, and other situations not subject to probate or where
18 probate is avoided.

19 The change may require additional staff time and postage
20 costs to forward reports to the department's contractor who is
21 handling the estate recovery program.

22 NURSING FACILITY FINES.

23 This language conforms Code language to the fine limit
24 reference for nursing facilities required under federal
25 regulation effective July 1, 1995. The regulations require
26 certain levels of civil penalties to be imposed on facilities
27 with certain types of deficiencies. In order to collect the
28 higher fines a change to the Iowa Code is required.

29 The federal fines may exceed the fines established in
30 chapter 135C which might result in increased fines to nursing
31 facilities.

32 The department of human services and the department of
33 inspections and appeals work jointly to establish the fines
34 imposed on certified facilities. The department of human
35 services is also establishing an account to use the nursing

1 facilities' fines under this section.

2 TRANSFERS OF ASSETS -- MEDICAL ASSISTANCE DEBT (CHAPTER
3 249F).

4 This change conforms transfer of asset requirements to
5 federal regulations and clarifies that transfers of a
6 homestead are exempt from application of Iowa Code chapter
7 249F if the transfer is exempt under federal regulations.

8 Implementing this change should result in reduction of
9 administrative complexity and a clearer understanding of the
10 intent of the Code. Reduced complexity may result in a slight
11 increase in the number of referrals that staff are able to
12 process.

13 No additional staff time is necessary; this change should
14 increase efficiency for those departments implementing the
15 provisions.

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representative of the recipient, if applicable, shall report the death to the department within ten days of the death of the recipient. ~~For the purposes of this paragraph, "personal representative" means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.~~

(2) If a personal representative or executor of an estate makes a distribution either in whole or in part of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having executed the obligations pursuant to section 633.425, the personal representative or executor may be held personally liable for the amount of medical assistance paid on behalf of the recipient, to the full value of any property belonging to the estate which may have been in the custody or control of the personal representative or executor.

(3) For the purposes of this paragraph, "executor" means executor as defined in section 633.3, and "personal representative" means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.

Sec. 2. Section 249A.19, Code 1995, is amended to read as follows:

249A.19 HEALTH CARE FACILITIES -- PENALTY.

The department shall adopt rules pursuant to chapter 17A to assess and collect, with interest, a civil penalty for each day a health care facility which receives medical assistance reimbursements does not comply with the requirements of the federal Social Security Act, § 1919, as codified in 42 U.S.C. § 1396r. A civil penalty shall not exceed the amount authorized under ~~section 135E-36~~ 42 C.F.R. § 488.438 for health care facility violations. Any moneys collected by the department pursuant to this section shall be applied to the protection of the health or property of the residents of the health care facilities which are determined by the state or by

SENATE FILE 2303

AN ACT

RELATING TO THE MEDICAL ASSISTANCE PROGRAM INCLUDING PROVISIONS RELATING TO PERSONAL LIABILITY OF PERSONAL REPRESENTATIVES OF MEDICAL ASSISTANCE RECIPIENTS, NURSING FACILITY FINES, AND TRANSFERS OF ASSETS.

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

Section 1. Section 249A.5, subsection 2, paragraph f, Code Supplement 1995, is amended to read as follows:

f. (1) If a debt is due under this subsection from the estate of a recipient, the administrator of the nursing facility, intermediate care facility for the mentally retarded, or mental health institute in which the recipient resided at the time of the recipient's death, and the personal

the federal health care financing administration to be out of compliance. The purposes for which the collected moneys shall be applied may include payment for the costs of relocation of residents to other facilities, maintenance or operation of a health care facility pending correction of deficiencies or closure of the facility, and reimbursing residents for personal funds lost. If a health care facility is assessed a civil penalty under this section, the health care facility shall not be assessed a penalty under section 135C.36 for the same violation.

Sec. 3. Section 249F.1, subsection 2, paragraph b, Code 1995, is amended to read as follows:

b. However, transfer of assets does not include the following:

(1) Transfers to or for the sole benefit of the transferor's spouse, including a transfer to a spouse by an institutionalized spouse pursuant to section 1924(f)(1) of the federal Social Security Act.

(2) ~~Transfers, other than the transfer of a dwelling,~~ to or for the sole benefit of the transferor's child who is blind or disabled as defined in section 1614 of the federal Social Security Act.

(3) Transfer of a dwelling, which serves as the transferor's home as defined in 20 C.F.R. § 416.1212, to a child of the transferor under twenty-one years of age.

(4) Transfer of a dwelling, which serves as the transferor's home as defined in 20 C.F.R. § 416.1212, after the transferor is institutionalized, to either of the following:

(a) A sibling of the transferor who has an equity interest in the dwelling and who was residing in the dwelling for a period of at least one year immediately prior to the date the transferor became institutionalized.

(b) A child of the transferor who was residing in the dwelling for a period of at least two years immediately prior

to the date the transferor became institutionalized and who provided care to the transferor which permitted the transferor to reside at the dwelling rather than in an institution or facility.

(5) ~~Transfers of less than two thousand dollars. For purposes of this chapter,~~ However, all transfers by the same transferor during a calendar year will shall be aggregated. If a transferor transfers property to more than one transferee during a calendar year, the two thousand dollar exemption shall be divided equally between the transferees.

(6) ~~Transfers of property~~ that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if it had been retained by the transferor, pursuant to 42 U.S.C. § 1382b(a), as implemented by regulations adopted by the secretary of the United States department of health and human services, ~~and pursuant to section 561.16 and chapter 627.~~

(7) Transfers to a trust established solely for the benefit of the transferor's child who is blind or permanently and totally disabled as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

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

(9) Transfer of a homestead, as defined in sections 561.1, 561.2, and 561.3.

Sec. 4. Section 249F.2, Code 1995, is amended to read as follows:

249F.2 CREATION OF DEBT.

A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of the transferor, on or after the date of the transfer of assets, but not exceeding the fair market value of the assets which

~~are-not-exempt-under-section-249F.1~~ at the time of the transfer.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2303, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 16, 1996

TERRY E. BRANSTAD
Governor

SF 2303