

JAN 29 2004
HUMAN RESOURCES

HOUSE FILE 2116
BY HEATON

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

A BILL FOR

1 An Act directing the department of human services to request
2 federal waivers related to transfers of assets provisions
3 under the medical assistance program, and providing an
4 effective date and contingent effective dates.

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

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HF 2116

1 Section 1. Section 249A.3, subsection 11, paragraphs a and
2 b, Code Supplement 2003, are amended by striking the
3 paragraphs.

4 Sec. 2. MEDICAL ASSISTANCE PROGRAM -- TRANSFER OF ASSETS
5 WAIVER.

6 1. The department of human services shall request a waiver
7 from the centers for Medicare and Medicaid services of the
8 United States department of health and human services relative
9 to the transfer of assets for less than fair market value for
10 individuals requesting participation in the medical assistance
11 program for long-term care services. The waiver shall request
12 all of the following:

13 a. A waiver of section 1902(a)(18) of the federal Social
14 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
15 extent that the section requires compliance with section
16 1917(c)(2) of that Act, as codified at 42 U.S.C. §
17 1396p(c)(2), excluding transfers of certain assets from
18 application of penalties. The state shall request a waiver of
19 this section to permit application of prohibitions to the
20 transfer of all assets, including excluded assets.

21 b. A waiver of section 1902(a)(18) of the federal Social
22 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
23 extent that the section requires compliance with section
24 1917(c)(1)(B) of that Act, as codified at 42 U.S.C. §
25 1396p(c)(1)(B), providing that a transfer of nonexcluded
26 assets or the homestead for less than fair market value,
27 within a thirty-six-month look-back period or within a sixty-
28 month look-back period for certain transfers involving trusts
29 prior to an individual's request for medical assistance while
30 receiving long-term care services results in a penalty for
31 medical assistance payment of long-term care services for a
32 calculated period of time. The state shall request a waiver
33 of this section to permit extension of the look-back period to
34 seventy-two months.

35 c. A waiver of section 1902(a)(18) of the federal Social

1 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
2 extent that the section requires compliance with section
3 1917(c)(1)(C) of that Act, as codified at 42 U.S.C. §
4 1396p(c)(1)(C), allowing payment of medical assistance for
5 long-term care services following a prohibited transfer of
6 assets. The state shall request a waiver of this section to
7 permit prohibited transfer penalties to result in complete
8 ineligibility for medical assistance for the calculated
9 period.

10 d. A waiver of section 1902(a)(18) of the federal Social
11 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
12 extent that the section requires compliance with section
13 1917(c)(1)(D) of that Act, as codified at 42 U.S.C. §
14 1396p(c)(1)(D), requiring that the penalty of nonpayment for
15 long-term care services begins generally in the month that
16 assets are transferred. The state shall request a waiver of
17 this section to permit delaying the start of the penalty
18 period until the first day of the first month of eligibility
19 for medical assistance-paid long-term care services.

20 e. A waiver of section 1902(a)(18) of the federal Social
21 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
22 extent that the section requires compliance with section
23 1917(c)(1)(E) of that Act, as codified at 42 U.S.C. §
24 1396p(c)(1)(E), requiring the divisor used to calculate a
25 penalty period to be the statewide average nursing facility
26 payment rate. The state shall request a waiver of this
27 section to permit use of the statewide average nursing
28 facility payment made by medical assistance as the divisor.

29 f. A waiver of section 1902(a)(18) of the federal Social
30 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
31 extent that the section requires compliance with section
32 1917(c)(2)(A) of that Act, as codified at 42 U.S.C. §
33 1396p(c)(2)(A), permitting transfers of homesteads for less
34 than fair market value to specified relatives without regard
35 to whether the relative is in need of housing or resides in

1 the homestead at the time of the transfer. The state shall
2 request a waiver of this section to permit such transfers only
3 to specified relatives who were living in the homestead at the
4 time of the transfer and who provided physician-certified care
5 in the person's own home that prevented the person from
6 entering a long-term care facility for at least two years.

7 g. A waiver of section 1902(a)(18) of the federal Social
8 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
9 extent that the section requires compliance with section
10 1917(c)(2)(B)(i) and (ii) of that Act, as codified at 42
11 U.S.C. § 1396p(c)(2)(B)(i) and (ii), permitting transfers for
12 less than fair market value to or on the sole behalf of
13 spouses of clients without further limitation. The state
14 shall request a waiver of this section to limit such transfers
15 only to an amount allowed under spousal impoverishment asset
16 provisions.

17 h. A waiver of section 1902(a)(18) of the federal Social
18 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
19 extent that the section requires compliance with section
20 1917(c)(2)(B)(iii) and (iv) of that Act, as codified at 42
21 U.S.C. § 1396p(c)(2)(B)(iii) and (iv), permitting transfers
22 for less than fair market value to trusts for the sole benefit
23 of children disabled according to federal social security
24 income criteria without a requirement that the trust principal
25 revert to the state after the disabled child's death to repay
26 any medical assistance payments made. Transfers for less than
27 fair market value are also permitted to be transferred to
28 trusts for the sole benefit of people under age sixty-five who
29 are disabled according to supplemental security income
30 criteria. The state shall request a waiver of this section to
31 limit such transfers to trusts that revert to the state after
32 the death of the disabled child, and to prohibit transfers
33 without penalty to trusts for people with a disability who are
34 under age sixty-five and who are not the children of the
35 transferor.

1 i. A waiver of section 1902(a)(18) of the federal Social
2 Security Act, as codified at 42 U.S.C. § 1396(a)(18), to the
3 extent that the section requires compliance with section
4 1917(d)(2)(C) of that Act, as codified at 42 U.S.C. §
5 1396p(d)(2)(C), specifying that trusts may be established
6 without regard to their purpose. The state shall request a
7 waiver of this section to permit discretion as to allowable
8 purposes for a trust.

9 2. The department of human services shall adopt rules
10 pursuant to chapter 17A to administer this section.

11 Sec. 3. CONTINGENT EFFECTIVE DATE. The amendment to
12 section 249A.3, subsection 11, paragraphs a and b, Code
13 Supplement 2003, in this Act, shall not take effect unless the
14 department of human services receives approval of all waivers
15 requested pursuant to section 2 of this Act from the centers
16 for Medicare and Medicaid services of the United States
17 department of health and human services. If approval is
18 received by June 30, 2004, the amendment shall take effect
19 July 1, 2004. If approval is received after June 30, 2004,
20 the amendment shall take effect on the date that the approval
21 is received by the department. The department shall notify
22 the Code editor of the date of receipt of any approval.

23 Sec. 4. EFFECTIVE DATES. The section of this Act
24 directing the department of human services to request waivers
25 from the United States department of health and human
26 services, being deemed of immediate importance, takes effect
27 upon enactment.

28 **EXPLANATION**

29 This bill directs the department of human services to
30 request waivers from the centers for Medicare and Medicaid
31 services of the United States department of health and human
32 services relating to transfer of assets provisions for persons
33 receiving long-term care services under the medical assistance
34 program. The bill repeals current law relating to transfer of
35 assets but the repeal of current law is contingent upon

1 receipt of approval of all waivers by the department. The
2 portion of the bill directing the department to request
3 federal waivers takes effect upon enactment.

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