

House Study Bill 148 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON FRY)

A BILL FOR

1 An Act relating to financial exploitation, conversion and
2 misappropriation of funds, and other violations relative to
3 older individuals and individuals with a disability, and
4 providing penalties.

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

1 Section 1. NEW SECTION. 714I.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Individual with a disability*" means an individual
5 with a physical, mental, or developmental disability that
6 substantially impairs the individual's ability to provide
7 adequately for the individual's own care or protection.

8 2. "*Nursing facility*" means as defined in section 135C.1.

9 3. "*Older individual*" means a person who is sixty years of
10 age or older.

11 4. "*Resident*" means an older individual or an individual
12 with a disability who resides in a nursing facility.

13 5. "*Spenddown obligation*" means the amount by which an
14 individual's countable income exceeds the applicable income
15 standard or nonexempt resources exceed the applicable resource
16 disregard in order for the individual to be eligible for the
17 Medicaid program.

18 Sec. 2. NEW SECTION. 714I.2 Financial exploitation of an
19 older individual or individual with a disability — penalties.

20 1. A person commits financial exploitation of an older
21 individual or an individual with a disability when the person
22 knowingly obtains control over the income or assets of an older
23 individual or an individual with a disability with the intent
24 to permanently deprive the older individual or individual with
25 a disability of the use, benefit, or possession of the income,
26 assets, or property of the older individual or individual
27 with a disability, thereby benefitting such other person or
28 detrimentally affecting the older individual or individual with
29 a disability.

30 2. A person who commits financial exploitation of an older
31 individual or an individual with a disability is guilty of the
32 following:

33 a. A simple misdemeanor if the value of the income, assets,
34 or property is less than fifty dollars.

35 b. A serious misdemeanor if the value of the income, assets,

1 or property is at least fifty dollars but less than five
2 hundred dollars.

3 c. An aggravated misdemeanor if the value of the income,
4 assets, or property is at least five hundred dollars but less
5 than one thousand dollars.

6 d. A class "D" felony if the value of the income, assets, or
7 property is at least one thousand dollars but less than fifty
8 thousand dollars.

9 e. A class "C" felony if the value of the income, assets, or
10 property is at least fifty thousand dollars or more.

11 Sec. 3. NEW SECTION. 714I.3 **Conversion or misappropriation**
12 **of assets — nonpayment of Medicaid services — liability.**

13 1. A person who assumes the responsibility of managing the
14 financial affairs of an older individual or an individual with
15 a disability and who willfully converts or misappropriates
16 the income or assets belonging to the older individual or an
17 individual with a disability which constitute the spenddown
18 obligation of the individual for the purposes of meeting
19 eligibility requirements under the Medicaid program, resulting
20 in nonpayment of costs incurred by the individual for care
21 provided by a health care provider, shall be liable to the
22 health care provider for any outstanding payment of such costs.
23 If such liability is established against such person by the
24 health care provider, the health care provider may recover any
25 reasonable attorney fees incurred.

26 2. A person who assumes the responsibility of managing
27 the financial affairs of a resident and who fails to pay a
28 nursing facility for the care provided to the resident from
29 such income or assets which constitute the spenddown obligation
30 of the resident for the purposes of meeting eligibility
31 requirements under the Medicaid program shall be liable to the
32 nursing facility for any outstanding payment of such costs.
33 If such liability is established against such person, the
34 nursing facility may also recover any reasonable attorney fees
35 incurred.

1 3. For the purposes of this section, a person assumes the
2 responsibility of managing the financial affairs of an older
3 individual, an individual with a disability, or a resident
4 when the person receives, has access to, handles, or controls
5 the income or assets of the older individual, individual
6 with a disability, or resident including income from any
7 source including but not limited to social security, railroad
8 retirement, or other sources disclosed as income contained
9 in the records of the department of human services or other
10 appropriate state agency.

11 4. *a.* The department of human services, or other
12 appropriate agency, may release information from the agency's
13 records containing information regarding the income and assets
14 of an older individual, individual with a disability, or a
15 resident to the attorney general or any county attorney in
16 the state for purposes of investigating or prosecuting any
17 suspected violation of this section.

18 *b.* The attorney general or the county attorney of any county
19 in which an affected provider or nursing facility is located,
20 who successfully prosecutes a violation of this section, may
21 request of the sentencing court as a condition of the sentence
22 that restitution of all amounts unlawfully withheld from the
23 affected provider or nursing facility be made by the offender.

24 *c.* Any order of restitution entered by the court or by
25 agreement shall provide that ten percent of any restitution
26 installment or payment paid by or on behalf of the offender
27 shall be paid to the county attorney successfully prosecuting
28 the violation to compensate for the cost of prosecution, and
29 any remaining amount shall be paid to the affected provider or
30 nursing facility up to the amount owed.

31 Sec. 4. NEW SECTION. 714I.4 **Application and construction.**

32 1. Nothing in this chapter shall be construed to limit
33 the remedies otherwise available to an older individual or
34 individual with a disability pursuant to any state law.

35 2. Nothing in this chapter shall be construed to impose

1 criminal liability on a person who has made a good-faith effort
2 to assist an older individual or individual with a disability
3 in the management of the property of the older individual or
4 individual with a disability, who through no fault of such
5 person is unable to provide assistance to the older individual
6 or individual with a disability.

7 3. Nothing in this chapter shall limit the ability of an
8 older individual or an individual with a disability to engage
9 in bona fide estate planning, to transfer property, and to
10 otherwise seek to reduce estate and inheritance taxes provided
11 that such actions do not adversely impact the standard of
12 living to which the older individual or individual with a
13 disability has become accustomed at the time of such actions.

14 4. It shall not be a defense under this chapter that
15 a person alleged to have violated this chapter reasonably
16 believed the victim was not an older individual or an
17 individual with a disability.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to financial exploitation, conversion
22 and misappropriation of funds, and other violations relative
23 to older individuals and individuals with a disability. The
24 bill includes definitions of "individual with a disability",
25 "nursing facility", "older individual", "resident", and
26 "spenddown obligation" for the purposes of the bill.

27 The bill provides criminal penalties applicable when a
28 person commits financial exploitation as described in the bill
29 based upon the value of the property ranging from less than \$50
30 (a simple misdemeanor which is punishable by confinement for no
31 more than 30 days or a fine of at least \$65 but not more than
32 \$625 or by both) to at least \$50,000 (a class "C" felony which
33 is punishable by confinement for no more than 10 years and a
34 fine of at least \$1,000 but not more than \$10,000).

35 The bill provides that a person who assumes the

1 responsibility of managing the financial affairs of an older
2 individual or an individual with a disability and who willfully
3 converts or misappropriates the income or assets belonging to
4 the older individual or individual with a disability which
5 constitute the spenddown obligation of the individual for
6 the purposes of meeting eligibility requirements under the
7 Medicaid program, resulting in nonpayment of costs incurred by
8 the individual for care provided by a health care provider,
9 shall be liable to the health care provider for any outstanding
10 payment of such costs. If such liability is established, the
11 provider may recover any reasonable attorney fees incurred.

12 The bill also provides that a person who assumes the
13 responsibility of managing the financial affairs of a resident
14 of a nursing facility and who fails to pay a nursing facility
15 for the care provided to the resident from such income or
16 assets which constitute the spenddown obligation of the
17 resident for the purposes of meeting eligibility requirements
18 under the Medicaid program shall be liable to the nursing
19 facility for any outstanding payment of such costs. If such
20 liability is established, the nursing facility may also recover
21 any reasonable attorney fees incurred.

22 Under the bill, a person assumes the responsibility of
23 managing the financial affairs of an older individual, an
24 individual with a disability, or a resident when the person
25 receives, has access to, handles, or controls the income or
26 assets of the older individual, individual with a disability,
27 or resident including income from any source including but
28 not limited to social security, railroad retirement, or other
29 sources disclosed as income contained in the records of the
30 department of human services (DHS) or other appropriate state
31 agency.

32 The bill authorizes DHS or other appropriate agency to
33 release information from the agency's records containing
34 information regarding the income and assets of the older
35 individual or individual with a disability to the attorney

1 general or any county attorney in the state for purposes of
2 investigating or prosecuting any suspected violation related
3 to managing the financial affairs of an individual who is a
4 recipient of Medicaid resulting in nonpayment of costs of a
5 health care provider or nursing facility.

6 The attorney general or the county attorney of any county
7 in which an affected provider or nursing facility is located,
8 who successfully prosecutes a violation of the bill, may
9 request of the sentencing court as a condition of the sentence,
10 that restitution of all amounts unlawfully withheld from the
11 affected provider or nursing facility be made by the offender.
12 Any order of restitution entered by the court or by agreement
13 shall provide that 10 percent of any restitution installment
14 or payment paid by or on behalf of the offender shall be paid
15 to the county attorney successfully prosecuting the violation
16 to compensate for the cost of prosecution, and any remaining
17 amount shall be paid to the affected provider or nursing
18 facility up to the amount owed.

19 Nothing in the bill is to be construed to limit the remedies
20 otherwise available to the older individual or individual with
21 a disability pursuant to any state law; or to impose criminal
22 liability on a person who has made a good-faith effort to
23 assist the older individual or individual with a disability
24 in the management of the property of the older individual or
25 individual with a disability, who through no fault of such
26 person is unable to provide assistance to the older individual
27 or individual with a disability.

28 Nothing in the bill is to limit the ability of an older
29 individual or an individual with a disability to engage in bona
30 fide estate planning, to transfer property, and to otherwise
31 seek to reduce estate and inheritance taxes provided that such
32 actions do not adversely impact the standard of living to which
33 the older individual or individual with a disability has become
34 accustomed at the time of such actions.

35 Under the bill, it is not a defense that a person alleged to

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1 have violated the bill reasonably believed the victim was not
2 an older individual or an individual with a disability.