

House Study Bill 215 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON LUNDGREN)

A BILL FOR

1 An Act relating to the transfer or encumbrance of real property
2 held by a recipient of medical assistance.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 2490.1 Request for notice of
2 transfer or encumbrance of real property held by recipient of
3 medical assistance.

4 1. When a recipient of medical assistance as defined in
5 section 249A.2 is the titleholder of record to real property,
6 is the contract holder of record as the purchaser under a land
7 sale contract, or has any other legal or equitable interest
8 in real property, the department of human services may file
9 a request for notice of transfer or encumbrance of the real
10 property with the county recorder of the county in which the
11 real property is located.

12 2. If a request for notice of transfer or encumbrance
13 is filed by the department of human services pursuant to
14 subsection 1, a title examiner shall provide the department
15 with a notice of transfer or encumbrance pursuant to section
16 558.73.

17 3. If the department has filed a request for notice of
18 transfer or encumbrance under subsection 1, but determines that
19 it is no longer necessary or appropriate to monitor transfers
20 or encumbrances related to the real property, the department
21 shall file a termination of request for notice of transfer or
22 encumbrance with the county recorder of the county in which the
23 real property is located.

24 4. a. The department shall adopt by rule in accordance
25 with chapter 17A the requirements and the forms to be used for
26 the request for notice of transfer or encumbrance, the notice
27 of transfer or encumbrance, and the termination of request for
28 notice of transfer or encumbrance. At a minimum, the forms
29 shall contain all of the following:

30 (1) The name of the medical assistance recipient and a
31 state identification number that links the individual who is
32 the titleholder of record to the real property or the contract
33 holder of record as the purchaser under a land sale contract,
34 or who has any other legal or equitable interest in the
35 property, to the medical assistance recipient's records.

1 (2) The legal description of the real property identified.

2 (3) A mailing address for the department to receive the
3 notice of transfer or encumbrance from a title examiner.

4 *b.* The rules shall require that the recordation of the forms
5 comply with the requirements specified in sections 558.41 and
6 558.42 for the recording of instruments affecting real estate.

7 5. The request for notice of transfer or encumbrance
8 described in this section does not affect the title to real
9 property and is not a lien on, or an encumbrance of, any
10 interest in the real property.

11 6. Except as provided in subsection 7, the department may
12 impose a lien against the property of any individual prior
13 to the person's death due to medical assistance paid or to
14 be paid on the person's behalf if either of the following is
15 applicable:

16 *a.* The lien is imposed pursuant to a judgment of a court
17 based on benefits incorrectly paid on behalf of such person.

18 *b.* In the case of the real property of a person who is a
19 resident of a nursing facility, an intermediate care facility
20 for persons with an intellectual disability, or a mental health
21 institute, if such person is required, as a condition of
22 receiving services in such institution, to spend for costs of
23 medical care all but a minimal amount of the person's income
24 required for personal needs, and the department determines,
25 after notice and opportunity for a hearing, that the person
26 cannot reasonably be expected to be discharged from the nursing
27 facility, intermediate care facility for persons with an
28 intellectual disability, or mental health institute and return
29 to the person's home.

30 7. A lien shall not be imposed under subsection 6 on
31 the home of a recipient of medical assistance if any of the
32 following persons is lawfully residing in the home:

33 *a.* The spouse of the recipient.

34 *b.* A child of the recipient who is under twenty-one years of
35 age, or is blind or permanently and totally disabled.

1 *c.* A sibling of the recipient who has an equity interest
2 in the home and who was residing in the home for a period of
3 at least one year immediately before the date of the medical
4 assistance recipient's admission to the nursing facility,
5 intermediate care facility for persons with an intellectual
6 disability, or mental health institute.

7 8. Any lien imposed pursuant to subsection 6, paragraph
8 "b", shall be discharged if the recipient is discharged from
9 the nursing facility, intermediate care facility for persons
10 with an intellectual disability, or mental health institute and
11 returns to the person's home.

12 9. *a.* The department may file and enforce a lien against
13 the real property of a deceased recipient when there is no
14 estate subject to probate and no person specified in subsection
15 7 is lawfully residing in the home.

16 *b.* The lien shall be subject to all prior liens of record
17 and transfers for value to a bona fide purchaser of record.

18 *c.* The lien shall be filed in the county where the real
19 property is located within one year from the date of death of
20 the recipient and shall contain the legal description of all
21 real property in the county subject to the lien.

22 Sec. 2. NEW SECTION. 558.73 Notice to department of human
23 services — transfer or encumbrance of real property and liens —
24 medical assistance recipient.

25 1. If a title examiner discovers the presence of a request
26 for notice of transfer or encumbrance filed pursuant to section
27 2490.1 when performing a title search, the title examiner shall
28 do all of the following:

29 *a.* Provide the department with a notice of transfer or
30 encumbrance of the real property prior to the transfer or
31 encumbrance.

32 *b.* Report the request for notice of transfer or encumbrance
33 in any title opinion or other report preliminary to the sale of
34 the property.

35 2. If the department has recorded a termination of request

1 for notice of transfer or encumbrance, the examiner is not
2 required to provide the notice of transfer or encumbrance
3 otherwise required pursuant to subsection 1.

4 3. A title examiner shall use the notice of transfer or
5 encumbrance form approved by the department when notifying the
6 department pursuant to subsection 1, which the title examiner
7 is not required to record with the county recorder.

8 4. A request for notice of transfer or encumbrance,
9 termination of request for notice of transfer or encumbrance,
10 and any lien authorized by section 2490.1 shall be recorded
11 as otherwise provided in this chapter. The county recorder
12 shall charge and collect fees for the recordation of these
13 instruments as provided pursuant to section 558.58 to be paid
14 by the department.

15

EXPLANATION

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

18 This bill relates to the transfer or encumbrance of real
19 property held by a recipient of medical assistance.

20 The bill provides that when a recipient of medical
21 assistance (Medicaid) is the titleholder of record to real
22 property, is the contract holder of record as the purchaser
23 under a land sale contract, or has any other legal or equitable
24 interest in real property, the department of human services
25 (DHS) may file a request for notice of transfer or encumbrance
26 of the real property with the county recorder of the county
27 in which the real property is located. If such a request
28 for notice of transfer or encumbrance is filed by DHS, a
29 title examiner shall provide DHS with a notice of transfer or
30 encumbrance as specified in the bill. If DHS files a request
31 for notice of transfer or encumbrance, but determines that it
32 is no longer necessary or appropriate to monitor transfers
33 or encumbrances related to the real property, the department
34 shall file a termination of request for notice of transfer or
35 encumbrance with the county recorder of the county in which the

1 real property is located.

2 The bill requires DHS to adopt administrative rules
3 regarding the requirements and the forms to be used for the
4 request for notice of transfer or encumbrance, the notice of
5 transfer or encumbrance, and the termination of request for
6 notice of transfer or encumbrance.

7 The bill provides that a request for notice of transfer or
8 encumbrance does not affect the title to real property and is
9 not a lien on, or an encumbrance of, any interest in the real
10 property.

11 Under the bill, DHS may impose a lien against the property
12 of any individual prior to the person's death due to medical
13 assistance paid or to be paid on the person's behalf if the
14 lien is imposed pursuant to a judgment of a court based on
15 benefits incorrectly paid on behalf of such person, or if
16 the person is a resident of a nursing facility, intermediate
17 care facility for persons with an intellectual disability,
18 or a mental health institute, if such person is required,
19 as a condition of receiving services in such institution,
20 to spend for costs of medical care all but a minimal amount
21 of the person's income required for personal needs, and DHS
22 determines, after notice and opportunity for a hearing, that
23 the person cannot reasonably be expected to be discharged
24 from the facility or mental health institute and return to
25 the person's home. However, a lien shall not be imposed on
26 the home of a recipient of medical assistance if certain
27 individuals including a spouse, certain children, or certain
28 siblings are lawfully residing in the home. The bill provides
29 for discharge of a lien imposed if the person does return to
30 the person's home after being discharged from a facility or
31 mental health institute.

32 Under the bill, DHS may file and enforce a lien against
33 the real property of a deceased recipient when there is no
34 estate subject to probate and no person specified in the bill
35 is lawfully residing in the home. The lien shall be subject

1 to all prior liens of record and transfers for value to a bona
2 fide purchaser of record. The lien shall be filed in the
3 county where the real property is located within one year from
4 the date of death of the recipient and shall contain the legal
5 description of all real property in the county subject to the
6 lien.

7 The bill requires that if a title examiner discovers the
8 presence of a request for notice of transfer or encumbrance
9 when performing a title search, the title examiner shall
10 provide DHS with a notice of transfer or encumbrance of
11 the real property prior to the transfer or encumbrance, and
12 report the request for notice of transfer or encumbrance in
13 any title opinion or other report preliminary to the sale of
14 the property. However, if DHS has recorded a termination of
15 request for notice of transfer or encumbrance, the examiner is
16 not required to provide the notice of transfer or encumbrance
17 otherwise required. The title examiner is required to use the
18 notice of transfer or encumbrance form approved by DHS, but is
19 not required to record the notice with the county recorder.
20 The request for notice of transfer or encumbrance, termination
21 of request for notice of transfer or encumbrance, and any
22 lien authorized under the bill is required to be recorded,
23 and the county recorder shall charge and collect fees for the
24 recordation of these instruments as provided in existing law
25 to be paid by the department.