



# The Iowa Legislature

## General Assembly

### Veto Message

May 14, 2004

The Honorable Chester Culver  
 Secretary of State  
 State Capitol Building  
 L O C A L

Dear Mr. Secretary:

I hereby transmit Senate File 2183, an Act relating to asset disregard under the medical assistance program for the purchase of a qualified long-term care insurance policy, providing for a repeal, and providing contingent effective date.

I am unable to approve Senate File 2183 for the following reasons. The policy behind this legislation is very sound and one which I support. However, there are numerous problems in the drafting of this bill. Senate File 2183 proposes to recast and amend current Iowa Code Chapter 249G (Long-term Care Asset Preservation Program) as new Iowa Code Chapter 249J. Iowa Code 249G was adopted in 1993 to take advantage of a waiver from the U.S. Department of Health and Human Services (HHS) which allowed states to offer incentive programs for long-term care insurance. Iowa is one of five states that have such a waiver. States obtained initial grants from various sources to launch these programs and all are now state-funded. However, no grants or appropriations are provided for this program in Iowa.

In addition to a lack of funding, there are several provisions in this bill that make it difficult for the Iowa Insurance Division (IID) to administer.

1. Section 5: Subsections 249J.5(1)(a) and (b) appear to conflict. Subsection (1)(a) calls for purchase of a policy that is roughly equivalent to the current cost of a three-year stay in a nursing home in Iowa. This subsection sets one standard for policies purchased before January 1, 2004 and another for policies purchased after that date. Subsection (1)(b) appears to be copied directly from Indiana law, which amended its law in 1998. There is no legal reason for Iowa to focus on the date January 1, 1998. The variance in minimum policy benefit levels between sub (a) and sub (b) and, i.e. \$100,000 vs. \$140,000 is not explained. At a minimum, these differences will create consumer confusion and make drafting of administrative rules difficult.
2. Effective Date: If Senate File 2183 becomes law, it will take effect on July 1, 2004. As a practical matter, this program cannot take effect until the State Medicaid plan is amended. This requires DHS to obtain approval by the federal government. It is unknown how long this process could take. The IID is directed to adopt rules to implement the program. Rulemaking cannot commence until the Medicaid amendments are in place. To allow time for this process, the legislation should not take effect until at least six months after the Medicaid plan amendments are approved.
3. Funding: Section 13 of the bill states that the program is established only if funding is specifically appropriated. The initial version of this bill called for the IID to promote this program, and to conduct consumer education. That version contained an appropriation of \$300,000. The appropriation was stricken, but the language in Section 13 remains. It thus appears that this legislation cannot become effective unless funds are appropriated through some other mechanism.
4. Administration: This program would be easier to administer if it contained some mechanism for the minimum policy face amount to increase over time. For example, a chart that presumes a certain level of inflation could be adopted for the first five years or the Insurance Commissioner could be directed to make a finding every two years of the cost of a three-year stay.
5. Waiver: Iowa Code 249G.2(1) directs the DHS to obtain a waiver from HHS. This waiver has been obtained. Senate File 2183 repeals Code Section 249G and does not include any reference to the waiver provisions in the proposed new Section 249J.

In addition to these technical and administrative problems there is a significant unintended fiscal impact to Iowa's Medicaid program, specifically as it impacts the Medically Needy. Currently applicants must spend their assets down to less than \$2,000 before they qualify for payment of nursing facility services. By covering nursing facility services under the Medically Needy program, applicants will only be required to spend their assets down to less than \$10,000. This higher resource limit will result in approximately 6,000 applicants each year that will qualify for coverage of nursing facility services two months earlier than they would under the current rules. This results in Medicaid covering an additional 12,000 months of nursing facility services per year. The fiscal impact is

estimated to be about \$12 million to the state general fund and about \$32.4 million in state and federal funds.

There is some additional confusion. The bill directs the Department of Human Services to amend the state plan to cover nursing facility services using the special income rule (three times the SSI limit) for the medically needy without requiring the individual to establish a qualifying income trust. Using the special income rule for nursing facility coverage under Medically Needy is in conflict with federal law. However, it appears that this legislation would still require us to cover nursing facility services under the Medically Needy Program using the current income limit.

This legislation in its current form creates significant administrative and fiscal problems. I encourage the legislature to revisit this issue next year and propose workable legislation that fixes the problems with Section 249G and thus make available to consumers an incentive to plan for their own long-term care needs.

For the above reasons, I hereby respectfully disapprove Senate File 2183.

Sincerely,

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House

## Senate File 2183

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SENATE FILE 2183

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AN ACT

RELATING TO ASSET DISREGARD UNDER THE MEDICAL ASSISTANCE  
PROGRAM FOR THE PURCHASE OF A QUALIFIED LONG-TERM CARE  
INSURANCE POLICY, PROVIDING FOR A REPEAL, AND PROVIDING A  
CONTINGENT EFFECTIVE DATE.

1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
1 10

1 11 Section 1. NEW SECTION. 249J.1 DEFINITIONS.

1 12 As used in this chapter, unless the context otherwise  
1 13 requires:

- 1 14 1. "Health maintenance organization" means health  
1 15 maintenance organization as defined in section 514B.1.
- 1 16 2. "Long-term care facility" includes, but is not limited  
1 17 to, a facility licensed under chapter 135C or an assisted  
1 18 living program certified under chapter 231C.
- 1 19 3. "Qualified long-term care insurance policy" means a  
1 20 qualified long-term care insurance contract as defined in  
1 21 section 7702B(b) of the Internal Revenue Code that is issued  
1 22 by an insurer or other person who complies with section  
1 23 249J.5.
- 1 24 4. "Qualified long-term care services" means qualified  
1 25 long-term care services as defined in section 7702B(c) of the  
1 26 Internal Revenue Code.

1 27 Sec. 2. NEW SECTION. 249J.2 ESTABLISHMENT AND  
1 28 ADMINISTRATION OF THE PROGRAM.

- 1 29 1. The Iowa long-term care asset disregard incentive  
1 30 program is established to do the following:  
1 31 a. Provide incentives for individuals to insure against  
1 32 the costs of providing for their long-term care needs.  
1 33 b. Provide a mechanism for individuals to qualify for  
1 34 coverage of the costs of their long-term care needs under the  
1 35 medical assistance program without first being required to  
2 1 substantially exhaust all their resources.  
2 2 c. Assist in developing methods for increasing access to  
2 3 and the affordability of long-term care insurance.  
2 4 d. Alleviate the financial burden on the state's medical  
2 5 assistance program by encouraging the pursuit of private  
2 6 initiatives.
- 2 7 2. The insurance division of the department of commerce  
2 8 shall administer the program in cooperation with the division  
2 9 responsible for medical services within the department of  
2 10 human services.

2 11 Sec. 3. NEW SECTION. 249J.4 ELIGIBILITY.

2 12 An individual who is the beneficiary of a qualified long=  
2 13 term care insurance policy approved by the insurance division  
2 14 is eligible for assistance under the medical assistance  
2 15 program using the asset disregard provisions pursuant to  
2 16 section 249J.6.

2 17 Sec. 4. NEW SECTION. 249J.5 INSURER REQUIREMENTS.

- 2 18 1. An insurer or other person who wishes to issue a  
2 19 qualified long-term care insurance policy meeting the  
2 20 requirements of this chapter shall, at a minimum, offer to

2 21 each policyholder or prospective policyholder a policy that  
 2 22 provides both of the following:

2 23     a. Facility coverage, including but not limited to long=  
 2 24 term care facility coverage.

2 25     b. Nonfacility coverage, including but not limited to home  
 2 26 and community care coverage.

2 27     2. An insurer or other person who complies with subsection  
 2 28 1 may also elect to offer a qualified long-term care insurance  
 2 29 policy that provides only facility coverage.

2 30     Sec. 5. NEW SECTION. 249J.6 ASSET DISREGARD ADJUSTMENT.

2 31     1. As used in this section, "asset disregard" means any of  
 2 32 the following:

2 33     a. A one dollar increase in the amount of assets an  
 2 34 individual who purchases a qualified long-term care insurance  
 2 35 policy and meets the requirements of section 249J.4 may retain  
 3 1 under section 249A.34 for each one dollar of benefit paid out  
 3 2 under the individual's qualified long-term care insurance  
 3 3 policy for qualified long-term care services if the policy  
 3 4 meets all of the following criteria:

3 5         (1) If purchased prior to January 1, 2004, provides  
 3 6 benefits in an amount equal to at least one hundred thousand  
 3 7 dollars as computed on January 1, 2004.

3 8         (2) If purchased on or after January 1, 2004, provides  
 3 9 benefits in an amount equal to at least one hundred thousand  
 3 10 dollars as computed on January 1, 2004, compounded annually by  
 3 11 at least five percent.

3 12         (3) Includes a provision under which the total amount of  
 3 13 the benefit increases by at least five percent annually.

3 14     b. The total assets an individual owns and may retain  
 3 15 under section 249A.34 and still qualify for benefits under  
 3 16 chapter 249A at the time the individual applies for benefits  
 3 17 if the individual meets all of the following criteria:

3 18         (1) Is the beneficiary of a qualified long-term care  
 3 19 insurance policy that provides benefits, if purchased prior to  
 3 20 January 1, 1998, in an amount equal to at least one hundred  
 3 21 forty thousand dollars as computed on January 1, 1998.

3 22         (2) Is the beneficiary of a qualified long-term care  
 3 23 insurance policy that provides benefits, if purchased on or  
 3 24 after January 1, 1998, in an amount equal to at least one  
 3 25 hundred forty thousand dollars as computed on January 1, 1998,  
 3 26 compounded annually by at least five percent.

3 27         (3) Is the beneficiary of a qualified long-term care  
 3 28 insurance policy that includes a provision under which the  
 3 29 total amount of the benefit increases by at least five percent  
 3 30 annually.

3 31         (4) Meets the requirements of section 249J.4.

3 32         (5) Has exhausted the benefits of the qualified long-term  
 3 33 care insurance policy.

3 34     2. When the division responsible for medical services  
 3 35 within the department of human services determines whether an  
 4 1 individual is eligible for medical services under chapter  
 4 2 249A, the division shall make an asset disregard adjustment  
 4 3 for any individual who meets the requirements of section  
 4 4 249J.4. The asset disregard shall be available after benefits  
 4 5 of the qualified long-term care insurance policy have been  
 4 6 applied to the cost of qualified long-term care services as  
 4 7 required under this chapter.

4 8     Sec. 6. NEW SECTION. 249J.7 APPLICATION OF ASSET  
 4 9 DISREGARD TO DETERMINATION OF INDIVIDUAL'S ASSETS.

4 10     A public program administered by the state that provides

4 11 long-term care services and bases eligibility upon the amount  
4 12 of the individual's assets shall apply the asset disregard  
4 13 under section 249J.6 in determining the amount of the  
4 14 individual's assets.

4 15 Sec. 7. NEW SECTION. 249J.8 DISCONTINUATION OF PROGRAM.

4 16 1. If the Iowa long-term care asset disregard incentive  
4 17 program is discontinued, an individual who is covered by a  
4 18 qualified long-term care insurance policy prior to the date  
4 19 the program is discontinued is eligible to continue to receive  
4 20 an asset disregard as defined under section 249J.6.

4 21 2. An individual who is covered by a long-term care  
4 22 insurance policy under the long-term care asset preservation  
4 23 program established pursuant to chapter 249G, Code 2003, on or  
4 24 before June 30, 2004, is eligible to continue to receive the  
4 25 asset adjustment as defined under that chapter.

4 26 3. The insurance division shall adopt rules to provide an  
4 27 asset disregard to individuals who are covered by a long-term  
4 28 care insurance policy prior to July 1, 2004, consistent with  
4 29 the Iowa long-term care program asset disregard.

4 30 Sec. 8. NEW SECTION. 249J.9 RECIPROCAL AGREEMENTS TO  
4 31 EXTEND ASSET DISREGARD.

4 32 The division responsible for medical services within the  
4 33 department of human services may enter into reciprocal  
4 34 agreements with other states to extend the asset disregard  
4 35 under section 249J.6 to Iowa residents who had purchased or  
5 1 were covered by qualified long-term care insurance policies in  
5 2 other states.

5 3 Sec. 9. NEW SECTION. 249J.10 RULES.

5 4 The department of human services and the insurance division  
5 5 shall adopt rules pursuant to chapter 17A as necessary to  
5 6 administer this chapter. The insurance division shall consult  
5 7 with representatives of the insurance industry in adopting  
5 8 such rules. This delegation of rulemaking authority shall be  
5 9 construed narrowly.

5 10 Sec. 10. NEW SECTION. 249A.34 PURCHASE OF QUALIFIED  
5 11 LONG-TERM CARE INSURANCE POLICY == COMPUTATION UNDER MEDICAL  
5 12 ASSISTANCE PROGRAM.

5 13 A computation for the purposes of determining eligibility  
5 14 under this chapter concerning an individual who has purchased  
5 15 a qualified long-term care insurance policy under chapter 249J  
5 16 shall include consideration of the asset disregard provided in  
5 17 section 249J.6.

5 18 Sec. 11. Chapter 249G, Code 2003, is repealed.

5 19 Sec. 12. MEDICAID STATE PLAN.

5 20 1. The department shall amend the medical assistance state  
5 21 plan to provide that all amounts paid for qualified long-term  
5 22 care services under a qualified long-term care insurance  
5 23 policy shall be considered in determining the amount of the  
5 24 asset disregard.

5 25 2. The department shall amend the medical assistance state  
5 26 plan to extend nursing home coverage using the special  
5 27 institutional income rule to the medically needy directly  
5 28 without the requirement of establishing a qualifying income  
5 29 trust.

5 30 Sec. 13. CONTINGENT EFFECTIVE DATE == IOWA LONG-TERM CARE  
5 31 ASSET DISREGARD INCENTIVE PROGRAM. The Iowa long-term care  
5 32 asset disregard incentive program established in this Act  
5 33 shall take effect only if funding is specifically appropriated  
5 34 to the insurance division for that purpose. The insurance  
5 35 division shall notify the Code editor if such an appropriation

6 1 is made.

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JEFFREY M. LAMBERTI  
President of the Senate

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CHRISTOPHER C. RANTS  
Speaker of the House

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6 13 I hereby certify that this bill originated in the Senate and  
6 14 is known as Senate File 2183, Eightieth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

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6 20 Approved \_\_\_\_\_, 2004

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6 24 THOMAS J. VILSACK

6 25 Governor