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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1144**

03/04/2013 Authored by Hortman

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to human services; clarifying an exception to the transfer penalty for
1.3 medical assistance eligibility; amending Minnesota Statutes 2012, sections
1.4 256B.056, subdivision 3b; 256B.0595, subdivision 1.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 256B.056, subdivision 3b, is amended to
1.7 read:

1.8 Subd. 3b. **Treatment of trusts.** (a) A "medical assistance qualifying trust" is a
1.9 revocable or irrevocable trust, or similar legal device, established on or before August
1.10 10, 1993, by a person or the person's spouse under the terms of which the person
1.11 receives or could receive payments from the trust principal or income and the trustee
1.12 has discretion in making payments to the person from the trust principal or income.
1.13 Notwithstanding that definition, a medical assistance qualifying trust does not include:
1.14 (1) a trust set up by will; (2) a trust set up before April 7, 1986, solely to benefit a person
1.15 with a developmental disability living in an intermediate care facility for persons with
1.16 developmental disabilities; or (3) a trust set up by a person with payments made by the
1.17 Social Security Administration pursuant to the United States Supreme Court decision in
1.18 Sullivan v. Zebley, 110 S. Ct. 885 (1990). The maximum amount of payments that a
1.19 trustee of a medical assistance qualifying trust may make to a person under the terms of
1.20 the trust is considered to be available assets to the person, without regard to whether the
1.21 trustee actually makes the maximum payments to the person and without regard to the
1.22 purpose for which the medical assistance qualifying trust was established.

1.23 (b) ~~Except as provided in paragraphs (c) and (d),~~ Trusts established after August 10,
1.24 1993, are treated according to section 13611(b) of the Omnibus Budget Reconciliation Act

of 1993 (OBRA), Public Law 103-66. It is the policy of the state to encourage the use of a special needs trust or pooled trusts to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life.

(c) For purposes of paragraph (d), a pooled trust means a trust established under United States Code, title 42, section 1396p(d)(4)(C).

(d) An individual may fund or establish a subaccount in a pooled trust without an age limit or a transfer penalty. A beneficiary's interest in a pooled trust is considered an available asset unless the trust provides that upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever is sooner, the department receives any amount, ~~up to the amount of medical assistance benefits paid on behalf of the beneficiary,~~ remaining in the beneficiary's trust account after a deduction for reasonable administrative fees and expenses, and an additional remainder amount. The retained remainder amount of the subaccount must not exceed ten percent of the account value at the time of the beneficiary's death or termination of the trust, and must only be used for the benefit of disabled individuals who have a beneficiary interest in the pooled trust.

EFFECTIVE DATE. This section is effective when the amendments to section 256B.056, subdivision 3b, by Laws 2009, chapter 173, article 1, section 17, as amended by Laws 2010, First Special Session chapter 1, article 24, section 13, and Laws 2011, First Special Session chapter 9, article 6, section 88, become effective.

Sec. 2. Minnesota Statutes 2012, section 256B.0595, subdivision 1, is amended to read:

Subdivision 1. **Prohibited transfers.** (a) For transfers of assets made on or before August 10, 1993, if an institutionalized person or the institutionalized person's spouse has given away, sold, or disposed of, for less than fair market value, any asset or interest therein, except assets other than the homestead that are excluded under the supplemental security program, within 30 months before or any time after the date of institutionalization if the person has been determined eligible for medical assistance, or within 30 months before or any time after the date of the first approved application for medical assistance if the person has not yet been determined eligible for medical assistance, the person is ineligible for long-term care services for the period of time determined under subdivision 2.

(b) Effective for transfers made after August 10, 1993, an institutionalized person, an institutionalized person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the institutionalized person or institutionalized person's spouse, may not give away, sell, or dispose of, for less than fair market value, any asset or interest therein, except assets other than the homestead that are excluded under the Supplemental Security Income program,

for the purpose of establishing or maintaining medical assistance eligibility. This applies to all transfers, including those made by a community spouse after the month in which the institutionalized spouse is determined eligible for medical assistance. For purposes of determining eligibility for long-term care services, any transfer of such assets within 36 months before or any time after an institutionalized person requests medical assistance payment of long-term care services, or 36 months before or any time after a medical assistance recipient becomes an institutionalized person, for less than fair market value may be considered. Any such transfer is presumed to have been made for the purpose of establishing or maintaining medical assistance eligibility and the institutionalized person is ineligible for long-term care services for the period of time determined under subdivision 2, unless the institutionalized person furnishes convincing evidence to establish that the transaction was exclusively for another purpose, or unless the transfer is permitted under subdivision 3 or 4. In the case of payments from a trust or portions of a trust that are considered transfers of assets under federal law, or in the case of any other disposal of assets made on or after February 8, 2006, any transfers made within 60 months before or any time after an institutionalized person requests medical assistance payment of long-term care services and within 60 months before or any time after a medical assistance recipient becomes an institutionalized person, may be considered.

(c) This section applies to transfers, for less than fair market value, of income or assets, including assets that are considered income in the month received, such as inheritances, court settlements, and retroactive benefit payments or income to which the institutionalized person or the institutionalized person's spouse is entitled but does not receive due to action by the institutionalized person, the institutionalized person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the institutionalized person or the institutionalized person's spouse.

(d) This section applies to payments for care or personal services provided by a relative, unless the compensation was stipulated in a notarized, written agreement which was in existence when the service was performed, the care or services directly benefited the person, and the payments made represented reasonable compensation for the care or services provided. A notarized written agreement is not required if payment for the services was made within 60 days after the service was provided.

(e) This section applies to the portion of any asset or interest that an institutionalized person, an institutionalized person's spouse, or any person, court, or administrative body with legal authority to act in place of, on behalf of, at the direction of, or upon the request of the institutionalized person or the institutionalized person's spouse, transfers to any

annuity that exceeds the value of the benefit likely to be returned to the institutionalized person or institutionalized person's spouse while alive, based on estimated life expectancy as determined according to the current actuarial tables published by the Office of the Chief Actuary of the Social Security Administration. The commissioner may adopt rules reducing life expectancies based on the need for long-term care. This section applies to an annuity purchased on or after March 1, 2002, that:

(1) is not purchased from an insurance company or financial institution that is subject to licensing or regulation by the Minnesota Department of Commerce or a similar regulatory agency of another state;

(2) does not pay out principal and interest in equal monthly installments; or

(3) does not begin payment at the earliest possible date after annuitization.

(f) Effective for transactions, including the purchase of an annuity, occurring on or after February 8, 2006, by or on behalf of an institutionalized person who has applied for or is receiving long-term care services or the institutionalized person's spouse shall be treated as the disposal of an asset for less than fair market value unless the department is named a preferred remainder beneficiary as described in section 256B.056, subdivision 11. Any subsequent change to the designation of the department as a preferred remainder beneficiary shall result in the annuity being treated as a disposal of assets for less than fair market value. The amount of such transfer shall be the maximum amount the institutionalized person or the institutionalized person's spouse could receive from the annuity or similar financial instrument. Any change in the amount of the income or principal being withdrawn from the annuity or other similar financial instrument at the time of the most recent disclosure shall be deemed to be a transfer of assets for less than fair market value unless the institutionalized person or the institutionalized person's spouse demonstrates that the transaction was for fair market value. In the event a distribution of income or principal has been improperly distributed or disbursed from an annuity or other retirement planning instrument of an institutionalized person or the institutionalized person's spouse, a cause of action exists against the individual receiving the improper distribution for the cost of medical assistance services provided or the amount of the improper distribution, whichever is less.

(g) Effective for transactions, including the purchase of an annuity, occurring on or after February 8, 2006, by or on behalf of an institutionalized person applying for or receiving long-term care services shall be treated as a disposal of assets for less than fair market value unless it is:

(i) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

5.1 (ii) purchased with proceeds from:

5.2 (A) an account or trust described in subsection (a), (c), or (p) of section 408 of the
5.3 Internal Revenue Code;

5.4 (B) a simplified employee pension within the meaning of section 408(k) of the
5.5 Internal Revenue Code; or

5.6 (C) a Roth IRA described in section 408A of the Internal Revenue Code; or

5.7 (iii) an annuity that is irrevocable and nonassignable; is actuarially sound as
5.8 determined in accordance with actuarial publications of the Office of the Chief Actuary of
5.9 the Social Security Administration; and provides for payments in equal amounts during
5.10 the term of the annuity, with no deferral and no balloon payments made.

5.11 (h) For purposes of this section, long-term care services include services in a nursing
5.12 facility, services that are eligible for payment according to section 256B.0625, subdivision
5.13 2, because they are provided in a swing bed, intermediate care facility for persons with
5.14 developmental disabilities, and home and community-based services provided pursuant
5.15 to sections 256B.0915, 256B.092, and 256B.49. For purposes of this subdivision and
5.16 subdivisions 2, 3, and 4, "institutionalized person" includes a person who is an inpatient
5.17 in a nursing facility or in a swing bed, or intermediate care facility for persons with
5.18 developmental disabilities or who is receiving home and community-based services under
5.19 sections 256B.0915, 256B.092, and 256B.49.

5.20 (i) This section applies to funds used to purchase a promissory note, loan, or
5.21 mortgage unless the note, loan, or mortgage:

5.22 (1) has a repayment term that is actuarially sound;

5.23 (2) provides for payments to be made in equal amounts during the term of the loan,
5.24 with no deferral and no balloon payments made; and

5.25 (3) prohibits the cancellation of the balance upon the death of the lender.

5.26 In the case of a promissory note, loan, or mortgage that does not meet an exception
5.27 in clauses (1) to (3), the value of such note, loan, or mortgage shall be the outstanding
5.28 balance due as of the date of the institutionalized person's request for medical assistance
5.29 payment of long-term care services.

5.30 (j) This section applies to the purchase of a life estate interest in another person's
5.31 home unless the purchaser resides in the home for a period of at least one year after the
5.32 date of purchase.

5.33 ~~(k) This section applies to transfers into a pooled trust that qualifies under United~~
5.34 ~~States Code, title 42, section 1396p(d)(4)(C), by:~~

5.35 ~~(1) a person age 65 or older or the person's spouse; or~~

6.1 ~~(2) any person, court, or administrative body with legal authority to act in place~~
6.2 ~~of, on behalf of, at the direction of, or upon the request of a person age 65 or older or~~
6.3 ~~the person's spouse.~~