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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2914

03/19/2012 Authored by Mack

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

1.1 A bill for an act
1.2 relating to human services; clarifying an exception to the transfer prohibition
1.3 for medical assistance eligibility; amending Minnesota Statutes 2010, section
1.4 256B.0595, subdivisions 1, 4; Laws 2009, chapter 173, article 1, section 17,
1.5 as amended.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2010, section 256B.0595, subdivision 1, is amended to
1.8 read:

1.9 Subdivision 1. **Prohibited transfers.** (a) For transfers of assets made on or before
1.10 August 10, 1993, if an institutionalized person or the institutionalized person's spouse has
1.11 given away, sold, or disposed of, for less than fair market value, any asset or interest
1.12 therein, except assets other than the homestead that are excluded under the supplemental
1.13 security program, within 30 months before or any time after the date of institutionalization
1.14 if the person has been determined eligible for medical assistance, or within 30 months
1.15 before or any time after the date of the first approved application for medical assistance
1.16 if the person has not yet been determined eligible for medical assistance, the person is
1.17 ineligible for long-term care services for the period of time determined under subdivision
1.18 2.

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

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

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

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

2.32 (e) This section applies to the portion of any asset or interest that an institutionalized
2.33 person, an institutionalized person's spouse, or any person, court, or administrative body
2.34 with legal authority to act in place of, on behalf of, at the direction of, or upon the request
2.35 of the institutionalized person or the institutionalized person's spouse, transfers to any
2.36 annuity that exceeds the value of the benefit likely to be returned to the institutionalized

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

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

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

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

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

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

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

3.36 (ii) purchased with proceeds from:

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

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

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

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

4.10 (h) For purposes of this section, long-term care services include services in a nursing
4.11 facility, services that are eligible for payment according to section 256B.0625, subdivision
4.12 2, because they are provided in a swing bed, intermediate care facility for persons with
4.13 developmental disabilities, and home and community-based services provided pursuant
4.14 to sections 256B.0915, 256B.092, and 256B.49. For purposes of this subdivision and
4.15 subdivisions 2, 3, and 4, "institutionalized person" includes a person who is an inpatient
4.16 in a nursing facility or in a swing bed, or intermediate care facility for persons with
4.17 developmental disabilities or who is receiving home and community-based services under
4.18 sections 256B.0915, 256B.092, and 256B.49.

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

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

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

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

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

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

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

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

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

5.4 Sec. 2. Minnesota Statutes 2010, section 256B.0595, subdivision 4, is amended to read:

5.5 Subd. 4. **Other exceptions to transfer prohibition.** (a) An institutionalized person,
5.6 as defined in subdivision 1, paragraph (h), who has made, or whose spouse has made a
5.7 transfer prohibited by subdivision 1, is not ineligible for long-term care services if one of
5.8 the following conditions applies:

5.9 (1) the assets were transferred to the individual's spouse or to another for the sole
5.10 benefit of the spouse; or

5.11 (2) the institutionalized spouse, prior to being institutionalized, transferred assets
5.12 to a spouse, provided that the spouse to whom the assets were transferred does not then
5.13 transfer those assets to another person for less than fair market value. (At the time when
5.14 one spouse is institutionalized, assets must be allocated between the spouses as provided
5.15 under section 256B.059); or

5.16 (3) the assets were transferred to the individual's child who is blind or permanently
5.17 and totally disabled as determined in the supplemental security income program; or

5.18 (4) a satisfactory showing is made that the individual intended to dispose of the
5.19 assets either at fair market value or for other valuable consideration; or

5.20 (5) the local agency determines that denial of eligibility for long-term care
5.21 services would work an undue hardship and grants a waiver of a period of ineligibility
5.22 resulting from a transfer for less than fair market value based on an imminent threat to
5.23 the individual's health and well-being. Imminent threat to the individual's health and
5.24 well-being means that imposing a period of ineligibility would endanger the individual's
5.25 health or life or cause serious deprivation of food, clothing, or shelter. Whenever an
5.26 applicant or recipient is denied eligibility because of a transfer for less than fair market
5.27 value, the local agency shall notify the applicant or recipient that the applicant or recipient
5.28 may request a waiver of the period of ineligibility if the denial of eligibility will cause
5.29 undue hardship. With the written consent of the individual or the personal representative
5.30 of the individual, a long-term care facility in which an individual is residing may file an
5.31 undue hardship waiver request, on behalf of the individual who is denied eligibility for
5.32 long-term care services on or after July 1, 2006, due to a period of ineligibility resulting
5.33 from a transfer on or after February 8, 2006.

5.34 (b) Subject to paragraph (c), when evaluating a hardship waiver, the local agency
5.35 shall take into account whether the individual was the victim of financial exploitation,

6.1 whether the individual has made reasonable efforts to recover the transferred property or
6.2 resource, whether the individual has taken any action to prevent the designation of the
6.3 department as a remainder beneficiary on an annuity as described in section 256B.056,
6.4 subdivision 11, and other factors relevant to a determination of hardship.

6.5 (c) In the case of an imminent threat to the individual's health and well-being, the
6.6 local agency shall approve a hardship waiver of the portion of an individual's period of
6.7 ineligibility resulting from a transfer of assets for less than fair market value by or to
6.8 a person:

6.9 (1) convicted of financial exploitation, fraud, or theft upon the individual for the
6.10 transfer of assets; or

6.11 (2) against whom a report of financial exploitation upon the individual has been
6.12 substantiated. For purposes of this paragraph, "financial exploitation" and "substantiated"
6.13 have the meanings given in section 626.5572.

6.14 (d) The local agency shall make a determination within 30 days of the receipt of all
6.15 necessary information needed to make such a determination. If the local agency does not
6.16 approve a hardship waiver, the local agency shall issue a written notice to the individual
6.17 stating the reasons for the denial and the process for appealing the local agency's decision.
6.18 When a waiver is granted, a cause of action exists against the person to whom the assets
6.19 were transferred for that portion of long-term care services provided within:

6.20 (1) 30 months of a transfer made on or before August 10, 1993;

6.21 (2) 60 months of a transfer if the assets were transferred after August 30, 1993, to a
6.22 trust or portion of a trust that is considered a transfer of assets under federal law;

6.23 (3) 36 months of a transfer if transferred in any other manner after August 10, 1993,
6.24 but prior to February 8, 2006; or

6.25 (4) 60 months of any transfer made on or after February 8, 2006,

6.26 or the amount of the uncompensated transfer, whichever is less, together with the costs
6.27 incurred due to the action; or

6.28 (5) for transfers occurring after August 10, 1993, the assets were transferred by
6.29 the person or person's spouse: (i) into a trust established for the sole benefit of a son or
6.30 daughter of any age who is blind or disabled as defined by the Supplemental Security
6.31 Income program; or (ii) into a trust established for the sole benefit of an individual who is
6.32 under 65 years of age who is disabled as defined by the Supplemental Security Income
6.33 program.

6.34 "For the sole benefit of" has the meaning found in section 256B.059, subdivision 1.

6.35 (e) A transfer of assets into a pooled trust as defined in section 256B.056,
6.36 subdivision 3b, paragraph (c), shall be considered a transfer of assets for fair market value

7.1 if the pooled trust is established according to the provisions listed in section 256B.056,
7.2 subdivision 3b, paragraph (d).

7.3 Sec. 3. Laws 2009, chapter 173, article 1, section 17, the effective date, as amended by
7.4 Laws 2010, First Special Session chapter 1, article 24, section 13, and Laws 2011, First
7.5 Special Session chapter 9, article 6, section 88, is amended to read:

7.6 **EFFECTIVE DATE.** This section is effective for pooled trust accounts established
7.7 on or after January 1, ~~2014~~ 2011, or upon the date it is no longer subject to the maintenance
7.8 of effort requirement in Public Law 111-148. The commissioner of human services shall
7.9 notify the revisor of statutes of that date.