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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. 3222

February 19, 2008

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

1.1 A bill for an act
1.2 relating to human services; clarifying certain asset transfers; amending medical
1.3 assistance preferred drug list; creating a cause of action for certain asset transfers;
1.4 changing medical assistance lien provisions; modifying a children's pilot
1.5 program; establishing a statewide health information exchange; allowing certain
1.6 claims against an estate; amending Minnesota Statutes 2006, sections 256B.056,
1.7 subdivision 4a; 256B.0571, subdivisions 8, 15, by adding a subdivision;
1.8 256B.0595, by adding subdivisions; 256B.0625, subdivision 13g; 256B.075,
1.9 subdivision 2; 524.3-803; proposing coding for new law in Minnesota Statutes,
1.10 chapter 256B.

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

1.12 Section 1. Minnesota Statutes 2006, section 256B.056, subdivision 4a, is amended to
1.13 read:

1.14 Subd. 4a. **Asset verification.** For purposes of verification, ~~the value of an individual~~
1.15 is not required to make a good faith effort to sell a life estate that is not excluded under
1.16 subdivision 2 and the life estate shall be ~~considered~~ deemed not salable unless the owner
1.17 of the remainder interest intends to purchase the life estate, or the owner of the life estate
1.18 and the owner of the remainder sell the entire property. This subdivision applies only for
1.19 the purpose of determining eligibility for medical assistance, and does not apply to the
1.20 valuation of assets owned by either the institutional spouse or the community spouse
1.21 under section 256B.059, subdivision 2.

1.22 Sec. 2. Minnesota Statutes 2006, section 256B.0571, subdivision 8, is amended to read:

1.23 Subd. 8. **Program established.** (a) The commissioner, in cooperation with the
1.24 commissioner of commerce, shall establish the Minnesota partnership for long-term care
1.25 program to provide for the financing of long-term care through a combination of private
1.26 insurance and medical assistance.

2.1 (b) An individual who meets the requirements in this paragraph is eligible to
2.2 participate in the partnership program. The individual must:

2.3 (1) be a Minnesota resident at the time coverage first became effective under the
2.4 partnership policy;

2.5 (2) be a beneficiary of a partnership policy that (i) is issued on or after the effective
2.6 date of the state plan amendment implementing the partnership program in Minnesota,
2.7 ~~or~~ (ii) qualifies as a partnership policy under the provisions of subdivision 8a, or (iii) if
2.8 permitted under subdivision 17, qualifies for a partnership program established by another
2.9 state under United States Code, title 42, section 1396p(b)(1)(C), and is either issued on
2.10 or after the effective date of the state plan amendment implementing the partnership
2.11 program in the state of issuance or qualifies for an exchange under the requirements of
2.12 the partnership program in that state; and

2.13 (3) have exhausted all of the benefits under the partnership policy as described in this
2.14 section. Benefits received under a long-term care insurance policy before July 1, 2006, do
2.15 not count toward the exhaustion of benefits required in this subdivision.

2.16 Sec. 3. Minnesota Statutes 2006, section 256B.0571, subdivision 15, is amended to
2.17 read:

2.18 Subd. 15. **Limitation on liens.** (a) An individual's interest in real property shall not
2.19 be subject to a medical assistance lien under sections 514.980 to 514.985 or a ~~notice of~~
2.20 ~~potential claim~~ lien arising under section 256B.15 while and to the extent it is protected
2.21 under subdivision 9. An individual's interest in real property that exceeds the value
2.22 protected under subdivision 9 is subject to a lien for recovery.

2.23 (b) Medical assistance liens under sections 514.980 to 514.985 or liens arising
2.24 under ~~notices of potential claims~~ section 256B.15 against an individual's interests in real
2.25 property in the individual's estate that are designated as protected under subdivision 13,
2.26 paragraph (b), shall be released to the extent of the dollar value of the protection applied
2.27 to the interest.

2.28 (c) If an interest in real property is protected from a lien for recovery of medical
2.29 assistance paid on behalf of the individual under paragraph (a) or (b), no lien for recovery
2.30 of medical assistance paid on behalf of that individual shall be filed against the protected
2.31 interest in real property after it is distributed to the individual's heirs or devisees.

2.32 Sec. 4. Minnesota Statutes 2006, section 256B.0571, is amended by adding a
2.33 subdivision to read:

3.1 Subd. 17. **Reciprocal agreements.** The commissioner may enter into an agreement
3.2 with any other state with a partnership program under United States Code, title 42,
3.3 section 1396p(b)(1)(C), for reciprocal recognition of qualified long-term care insurance
3.4 policies purchased under each state's partnership program. The commissioner shall notify
3.5 the secretary of the United States Department of Health and Human Services if the
3.6 commissioner declines to enter into a national reciprocal agreement.

3.7 Sec. 5. Minnesota Statutes 2006, section 256B.0595, is amended by adding a
3.8 subdivision to read:

3.9 Subd. 8. **Cause of action; transfer prior to death.** (a) A cause of action exists
3.10 against a transferee who receives assets for less than fair market value, either:

3.11 (1) from a person who was a recipient of medical assistance and who made an
3.12 uncompensated transfer that was known to the county agency but a penalty period could
3.13 not be implemented under this section due to the death of the person; or

3.14 (2) from a person who was a recipient of medical assistance who made an
3.15 uncompensated transfer that was not known to the county agency and the transfer was
3.16 made with the intent to hinder, delay, or defraud the state or local agency from recovering
3.17 as allowed under section 256B.15. In determining intent under this clause consideration
3.18 may be given, among other factors, to whether:

3.19 (i) the transfer was to a family member;

3.20 (ii) the transferor retained possession or control of the property after the transfer;

3.21 (iii) the transfer was concealed;

3.22 (iv) the transfer included the majority of the transferor's assets;

3.23 (v) the value of the consideration received was not reasonably equivalent to the fair
3.24 market value of the property; and

3.25 (vi) the transfer occurred shortly before the death of the transferor.

3.26 (b) No cause of action exists under this subdivision unless:

3.27 (1) the transferee knew or should have known that the transfer was being made by a
3.28 person who was receiving medical assistance as described in section 256B.15, subdivision
3.29 1, paragraph (b); and

3.30 (2) the transferee received the asset without providing a reasonable equivalent fair
3.31 market value in exchange for the transfer.

3.32 (c) The cause of action is for the uncompensated amount of the transfer or the
3.33 amount of medical assistance paid on behalf of the person, whichever is less. The
3.34 uncompensated transfer amount is the fair market value of the asset at the time it was
3.35 given away, sold, or disposed of, less the amount of the compensation received.

4.1 Sec. 6. Minnesota Statutes 2006, section 256B.0595, is amended by adding a
4.2 subdivision to read:

4.3 Subd. 9. **Filing cause of action; limitation.** (a) The county of financial
4.4 responsibility under chapter 256G may bring a cause of action under any or all of the
4.5 following:

4.6 (1) subdivision 2, paragraphs (a) and (b);

4.7 (2) subdivision 3, paragraph (b);

4.8 (3) subdivision 4, clause (5); and

4.9 (4) subdivision 8

4.10 on behalf of the claimant who must be the commissioner.

4.11 (b) Notwithstanding any other law to the contrary, a cause of action under
4.12 subdivision 2, paragraph (a) or (b) or subdivision 8, must be commenced within six years
4.13 of the date the local agency determines that a transfer was made for less than fair market
4.14 value. Notwithstanding any other law to the contrary, a cause of action under subdivision
4.15 3, paragraph (b), or subdivision 4, clause (5), must be commenced within six years of the
4.16 date of approval of a waiver of the penalty period for a transfer for less than fair market
4.17 value based on undue hardship.

4.18 Sec. 7. Minnesota Statutes 2006, section 256B.0625, subdivision 13g, is amended to
4.19 read:

4.20 Subd. 13g. **Preferred drug list.** (a) The commissioner shall adopt and implement a
4.21 preferred drug list by January 1, 2004. The commissioner may enter into a contract with
4.22 a vendor ~~or one or more states~~ for the purpose of participating in a ~~multistate~~ preferred
4.23 drug list and supplemental rebate program. The commissioner shall ensure that any
4.24 contract meets all federal requirements and maximizes federal financial participation. The
4.25 commissioner shall publish the preferred drug list annually in the State Register and shall
4.26 maintain an accurate and up-to-date list on the agency Web site.

4.27 (b) The commissioner may add to, delete from, and otherwise modify the preferred
4.28 drug list, after consulting with the Formulary Committee and appropriate medical
4.29 specialists and providing public notice and the opportunity for public comment.

4.30 (c) The commissioner shall adopt and administer the preferred drug list as part of the
4.31 administration of the supplemental drug rebate program. Reimbursement for prescription
4.32 drugs not on the preferred drug list may be subject to prior authorization, unless the drug
4.33 manufacturer signs a supplemental rebate contract.

5.1 (d) For purposes of this subdivision, "preferred drug list" means a list of prescription
 5.2 drugs within designated therapeutic classes selected by the commissioner, for which prior
 5.3 authorization based on the identity of the drug or class is not required.

5.4 (e) The commissioner shall seek any federal waivers or approvals necessary to
 5.5 implement this subdivision.

5.6 Sec. 8. Minnesota Statutes 2006, section 256B.075, subdivision 2, is amended to read:

5.7 Subd. 2. **Fee-for-service.** (a) The commissioner shall develop and implement
 5.8 a disease management program for medical assistance and general assistance medical
 5.9 care recipients who are not enrolled in the prepaid medical assistance or prepaid general
 5.10 assistance medical care programs and who are receiving services on a fee-for-service basis.
 5.11 The commissioner may contract with an outside organization to provide these services.

5.12 (b) The commissioner shall seek any federal approval necessary to implement this
 5.13 section and to obtain federal matching funds.

5.14 (c) The commissioner shall develop and implement a pilot intensive care
 5.15 management program for medical assistance children with complex and chronic medical
 5.16 issues ~~who are not able to participate in the metro-based U-Special Kids program due~~
 5.17 ~~to geographic distance.~~

5.18 Sec. 9. **[256B.0948] ADMINISTRATIVE SIMPLIFICATION FOR MEDICAL**
 5.19 **ASSISTANCE.**

5.20 Subdivision 1. Statewide health information exchange. The commissioner of
 5.21 human services shall participate in a statewide health information exchange, which is
 5.22 necessary for the efficient administration of medical assistance under this chapter. The
 5.23 health information exchange shall meet the following criteria:

5.24 (1) the health information exchange must be organized as a nonprofit legal entity so
 5.25 that none of the entity's property or assets inure to any private organizations or individuals;

5.26 (2) a seat must be reserved on the board of directors or managers for the
 5.27 commissioner, or the commissioner's designated representative, from which the
 5.28 commissioner or the commissioner's designee may monitor, supervise, and participate in
 5.29 the governance of the health information exchange;

5.30 (3) the health information exchange must be designed to advance state interests and
 5.31 lessen the burdens of government by offering a variety of electronic health information
 5.32 exchange capabilities and services which promote administrative simplification and
 5.33 efficiency in the medical assistance program; and

6.1 (4) members, directors, managers, and officers of the health information exchange
6.2 maintain fiduciary duties to the health information exchange, including a duty of care, a
6.3 duty of loyalty, and a duty of good faith.

6.4 Subd. 2. **Development expenses.** Notwithstanding chapter 16C, the commissioner
6.5 may pay the state's prorated share of development related expenses retroactive to October
6.6 29, 2007, regardless of the date the participation agreement was signed.

6.7 Sec. 10. Minnesota Statutes 2006, section 524.3-803, is amended to read:

6.8 **524.3-803 LIMITATIONS ON PRESENTATION OF CLAIMS.**

6.9 (a) All claims as defined in section 524.1-201(6), against a decedent's estate which
6.10 arose before the death of the decedent, including claims of the state and any subdivision
6.11 thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated,
6.12 if not barred earlier by other statute of limitations, are barred against the estate, the personal
6.13 representative, and the heirs and devisees of the decedent, unless presented as follows:

6.14 (1) in the case of a creditor who is only entitled, under the United States Constitution
6.15 and under the Minnesota Constitution, to notice by publication under section 524.3-801,
6.16 within four months after the date of the court administrator's notice to creditors which
6.17 is subsequently published pursuant to section 524.3-801;

6.18 (2) in the case of a creditor who was served with notice under section 524.3-801(c),
6.19 within the later to expire of four months after the date of the first publication of notice to
6.20 creditors or one month after the service;

6.21 (3) within the later to expire of one year after the decedent's death, or one year after
6.22 June 16, 1989, whether or not notice to creditors has been published or served under
6.23 section 524.3-801, provided, however, that in the case of a decedent who died before June
6.24 16, 1989, no claim which was then barred by any provision of law may be deemed to have
6.25 been revived by the amendment of this section.

6.26 (b) All claims against a decedent's estate which arise at or after the death of the
6.27 decedent, including claims of the state and any subdivision thereof, whether due or to
6.28 become due, absolute or contingent, liquidated or unliquidated, are barred against the
6.29 estate, the personal representative, and the heirs and devisees of the decedent, unless
6.30 presented as follows:

6.31 (1) a claim based on a contract with the personal representative, within four months
6.32 after performance by the personal representative is due;

6.33 (2) any other claim, within four months after it arises.

6.34 (c) Nothing in this section affects or prevents:

- 7.1 (1) any proceeding to enforce any mortgage, pledge, or other lien upon property
7.2 of the estate;
- 7.3 (2) any proceeding to establish liability of the decedent or the personal representative
7.4 for which there is protection by liability insurance, to the limits of the insurance protection
7.5 only;
- 7.6 (3) the presentment and payment at any time within one year after the decedent's
7.7 death of any claim arising before the death of the decedent that is referred to in section
7.8 524.3-715, clause (18), although the same may be otherwise barred under this section; ~~or~~
- 7.9 (4) the presentment and payment at any time before a petition is filed in compliance
7.10 with section 524.3-1001 or 524.3-1002 or a closing statement is filed under section
7.11 524.3-1003, of:
- 7.12 (i) any claim arising after the death of the decedent that is referred to in section
7.13 524.3-715, clause (18), although the same may be otherwise barred hereunder;
- 7.14 (ii) any other claim, including claims subject to clause (3), which would otherwise be
7.15 barred hereunder, upon allowance by the court upon petition of the personal representative
7.16 or the claimant for cause shown on notice and hearing as the court may direct; or
- 7.17 (5) a state or county claim authorized by sections 246.53, 256B.15, and 256D.16.