

**Health and Human Services Committee**  
**Testimony LB 1158**  
**February 8, 2012**

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Good morning/afternoon, Senator Campbell and members of the Health and Human Services Committee, my name is Vivianne Chaumont (V-I-V-I-A-N-N-E C-H-A-U-M-O-N-T), Director of the Division of Medicaid and Long-Term Care for the Department of Health and Human Services. I am here to testify in a neutral capacity on LB 1158.

I have previously briefed the committee on the issues regarding Institutes for Mental Disease (IMD) that the Nebraska Medicaid program is facing. Briefly, federal statutes and regulations prohibit Medicaid from paying for any services provided to an individual 21 and over and under 65 who lives in an IMD. An IMD is an institution of more than 16 beds that is primarily engaged in providing treatment or care to persons with mental diseases, including medical attention, nursing care and related services. Generally, speaking, an institution where more than 50% of the residents have a behavioral health diagnosis may be considered an IMD.

In the summer of 2011, the Centers for Medicare and Medicaid Services (CMS) requested assurances from Nebraska Medicaid that Nebraska was not paying for services to individuals who live in IMDs. Nebraska was unable to provide that assurance. In order to come into compliance, we submitted a corrective action plan stating that we would issue a Request for Proposal to move the Medicaid behavioral health program to at-risk managed care by July 1, 2012 and that we would implement at-risk managed care statewide by July 1, 2013.

The benefits of at-risk managed care are that the company manages utilization and provides access while the state gets control of its costs. The at-risk managed care company can manage care by providing services that the Medicaid program cannot itself provide. A prime example is paying for clients who live in an IMD. Fee for service Medicaid cannot pay for such clients. At-risk managed care can pay for such clients because it is providing the services "in lieu" of more expensive services such as inpatient psychiatric hospitalization.

Medicaid staff is gathering input, through town meetings and through a Request for Information in order to post a Request for Proposal by July 1, 2012. There are components in LB 1158 that the Department would like to incorporate in the development and implementation of managed care contracts. For instance, CMS requirements cap the administration portion of the rate at 15%. Federal regulations

require that CMS grant approval of the actuarial soundness of the managed care rates and grant approval of the terms of the contract.

We plan to establish limits on profits, requirements for community reinvestment and performance measures. These are best practices used by many states in these contracts. What concerns me about the bill is the cementing of these requirements, at specific numbers, in a statute. The statute could hamper the flexibility of the Department to adjust the specifics based on the bids it receives. The restrictions in LB 1158 could result in fewer or even no companies bidding on the behavioral health managed care contract now or in the future. It is in Nebraska's interest to have several companies bid this contract so we have good choices in making this big step. Failure to have a contract in place on July 1, 2013 has severe consequences in the current environment. If we do not have a contract in place on July 1, 2013, we are out of compliance with federal requirements and will need to stop paying for services provided to Medicaid clients who live in IMDs. This includes all Medicaid services not just those related to living in an IMD. The loss of federal financial participation is estimated to be approximately \$20 million per year.

The Department is in favor of contractor accountability through performance measures and the ideas behind the bill. However, setting these in concrete may have consequences which are unintended and put the behavioral health system at greater risk.

I appreciate the opportunity to voice these concerns and I would be happy to answer any questions.