

February 3, 2016

Senator Les Seiler
District #33
Room 1103, Capitol
PO Box 94604
Lincoln, NE 68509-4604

RE: LB 1103

Dear Senator Seiler and Members of the Judiciary Committee:

LB 1103 makes changes to Medicaid estate recovery. First of all, the Department of Health and Human Services (DHHS) is supportive of the intent of this bill. I would like to thank Senator Schumacher for his leadership in this area and for seeking our feedback while drafting this legislation and meeting with the Department's leadership to hear DHHS's technical issues. I would like to share the following technical issues with the committee, many of which we understand may already be in the process of being addressed through amendments.

The fourth section of this bill indicates that a Medicaid applicant must disclose the full nature and extent of his or her assets. Failure to do so makes the applicant liable to repay any benefits received. This wording makes it clear that whenever someone dies with sufficient assets to pay for their medical bills, the taxpayers will not end up having to pay for them. However, there are a few parts of the fourth section that are not consistent with federal law. Specifically, this section includes unenforceable Medicaid eligibility requirements. For example, there is no provision in federal Medicaid eligibility law for counting income not actually produced and available to the recipient. In addition, the introduced wording of the fourth section is not entirely clear that the deadline commences after the death of the recipient or the recipient's spouse, whichever is later.

The sixth section sets forth the federally permitted extent of which medical assistance is subject to estate recovery. The bill, as worded, delays recovery as long as a surviving spouse exists (as required by federal law), but may extinguish recovery (rather than delay it) if a minor child or disabled child of any age survives the recipient (which might not be consistent with federal requirements).

The sixth section also requires the Department to waive restrictions on transfer within 60 days if no Medicaid reimbursement is due. However, even routine Medicaid claims can be filed up to six months after the date of service. So, the Department's answer may not be complete in only 60 days if an active Medicaid case were open at the time of the person's death.

The seventh section indicates that county attorneys could bring reimbursement actions if the Department chooses not to do so. The Attorney General would need to consent, and there are also policy reasons why particular cases might not be brought or particular appeals taken by Medicaid. It is also questionable whether federal authorities would permit Medicaid decisions being made by any entity other than the designated entity, the Department.

The eighth section would require death certificates to note if Medicaid reimbursement were due. It is unclear how this would work in practice, particularly given the timeframe in which death certificates are issued, as well as whether this would mean that death certificates can and would have to be reissued if and when a debt is paid. The department urges continued consideration of revising these

requirements to ensure practical feasibility and prevent undue delays in the issuance of death certificates.

Thank you for the opportunity to share these technical issues.

Sincerely,

Calder Lynch, Director
Division of Medicaid and Long-Term Care
Department of Health and Human Services

CC: Sen. Paul Schumacher