

February 5, 2015

Senator Kathy Campbell, Chair  
Health and Human Services Committee  
P.O. Box 94604  
Lincoln, NE 68509-4604

RE: LB 440

Dear Senator Campbell and members of the Health and Human Services Committee:

The Division of Medicaid and Long-Term Care has reviewed LB 440 and offers the following technical information on the bill. The agency takes no policy position on the bill at this time.

According to the statement of intent for LB 440, the bill would direct the Division of Medicaid and Long-Term Care of the Department of Health and Human Services to contract for a study to determine an appropriate rate for payment under the Medicaid waiver for the aged and disabled for care for individuals with Alzheimer's disease or other dementia provided by an Alzheimer's special care unit in an assisted living facility.

Nebraska Medicaid pays for services in Assisted Living only through the Aged and Disabled (AD) Waiver Program. Operating this program of services under the authority of Section 1915(c) of the Social Security Act permits Nebraska to waive certain Medicaid requirements in order to furnish an array of home and community-based services (HCBS) that promote community living for Medicaid beneficiaries and, thereby, avoid institutionalization. Waiver services complement and/or supplement the services that are available through the Medicaid State Plan and other federal, state and local public programs as well as the supports that families and communities provide to individuals.

The AD Waiver's established Medicaid payment for assisted living ranges from \$1,853 – \$2,588 per month (with variance based on urban/rural and single/multiple occupancy). In addition, each person pays a non-Medicaid coverable room and board amount which is currently \$669 per month.

In March 2014, federal changes to all HCBS waivers were implemented. In addition to emphasizing person-centered guiding principles, the federal "HCBS Final Rule" defines settings in which CMS considers HCBS, defines settings which are institutional, and regulates that settings which do not meet the HCBS definition will not be eligible for federal funding. The HCBS Final Rule also requires all states to develop and publish a transition plan

for coming into compliance with the new settings requirements. Basically, the rule requires that all HCBS settings operate in ways that are, in fact, Home- and Community-Based and do not operate in ways that appear institutional. Some of the specific HCBS qualities cited are that the individual's unit has lockable doors, that the individual may have visitors at any time, that the individual controls his/her own daily schedule, and that the individual has access to food at any time. These qualities are typically not seen in a special care unit setting.

In addition, the rule lists settings that are presumed not to have the qualities of HCBS which includes hospitals, nursing facilities, and "any other location that has the effect of isolating individuals from the broader community" 42 CFR 441.301(c) (4). Locations that are considered not or not likely to have the qualities of HCBS will require heightened scrutiny from CMS.

A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home- and community-based and does not have the qualities of an institution. Nebraska Medicaid fully intends to present such a "heightened scrutiny" case to CMS in regard to special care units.

Nebraska Medicaid believes that persons with dementia could appropriately participate in the AD Wavier and be served in assisted living settings if some of the HCBS qualities of the setting do not apply to those individuals for safety reasons. That may be acceptable by assuring that alternative practices are detailed on those persons' individualized Plans of Services and Supports. It is less clear how CMS will consider a setting that serves only the population of persons with Alzheimer's disease and other dementia diagnoses, as this would not be considered an integrated setting.

If the committee decides to advance LB 440, it may want to consider extending the completion date to complete the study and publish the report. The Department will have challenges with identification of a contractor, negotiations, finalizing the contract, and completing the deliverables before July 1, 2015, when the study is to be complete and published to the DHHS website.

If such a contract could be finalized, reflecting the specific points for analysis contained in LB 440, and ready for signature when the funds are available July 1, 2015, the Department expects this work could be completed within six months. The timeframe proposed to complete the study also takes into consideration for the study to identify best practices as well as eligibility criteria and processes as required by the bill which will require national research.

Due to the challenges identified above, the Department would request the study to be complete and published to the DHHS website by January 1, 2016.

Please feel free to contact me for discussion that you would deem necessary on this matter.

Sincerely,



Courtney Miller  
Deputy Director, Programs  
Division of Medicaid & Long-Term Care

Cc: Senator Morfeld