

February 18, 2015

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

RE: LB 607

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

The Division of Public Health, Division of Medicaid and Long-Term Care, and Division of Behavioral Health have reviewed LB 607 and offer the following technical information on the bill. The agency takes no policy position on the bill at this time.

Home care services are defined in the bill as those under Medicare, Medicaid, or any other public or private program providing home care services. This bill would impact providers of the Home Health, Private Duty Nursing, Personal Assistance Service (PAS) and Aged and Disabled Waiver program. Sections of the bill that impact the Medicaid program are:

1. Section 3 - Requiring agency and individual service providers to take on additional roles may cause a negative impact on recruiting and retaining service providers.
2. Section 3 (2) – Service providers may not have the skills to disclose the information required in writing.
3. Section 5 – The requirement for compliance prior to service beginning may cause a delay in service.
4. Section 7 (1) – Service choices have to be within the parameters of the funding source.
5. Section 8 – It's unclear who is responsible to provide cost information.
6. Section 8 - This bill provides for a thirty days' advance notice whereas Medicaid federal regulations provide a ten-day advance notice of adverse action.

LB 607 defines Home Care services as home and community-based services which promote independence and reduce the necessity for residence in a long-term care facility including, but not limited personal care services designed to assist an individual in the activities of daily living. Using this definition, it is unclear as to whether the Home Care Consumer Bill of Rights Act applies to the following services funded in Nebraska's public behavioral health system:

- Community Support
- Recovery Support
- Emergency Community Support
- Day Support

- Day Rehabilitation
- Day Treatment

Nebraska Administrative Code (NAC) 206 already covers the requirements for consumer rights in Nebraska's public behavioral health system, including the presentation and documentation of rights when the service is initiated by the provider. Any additional requirements included in this proposed legislation are either duplicative or could, in some cases, conflict with NAC 206 requirements resulting in further confusion.

This bill also specifies that the home care consumer would have the right to contact the State Unit on Aging, and the state long-term care ombudsman in order to have grievances addressed in an appropriate and timely manner and without retaliation. The Area Agencies on Aging and the Centers for Independent Living would be logical local agencies to include in the effort.

The Long-Term Care Ombudsman program is currently understaffed to meet the need for the 27,000 nursing home and assisted living residents. Additional staff for the Long-Term Care Ombudsman Program is needed as the estimated new client base is expected to be 87,900. It is expected that if 15 percent of home care consumers contact the Ombudsman, an additional seven staff persons will be needed.

Rules and Regulations Impact:

- Regulations would have to be revised to incorporate the requirements of this bill in 480 NAC Chapter 5 and 471 NAC Chapter 3 (Provider enrollment).
- Regulations would have to be revised to incorporate the requirements for the Long-Term Care Ombudsman Program 15 NAC Chapter 3.
- Regulations would have to be revised to incorporate the requirements of this bill in 175 NAC Chapter 14: Regulations Governing Licensure of Home Health Agencies.
- Regulations would have to be revised to incorporate the requirements of this bill in 175 NAC Chapter 16: Regulations Governing Licensure of Hospice Services.
- Regulations would have to be revised to incorporate the requirements of this bill in 206-6-001 Consumer Rights.

LB 607 provides that a home care consumer has the right to be informed of the provisions of the Consumer Bill of Rights Act by a provider of home care services before the home care consumer begins to receive home care services. Changes that may need to be added to NAC 206 include but are not limited to:

- The contact information for the entities the home care consumer may contact if his or her rights are violated,
- The right to sufficient information to make informed decisions, to be fully informed in advance about any proposed changes in home care services, and to be involved in the decision making process regarding those changes.

- The right to be informed of the cost of home care services prior to receiving those services and the right to 30 days advance notice of any changes to such costs or services.

Provider grievance policies may require revision to address any violations of consumer rights under the Home Care Consumer Bill of Rights Act.

Also, depending on whether the provider of home care services is an employer, a joint employer, an employee leasing company, or a contractor, as applicable, and the home care consumer is considered an employer under law, the consumer may be held responsible for the payment of federal and state taxes.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Acerno". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr. Joseph Acierno, Chief Medical Officer
Division of Public Health
Department of Health and Human Services

cc. Senator Mello