

Executive Board
LB 837
January 25, 2017

Rocky Thompson, Director
Division of Medicaid and Long-Term Care
Department of Health and Human Services

Good afternoon, Senator Watermeier, and members of the Executive Board. My name is Thomas “Rocky” Thompson (T-H-O-M-A-S R-O-C-K-Y T-H-O-M-P-S-O-N), and I am the Interim Director of the Division of Medicaid and Long-Term Care (MLTC) in the Department of Health and Human Services (DHHS). I am here to testify in opposition of LB 837.

LB 837 would require the Department to submit Medicaid waiver applications to the Health and Human Services Committee before submitting to the Centers for Medicare and Medicaid Services (CMS). The bill also allows the committee to hold a public hearing and gives the committee approval and disapproval authority over the submission of waiver applications. Before I begin explaining our opposition to this proposal, my team has put together a handout which provides background information about the different types of waivers and the current processes the federal government requires, which is what our state implements. This information will provide additional context.

Under this bill, the state may see delays in submitting waivers, which could cause a loss of federal funding. CMS does not retroactively approve waivers, only prospectively. CMS requires that waivers be submitted ninety (90) days before the implementation date. Existing waivers must be renewed and submitted ninety (90) days before the renewal date. Delaying a renewal could cause a break in covered services and/or require services to be paid for entirely by state general funds. Individuals covered by the (c) waivers are some of the state’s most vulnerable populations: the aged and disabled. Any delay or loss in services could be detrimental to these individuals and providers who receive payment under these waivers.

Biennial budget requests and fiscal notes on bills routinely plan on federal funding anticipated by waiver submissions.

To put this in context, the current timeline of a waiver submission with an effective date of October 1 would follow as such:

- on April 1, the state would submit a draft of the waiver to all Nebraska tribes, as federally required;
- the tribes are given thirty (30) days to review and provide comments or feedback;
- public notice would be posted in May, allowing stakeholders to review and provide feedback. This would include online posting and stakeholder meetings being held; and

- submission to CMS must happen no later than July 1 for an implementation date of October 1.

Prior to April, the state's subject matter experts would be working for months to develop and draft the waiver.

As written, it is unclear if this bill applies to only new waiver applications or if the bill applies to amendments, renewals, or extensions, as well. Waivers are not automatically renewed; waivers which have not been formally renewed by the end of the waiver period will automatically expire. Waiver renewals also must be submitted at least 90 days prior to the end of the waiver period. However, CMS prefers renewals to be submitted 180 days prior. Any delay in submitting waiver renewals could lead to the ending of a waiver which would effectively end services for vulnerable individuals.

CMS will consider requests for temporary 90-day waiver extensions only in very limited circumstances. A temporary extension permits the state to continue to operate an approved waiver beyond its original expiration date. Extensions are not granted solely for administrative convenience, such as giving the state extra time to prepare a waiver renewal request. Extensions are only granted for reasons such as aligning a period of the waiver to the state fiscal year, or combining several waivers into one waiver. A request for an extension must be submitted formally in writing to CMS in advance of an approved waiver's expiration date and extensions are considered on a case-by-case basis.

A request for extension may also arise out of the need to address waiver design issues as identified by CMS. In those instances, CMS will not approve a temporary extension request unless and until the state submits a satisfactory action plan with specific milestones. CMS will also require the state to report its progress in implementing the action plan during the extension period. Temporary extensions are only granted for a period of up to ninety (90) days. If the intent is for LB 837 to apply to extensions the timing and delay could cause the state to be unable to utilize this important process in ensuring services continue. The Director for the Division of Developmental Disabilities is also here and will discuss their experiences with the extension process.

This bill effectively gives a legislative committee veto authority over the executive branch's execution of the Medicaid program. By having a veto over the submission of our waivers, the legislature could hinder Medicaid's ability to effectively manage the program. Medicaid is the single state agency responsible for administering the Medicaid program to the federal government. This includes the ability to submit waivers that ensure Nebraskans, who are most in need, continue to receive medical services. This bill, by allowing the state legislature veto authority over waiver submission, risks our ability to make sure services are delivered to our Medicaid clients.

I believe we are holding ourselves to a high standard and I appreciate the oversight and transparency the Legislatures Health and Human Services Committee provides. Our team is dedicated to the mission of helping people live better lives and we will continue to work closely with the HHS committee members, the legislature, our providers, stakeholders, and advocates to ensure the appropriate management of our programs. Any senator or his or her staff are welcome to attend our stakeholder meetings. I am glad to present to the HHS committee any waiver application if asked.

Again, I oppose LB 837 because it duplicates existing oversight, raises concerns about the separation of powers, could delay the waiver approval process, and could cause vulnerable Nebraskans to lose needed services. It could also create unintended fiscal implications if federal receipts were planned for in a biennial budget or a fiscal note on a bill, which then gets delayed by additional legislative review.

Thank you for the opportunity to testify and I'm happy to answer any questions you have.