

Health and Human Services Committee

LB 866

February 14, 2018

Rocky Thompson

Interim Director, Division of Medicaid and Long-Term Care

Nebraska Department of Health and Human Services

Good afternoon, Chairman Riepe, and members of the Health and Human Services Committee. 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 to LB 866.

LB 866 would make numerous changes to state statutes regarding waiver submissions by the Division of Medicaid and Long-Term Care. Many of these changes would negatively impact the timely submission of waivers to the federal government, which could jeopardize federal funding. These changes include mandating that the Health and Human Services Committee hold a hearing within ten (10) days of the department submitting the annual report regarding regulations, waivers, and state plan amendments – which the committee can already hold a hearing at any time. The bill also would require the department to provide public notice for waivers and sets requirements for public notice – but the department already is required to provide public notice. Finally, LB 866 requires that the changes incurred with any new, extended, or eliminated of a waiver would not be effective until the conclusion of the legislative session – which would delay waiver submittal and jeopardize continued federal funding.

Let me be clear: We support hearings before this committee and outreach to affected residents. However, the public notice provisions contained within this bill would be duplicative of public notice already given for waiver submissions. Public notice is already required by federal law. In addition, the department provides detailed information regarding the current waivers on its website, and publishes public notice online and in print. We also already hold regular stakeholder meetings and town halls across the state when the waivers are due for renewal. Again, this proposed notice provision is duplicative of current federal requirements and what the department is already doing.

Regarding the HHS hearing requirement, specifically, this committee knows that I am more than willing to come at any point in time to discuss the Medicaid program with you. I am glad to present to the HHS committee regarding any waiver, state plan amendment, or regulation. The committee already has the authority to hold a meeting, briefing, or hearing about these matters at any time, and the department is always willing to attend and present if requested. A duplicative law is not needed.

My main concern is that, under this bill, the state would see delays in submitting waivers, which could cause a loss of federal funding. The Centers for Medicare and Medicaid Services (CMS) does not retroactively approve waivers; they are only prospectively approved. 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 the effective date of a waiver or renewal of a waiver could cause residents to go without services during a waiver-submission delay, or require services to be paid for entirely by state general funds. Individuals covered by the home and community based waivers are some of the state's most vulnerable residents: the aged and disabled. Any delay or loss in services would be highly detrimental to those residents and the providers who receive payment for the work they perform under these waivers.

It is unlikely that CMS would grant us additional time to submit waivers to comply with this proposed law. CMS will only consider requests for temporary 90-day waiver extensions in very limited circumstances, and this would very likely not count as one.

In conclusion, current law already requires considerable public notice to residents, and this committee already has authority to hold hearings. Conditioning the submittal of certain required documents to the federal government on duplicative notice and hearing requirements could jeopardize continued federal funding of our state's most vulnerable residents, and it is for this reason that we oppose this bill.

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