

Judiciary Committee
LB 268
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Good afternoon, Senator Ebke, and members of the Judiciary Committee. My name is Calder Lynch (C-A-L-D-E-R L-Y-N-C-H) and I am the Director of the Division of Medicaid and Long Term Care in the Department of Health and Human Services (DHHS). I am here to testify in a neutral capacity to LB 268. This bill would, among other things, broaden the scope of Medicaid estate recovery. While DHHS has no position on this bill at this time, we would like to take this opportunity to share the following policy and technical concerns which have also been shared with Senator Schumacher.

- (1) LB 268 would require DHHS to determine whether real property rented out to close relatives is at commercially reasonable rates. If ground is rented out for less than fair market value, that difference is to be held against the member's Medicaid eligibility.

However, federal Medicaid law (in various sections of 20 CFR chapter 416, as well as federal guidance in the Social Security Administration's POMS manual) does not allow us to tell members how much rent to charge, if ground is rented out. This is different than situations in which a recipient actually transfers property for less than fair market value – a gift, for example. Federal law considers this a deprivation of resources when considering member's Medicaid eligibility.

DHHS would suggest this requirement to determine "commercial reasonableness" be removed from this bill.

- (2) LB 268 would require DHHS to be given a copy of every recorded deed filed in the state. Registers of deeds offices would be required to perform this additional work. DHHS would be required to receive and maintain all of these copies. This could require considerable additional governmental resources. Due to federal restrictions on estate recovery – particularly the five-year "lookback" rule – most of these land transactions could never be subject to estate recovery.

DHHS would suggest that this requirement that DHHS be given a copy of every recorded deed filed in the state be removed from this bill, and that the language of this provision be made clearer regarding the scope of the duties of the registers of deeds in this regard.

- (3) Whenever a third party is responsible for injuries – such as a car accident – that third party is supposed to be responsible for paying to treat them – not the taxpayers through Medicaid. Under federal law, DHHS enforces this requirement whenever liability is reasonably clear, and it is reasonably likely that the third party has sufficient resources (such as insurance).

LB 268 would create a complicated system of county attorneys being able to bring these lawsuits, if DHHS or private attorneys decide not to bring a lawsuit. But, DHHS would be able to “veto” county attorneys bringing these suits, as long as that veto were “reasonable.” It is unclear what that means, and who would decide this. As mentioned, DHHS already is subject to very particular rules as to when it can bring these lawsuits, and attorneys generally do bring lawsuits if there is a reasonable chance of recovery.

DHHS would suggest reference to county attorneys being made a part of the process of the recovery of third party liability be removed from this bill.

- (4) LB 268 would require DHHS to monitor the death registry, and to file a demand for notice in the courts every time a person who had received reimbursable Medicaid dies. Not every person who dies has a probate estate, and not every member who dies owing back reimbursable Medicaid has sufficient assets to pay back anything. Also, the language of LB 268 could delay the issuance of certified copies of death certificates.

DHHS would suggest that this requirement to file demands for notice in every death be removed from this bill.

Thank you for the opportunity to testify before you today. LB 268 does contain many helpful provisions that would increase the amount of Medicaid funds returned to the state and improve the methods of pursuing the recovery. These helpful provisions are all contained in LB 542. Unlike this bill, LB 542 does not contain those items with concerns I have just mentioned. I’m happy to answer any questions you may have.

Also with me is Department attorney Nate Watson, who will be able to answer any of the more technical questions that you might have about our concerns regarding LB 268.