

March 12, 2015

Senator Les Seiler, Chair
Judiciary Committee
P.O. Box 94604
Lincoln, NE 68509-4604

RE: LB 281

Dear Senator Seiler and members of the Judiciary Committee

LB 281 would provide a means for a noncustodial parent (NCP) to make contributions to a college savings account and reduce or eliminate State debt that has arisen when the custodial parent (CP) received payments from the state pursuant to the Aid for Dependent Children Program. The Department of Health and Human Services is not taking a policy position on LB 281 and AM 706. I would like to point out a number of important technical issues the Committee might wish to consider when discussing this bill.

- The key provision defining NCP eligibility in the program, Section 4(1), appears flawed. It states the State Treasurer shall enter into an agreement whereby “a NCP owing arrears but current on his or child support obligation may open and make contributions to one or more college savings accounts.” The term “current” has a specialized technical meaning in Federal and State Child Support regulations. “Current” support means the amount of financial support which is paid in the month it is due. It is unclear how an NCP could be “owing arrears but current” in his/her support obligation. Additionally, based on language from other sections of LB 281, it is probable the bill at Section 4(1) is meant to reference State debt (versus “arrears”) but the language in that section needs to be refined.
- Another key provision of LB 281, Section 4(4), mandates that for every dollar contributed, “the department shall forgive two dollars of the arrears”. However, the State has no lawful authority to forgive arrears owed to the CP, which is not clear from the wording of the proposed bill. Secondly, it is unclear who is being referenced by the term “the department”—the State Treasurer, the Department of Health and Human Services or another State agency. It would appear that Section 4(4) is meant to reference State debt (versus “arrears”) but the language in that section needs to be refined.
- Support order payments are credited and distributed according to state and federal law. However, the bill is silent on the issue of distribution of support payments in situations where the NCP has multiple support orders. Federal and state law require that funds be allocated across all orders so that all families are treated equally. Federal law requires that if the NCP has multiple court orders, the NCP must be current on all the obligations before any payment is applied toward

arrears. Additionally, before any payments are applied to State debt, the law requires the unassigned arrears owed to the CP be paid in full. LB 281, as drafted, might leave the door open for an NCP to make a contribution to a college savings plan in one support case, while leaving other current support obligations unfulfilled in other cases, and would therefore be in violation of federal law.

- LB 281 Section 4(2) mandates that the owner of the college savings account “shall be the State of Nebraska.” This is in direct conflict with NRS Sec. 85-1809 that provides “a participant retains ownership of all contributions” of Educational Savings Plan Trusts (emphasis added). Therefore, it is unclear how the participant/NCP could retain the tax advantage of such a savings account fund without ownership.

Thank you for your time and consideration of this information. I would be happy to discuss this matter further with Senator Kolowski and the Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Tony Green'.

Tony Green, Acting Director
Division of Children and Family Services
Department of Health and Human Services

Cc: Senator Rick Kolowski