Department of Health & Human Services
DHHS
NEBRASKA

Kerry T. Winterer
Chief Executive Officer

State of Nebraska
Dave Heineman, Governor

February 13, 2014

Senator Brad Ashford
Judiciary Committee
P.O Box 94604
State Capitol
Lincoln, NE 68509

RE: LB 870

Dear Senator Ashford and members of the Judiciary Committee:

LB 870 would establish the Public Debt Recovery Program administered by the State Treasurer. A state agency would be required to assign every debt over $50 to the Program with limited exceptions.

The only exception applicable to DHHS is in relation to child, spousal and medical support debts.

DHHS currently pursues collection efforts in programs across the divisions. While the idea of consolidating debt collection into one program has some appeal, the requirement that DHHS discontinue all collection actions while a debt is assigned to the State Treasurer may violate federal requirements applicable to the state's federally funded programs, such as Medicaid, Supplemental Nutrition Assistance Program (SNAP - formerly known as Food Stamps), and programs funded through Temporary Assistance for Needy Families (TANF) funds.

Federal Medicaid law imposes specific requirements respecting recovery from liable third parties of Medicaid paid on behalf of an injured party and recovery of Medicaid overpayments to a Medicaid provider. Likewise, federal SNAP and TANF laws impose specific requirements respecting recovery of overpayments. This requirement in the bill may cause DHHS to be in violation of those federal requirements in some cases resulting in federal funding reductions due to noncompliance with the federal requirements.

Regarding the recovery fee which the State Treasurer may assess against a state agency, it is unlikely that federal funds could be used to pay any such fees. Thus, the fees would come out of state general funds including the state's share of any Medicaid recovery by the State Treasurer.

There are other concerns, as well.

For example, the prohibition against all collection actions while a debt is assigned to the State Treasurer may also interfere with collection action by DHHS at critical times. For example, in collecting a large debt, the opportunity to collect by garnishment may be lost forever if garnishment action is not promptly taken. DHHS would also be prohibited from offsetting program payments to beneficiaries or providers who owe a debt to DHHS.

The requirement that a state agency discontinue all collection actions while a debt is assigned to the State Treasurer would be a substantial impediment to collection of other debts owed to DHHS. For example, the provision for offset of a Nebraska income tax refund doesn't help collect a debt from a doctor for breaking a contract for practicing in a state-designated shortage area if the doctor has moved out of Nebraska and is no longer filing Nebraska state income tax returns.

Disciplinary action under licensing statutes, such as the Uniform Credentialing Act which is applicable to medical professionals including doctors and nurses, may also be obstructed by the requirement that collection actions be discontinued while a debt is assigned to the State Treasurer. For example, timely enforcement of administrative disciplinary orders may be hindered if DHHS is not free to proceed with enforcement of an order which imposes a civil penalty, and subjects the medical professional to further sanctions if the civil penalty is not paid.

The bill requires the State Treasurer to grant a hearing to a debtor who contests a state agency's claim in a timely manner unless the issue has been previously litigated. The requirement of previous litigation may require a prior judicial determination and may not be met if the only previous determination was an administrative order in a contested case conducted by a DHHS administrative hearing officer. In other words, the bill appears to require another administrative hearing which would result in duplication of a prior administrative proceeding and thus grant the debtor a proverbial second bite at the apple.

While this bill would give a collection tool to DHHS which may be helpful in collecting some debts, it poses considerable concerns when required for all debts over $50.

Sincerely,

Kerry T. Winterer
Chief Executive Officer
Department of Health and Human Services

cc: Senator Kate Bolz