

## **Testimony on HB 2697, Collateral Assignment of the Proceeds of Life Insurance Policies**

**Presented To**

**House Committee on Aging and Long-Term Care**

**By**

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**February 16, 2012**

Chairman Bethell and Members of the House Committee on Aging and Long-Term Care: Thank you for the opportunity to submit testimony regarding House Bill 2697, related to the collateral assignment of the proceeds of life insurance policies. KDHE agrees with the spirit and intent of the legislation but suggests an amendment to ensure that an estate planning loophole is not inadvertently created.

HB 2697 would, in effect, exempt life insurance policies from the Medicaid asset test if a collateral assignment of the proceeds to KDHE were executed. Any proceeds from the policy would be used to reimburse Medicaid for expenditures paid for the insured. Conceptually, this is good policy that would benefit Kansans and the Medicaid program.

To explain KDHE's concern with the current bill language, first consider current Medicaid policy regarding life insurance. In general, Medicaid for the elderly and disabled requires a resource or asset test. Included in the resource test are items like bank accounts, stocks, bonds and the cash surrender value of most life insurance policies. It is not unusual for applicants with a life insurance policy to cash in the policy and spend the money down. As an alternative, the individual may formally designate a smaller policy for funeral expenses. However, for large policies it is quite common to cash in, or terminate the policy prior to applying for coverage. If the policy is terminated, the applicant is required to provide an accounting of the cash value when a Medicaid application is received. If the funds were inappropriately transferred, or given away, a transfer of property penalty may be imposed.

HB 2697 would establish the option of a collateral assignment. Although the applicant would have the same options as under current policy, the additional option would allow the insured to keep the policy in force by executing the assignment. KDHE has concerns with this language, because technically, a collateral assignment does not lock-down the policy sufficiently to ensure the insured cannot make changes. This means a policy could be cashed in or reassigned after execution of the assignment. In addition, the transfer-of-property penalties that are imposed on individuals who inappropriately dispose of money are not applicable to assets that are not countable. So, an estate planner could purchase a life policy, immediately apply for Medicaid and execute a collateral assignment. Because the policy would now be exempt, the insured would receive Medicaid coverage. However, collateral assignment still would allow the

policy to be cashed in. Those funds could then be given away without a penalty, in effect sheltering the entire life policy purchase price. Any recovery of funds at the time of policy termination would no longer be possible without a policy in force.

Without amendment, KDHE estimates the bill would increase caseload, reflecting the result of the asset sheltering incentive, with a reduction in collections at the time of policy termination.

However, KDHE suggests a simple change that would avoid the creation of loopholes and lead to significantly increased recoveries while remaining consistent with the spirit of the legislation.

Specifically, we suggest adding at line 14 and after "...policy.":

*"To qualify, the collateral assignment, at minimum, shall be irrevocably assigned to the Kansas medical assistance program and incorporate a written agreement binding on the holder or owner of the policy to not invade or use the cash or equity value of the policy after assignment. The Kansas medical assistance program may add any necessary provisions needed to gain approval from federal medical assistance authorities."*

This language would ensure the collateral assignment was irrevocable. If an irrevocable assignment were executed, the owner of the policy could not execute a change, ensuring the policy would remain in force. The possibility of additional recoveries from current members also exists, as existing policies could be assigned by beneficiaries as cash value is accumulated.

Thank you for the opportunity to present this testimony. We welcome the opportunity to work with the committee on this and other issues related to the Medicaid program.