

HMS Testimony to the Kansas House Judiciary Committee
March 5, 2012

Good day Mr. Chairman and members of the Committee. My name is Ben Sherber and I am the Attorney and Program Manager responsible for HMS's Estate Recovery work in the State of Kansas. I graduated from the University of Kansas School of Law, and have practiced law in the state since 2002; specifically focusing on HMS's Estate Recovery contract with the State of Kansas since 2007. I am here today representing HMS and to testify in support of HB 2742.

HMS is the nation's leader in cost containment solutions for government-funded and commercial healthcare entities. Our clients include health and human services programs in more than 40 states; commercial programs, including over 150 Medicaid Managed Care plans; the Centers for Medicare and Medicaid Services (CMS); and Veterans Administration facilities. HMS helps these healthcare payers ensure claims are paid correctly and by the responsible party. Overall, our services make the healthcare system better by improving access, impacting outcomes, containing costs, recovering dollars, and creating efficiencies. As a result of HMS's services, our clients collectively recover over \$2 billion annually, and save billions of dollars more by avoiding erroneous payments.

HB 2742 makes changes to the State's Estate Recovery Program which will result in increased revenue to the State. Kansas started its Estate Recovery program in 1992, after Congress enacted legislation requiring states to recover long term care costs from the estates of deceased Medicaid recipients who used Medicaid funds to pay for those services.

Estate Recovery offsets the high costs of long term care and nursing home services by recouping the amounts paid for individuals over 55 years of age, or residents of a long term care facility, after their deaths from remaining assets. Often, recoveries take the form of bank accounts under \$2,000 and houses or other real property exempted from determining eligibility at the time of application. Estate Recovery seeks to partially collect from those remaining assets and reimburse the taxpayers for the costs that were fronted for medical care.

Since 1992, the Kansas Legislature has continued to support the program by reviewing and improving the Estate Recovery statute. In 2005, the law was updated to include recovery of non-probate type assets; and in 2007, it was updated again to clarify that the State should be notified on all probate estates where the recipient or spouse received medical assistance. These legislative changes have contributed to the consistent increase in revenue from Estate Recovery activities since the inception of the program.

Beginning in 2007, the State of Kansas has contracted with HMS to supplement its Medicaid Estate Recovery Program. Since that time, annual gross recoveries (including federal share) have increased in Kansas from \$5.2M in FY 2007 to over \$9.4M in FY 2011, with further growth projected this year. In 2010, the contract was competitively reprocured and reawarded to HMS. This arrangement has benefitted the state significantly as HMS has recovered a gross total, prior to removal of the federal share, of \$25.3M since 2007.

In addition to our work in Kansas, HMS contracts with ten (10) other states to supplement their Estate Recovery programs. During our tenure working with Kansas and other state programs, we have identified several ways to further improve the Kansas Estate Recovery Program. HB 2742 not only updates Kansas's law to bring it in line with other states, but would close some of the loopholes that artificially suppress revenue from current activities, doing so in a balanced, responsible way to the community.

For example, ***HB 2742 would extend the time deadlines for Estate Recovery to open probate.*** In comparison to its peers, Kansas has the shortest creditor probate time limits in the nation. The state loses significant recovery opportunities due to lack of time to fully investigate the case before the deadline. In practice, the Estate Recovery Program typically does not learn of the death of a Medicaid recipient for 2 months. And, the questionnaire used to determine assets is often not returned promptly or vital pieces of information are left blank, which is problematic under a 6 month deadline. Also, because the family is put on notice that there may be a Medicaid claim, they often have little incentive to cooperate or to initiate an estate prior to the time deadline. Further, I frequently receive calls and letters from attorneys advising me that the family has no plans to open an estate, but is planning to

wait out 6 months and file a Determination of Descent proceeding. While there may be valid reasons as to why Determination of Descent actions are needed, the intentional delay costs Kansas taxpayers significant recoveries. For all of these reasons, we frequently learn after the 6 month deadline that the deceased passed with real property, which goes uncollected.

We are sensitive to striking the balance between maximizing state revenue and requirements placed on descendents and their attorneys. However, we believe HB 2742 is reasonable, and does not place significant additional burdens on the community. For instance, ***HB 2742 would require notice be forwarded to KDHE on all probate cases filed where the deceased was over 55 or a resident of a long term care facility.*** While the legislature attempted to address this issue in 2007, when it added section (e) to K.S.A. 59-2222, in practice, we are still not receiving notice in a surprisingly high number of cases because the family did not tell the attorney that the decedent was a Medicaid recipient. To eliminate this problem, the bill would require the filing of a certificate in all probate cases that confirms the attorney notified the State agency and that Estate Recovery has waived any claim against the estate. As evidenced by a similar statute in Tennessee, forwarding every probate to the State will eliminate loopholes or miscommunications, thereby increasing recovery potential. This approach has historically and successfully been in Kansas with the old inheritance tax, where the Department of Revenue would file a certificate in the estate confirming no tax due prior to closure. We believe that a comparable approach is a reasonable and balances the State's needs to operate an effective program with the probate bar's interest in not overly complicating the probate process.

In addition, ***HB 2742 would allow the State to collect and recover upon unclaimed property that is currently being held at the State Treasurer's office.*** Current law does not allow for the recovery of these funds unless a probate estate is opened; however, many estates do not have sufficient assets to justify the legal expenses and time required to probate an estate. Iowa passed a similar law several years ago; and as a result, their Estate Recovery collections increased by nearly half a million dollars a year.

I would suggest one change to the Committee in the wording of the bill to clear up an ambiguity involving funeral expenses. Section 6, which gives estate recovery standing to utilize the small estates affidavit, should be amended to clarify that funeral expenses would be repaid if the affidavit process was used, making the affidavit process consistent with the probate code priorities contained in K.S.A. 59-1301." To do so, I suggest the language "*shall be subject to reasonable funeral expenses of the decedent...*" should be inserted on page 17, Section 6, line 14.

There are several other statutory updates recommended by this bill, and I am happy to address any of your specific technical questions about these provisions at the conclusion of my testimony.

Ultimately, if these provisions are adopted as is, we estimate an annual increase to the State's General Fund to be between \$780,000 to \$1.5 million, with a first year impact between \$585,000 and \$1.1 million. This is equivalent to a 15-25% increase over current Estate Recovery levels.

Thank you for allowing me to speak today and your careful attention to this matter. I welcome your questions at this time.