

Testimony on HB 2742, Related to the Medical Assistance Recovery Program

**Presented To
House Judiciary Committee**

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Chairman Kinzer and Members of the House Committee on the Judiciary: Thank you for the opportunity to present testimony regarding House Bill 2742.

HB 2742 proposes eight substantive amendments to the current Kansas Medicaid estate recovery process. Those changes, as they appear in the bill, are detailed at the end of this testimony. I will not review them in detail as there others to testify. Health Management Systems, our contractor for estate recovery and medical subrogation, presented these proposals based on its background and experience in Kansas and other states. KDHE is supportive of the legislation.

Over the last 10 years, Kansas Estate Recovery has recovered over \$67 million from the estates and property of deceased Medicaid recipients. (Please see attached spreadsheet.) Part of that success has been the growth of the recoveries under HMS beginning in FY 2008. When Rep. Ryckman approached us earlier this year concerning how to make the program better, we encouraged dialogue with HMS.

As a concept, estate recovery is an integral part of the Medicaid program. Its value is in assuring fairness to the recipients of Medicaid. Please consider the nature of Medicaid. As a cooperative program between the federal and state governments, it is designed to assist individuals who do not have the economic wherewithal to pay for their medical needs. Medicaid, as you know, is a means-tested program. For the most part, beneficiaries deplete their resources before eligibility. However, the federal rules for Medicaid eligibility have numerous exceptions and protections accorded beneficiaries. Those rules, as they developed over the years, allowed beneficiaries with certain types of assets to qualify for Medicaid while retaining those assets. In 1993, when faced with certain egregious examples across the country, the federal government mandated estate recovery for participating states. An often cited reason for this mandate was fundamental fairness of treatment between all beneficiaries. The fact that the Kansas estate recovery program recovered over \$9 million in assets in FY 2011 alone is a testament to the need to have such a recovery program for program integrity.

Most of the proposals in HB 2742 follow this philosophy of allowing the recoveries of assets belonging to a deceased beneficiary or their spouse. An example is the ability to recover unclaimed property belonging to a deceased Medicaid beneficiary from the state treasurer's office. Another example would be the ability for the state to use an affidavit authorized under K.S.A. 59-1507b to recover personal property belonging to a deceased Medicaid beneficiary from the holder of such property. Both such examples would be helpful in dealing with small assets where a probate action would not be cost-effective. A typical scenario would involve a small bank account or insurance policy. When there is only \$500 - \$1,000 in such an account, the person would be eligible for Kansas Medicaid. However, upon death, the state could not afford to open probate actions and pay attorney fees and expenses to recoup such small accounts. These proposals would enhance the state's ability to handle such accounts.

Similarly, HMS, and the state before it, have had a number of cases where assets were hidden during the eligibility process. If those assets are not discovered during the current six-month period allowed for a creditor to open a probate action, a creditor's claim, including a claim by the state, is waived by K.S.A. 59-2239. Once again, the concern is program integrity. If estate recovery is to ensure fundamental fairness, stories where heirs reap a windfall by staying quiet compromise the state's ability to ensure fundamental fairness of the program. When HMS and KDHE legal staff advised as to "non-claims" periods in other states, Kansas, in comparison, had one of the shortest periods. By comparison, Missouri has a 1 year period, while Iowa has a 3 year period. An extended non-claims period for Kansas Medicaid would allow time for the state to investigate and determine whether such cases and assets exist.

Thank you for the opportunity to address the provisions of this bill. I will be glad to answer any questions which you may have.

Changes proposed by HB 2742

- Pg. 12 – An amendment to K.S.A. 39-709 (g) - KDHE will promulgate by rule and regulation life estate valuation tables for use in valuing property held in life estates of Medicaid beneficiaries; these tables will be the evidence used for recoveries under K.S.A. 39-709 (g);
- Pg. 14 – An amendment to K.S.A. 58-3957 - KDHE may claim an interest in property held by the administrator of unclaimed property in the State Treasurer's office;
- Pg. 15 – An amendment to K.S.A. 58a-818 – A trustee who has authority to settle debts of a deceased settlor is to give notice to KDHE if the deceased settlor or beneficiary received Medicaid; KDHE is to proceed with a claim and recovery against the trust;
- Pg. 16 – An amendment to K.S.A. 59-1501 – An executor or administrator of an estate for certain deceased recipients of Medicaid shall file a specified release received from KDHE;