

**HMS Testimony to the Kansas House Judiciary Committee- HB 2166
February 13, 2013**

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 2166.

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 2166 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. In 2011, which was the last available full year with statistics, there were 21,808 reported deaths in Kansas of people over the age of 55. During the same time period, our office opened estate recovery files on 7,303 deceased Kansas Medicaid recipients. These numbers demonstrate that approximately one-third (1/3) of all deaths in the state of persons over the age of 55 were Kansas Medicaid recipients. Often, recoveries in these

cases take the form of bank accounts under \$2,000 and houses or other real property that are not included in determining Medicaid eligibility. Estate Recovery seeks to partially collect the recipient's remaining assets after their death 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 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 \$11.0M in FY 2012 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 \$33.3M since 2007.

In addition to our work in Kansas, HMS contracts with thirteen (13) 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 2166 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 2166 would extend the time deadlines for Estate Recovery to open probate from 6 months to 1 year.*** 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.

Once the death referral is processed, our office contacts family members to inquire about assets of the deceased. During this process, the family is put on notice that there may be a Medicaid claim. Unfortunately a high percentage of our letters and phone calls go unreturned or have delayed responses. As a result, Estate Recovery is often required to make decisions on whether to probate an estate with incomplete information in a compressed time period. 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 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 descendants and their attorneys. However, we believe HB 2166 is reasonable, and does not place significant additional burdens on the community. For instance, ***HB 2166 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 may not inform the attorney that the decedent or a predeceased spouse was a Medicaid recipient. To eliminate this problem, the bill would shift the responsibility of determining Medicaid status from the heirs/attorney over to Kansas Estate Recovery. A certificate would be required in all probate cases where the decedent was over the age of 55 that confirms the attorney notified Estate Recovery. In response to concerns raised last session, HB 2166 includes a time provision of 30 days for Estate Recovery to respond to the notice. If the attorney receives no response in 30 days, the attorney is permitted to proceed with closing 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 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.

Another provision in *HB 2166* 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 each year.

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

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