

HMS Testimony to the Kansas Senate Public Health and Welfare Committee

Good day, Madam 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 Substitute 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.

Substitute 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 any remaining assets. A robust estate recovery program serves the purpose of charging the heaviest users of state services for the costs of their care from their remaining assets after their death. As such, the burden on state general funds is reduced to the taxpayers. In Kansas, our program annually opens and reviews the files of more than 7,000

deceased Medicaid recipients per year. Often, recoveries in these cases take the form of bank accounts under \$2,000 and houses or other real property exempted from eligibility at the time of application.

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 rewarded 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. Substitute HB 2166 closes some of the loopholes that artificially suppress revenue from current activities, and does so in a balanced, responsible way unique to Kansas.

We are sensitive to striking the balance between maximizing state revenue and requirements placed on descendants and their attorneys. However, we believe Substitute HB 2166 is reasonable, and does not place significant additional burdens on the community. This belief was confirmed when the bill recently passed out of the House with strong bipartisan support.

The original bill as submitted to the House Judiciary Committee proposed to extend the time deadlines for a creditor to open probate from 6 months to one year. In comparison to its

peers, Kansas has the shortest creditor probate time limits in the nation. As such, over the years we have found that Kansas loses significant recovery opportunities compared to other states due to lack of time to fully investigate cases between the time we learn of the death and the deadline to probate an estate which runs at 6 months from death. In many cases the Estate Recovery Program is unable to identify real property assets in time because heirs stall and/or attempt to hide assets from the state. We often run into situations where a Kansas Medicaid recipient has improperly transferred property over to their family either during their lifetime or at death through a transfer on death deed to avoid estate recovery. HB 2166 as originally filed worked to correct the problem by granting additional time for Estate Recover Program to investigate the case before the probate deadline passed. However, the change would have applied to all other creditors as well. Working with Rep. Bideau, Rep. Finch and other members of the House Judiciary Subcommittee charged with studying the bill, it was determined that a better approach was to give the Kansas Estate Recovery Program the ability to use a post-death lien process to secure interest in real property owned by deceased Kansas Medicaid recipients.

Current Kansas law already allows for a lien to be placed on real property in certain circumstances for living Medicaid recipients. The provisions in Substitute HB 2166 extend those abilities to post death situations as well and will allow the Estate Recovery Program to recover on assets that currently go undiscovered in the first six months after death. As you'll notice there are protections in the bill which prohibit the State from foreclosing on any lien so long as there is a surviving spouse, or a minor, blind, or disabled child living in the home. However the state's interest could be secured during this time period by recording a lien which would not be foreclosed upon until the time comes that the surviving spouse passes away or the child moves out of the home. We fully support this approach as a common sense alternative to the original proposal, and it will allow the State over time to generate significant additional recovery opportunities and reduce recipient/family fraud which we see too often in the form of real estate improperly transferred to heirs.

The second primary provision in Substitute HB 2166 would allow the State to collect and recover upon any unclaimed property in the name of a deceased Kansas Medicaid recipient

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. We believe such a provision makes sense as the Treasurer's Office will be able to quickly close a number of cases and the state's Medicaid program will benefit from the additional funding at the same time.

There were several other provisions in the original bill that were struck by the House Judiciary Subcommittee when it reviewed the bill including the ability for the State to recover upon small bank/financial accounts through the small estates affidavit process and a definition on how to value life estates for recovery purposes. I am willing to answer questions as to those or any other provisions contained in the original or substitute bill, however we fully support Substitute HB 2166 as an effective tool to strengthen the state's Medicaid recoveries, and we anticipate a positive impact on state SGF dollars in the years to come should the bill pass.

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