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HOUSE OF
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COMMITTEE ASSIGNMENTS
HEALTH & HUMAN SERVICES
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Public Health and Welfare Committee
Kansas State Senate
March 21, 2013
Testimony In Support Of Sub. For HB 2166

Ms. Chair and Members of the Committee:

I am Ed Bideau, State Representative for the Ninth District, which includes parts of Allen and Neosho counties in Southeast Kansas. I am also an attorney in private practice at Chanute, Kansas and my practice involves a good deal of probate, estate planning and Medicaid eligibility work. I have also served as an estate administrator for probate cases filed by SRS for estate recovery. I am also familiar with issues surrounding Division of Assets and Spousal Impoverishment provisions of Kansas law. During previous service in the Kansas House in the late 1980s, I chaired the subcommittee that wrote the very first Division of Assets bill in Kansas, to protect some of the couple's assets for the "well spouse" when one of the couple is confined to a nursing home. The Division of Assets program helped to avoid driving both spouses into long term care and resulted in a significant long term overall savings to Kansas Medicaid.

Substitute for HB 2166 was crafted by a subcommittee of the House Health and Human Resources Committee as an alternative to a bill proposed by KDHE contract attorneys to expedite and increase estate recovery after a Medicaid recipient has passed away. The original bill requested by KDHE would have doubled the time required to settle almost every estate in Kansas and would have put hurdles in the way of estate settlement for families that the committee felt was unwarranted. The substitute bill simply gives KDHE the right to file a post death lien over real estate interests owned by a deceased Medicaid recipient and

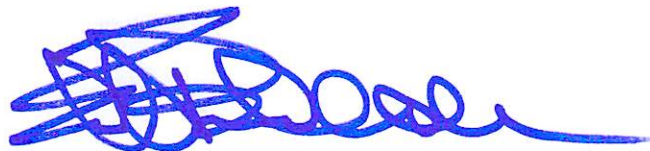
avoids burdening other estates not involving a claim of Medicaid reimbursement. The substitute bill also grants KDHE the right to assert a claim against abandoned or unclaimed property of the decedent which may be held by the State Treasurer.

Testimony before the House Committee indicated that the bill was being requested by KDHE because it was apparently having trouble getting notice when a recipient had died, so it could start the estate recovery process. I personally found it remarkable, perhaps even alarming, that the entity paying the medical and nursing home bill, could not immediately be aware of the death of a Medicaid recipient. Provisions were included in the bill which require prompt notice of death.

In short, the substitute bill will enhance estate recovery and benefit SGF but will not burden estates where the decedent was not a Medicaid recipient.

In reviewing the bill as amended on the House floor, I am suggesting a technical amendment by your committee. The House subcommittee and the full committee had discussed the time limit for filing of the lien by KDHE and generally agreed that the lien should be filed within six months from the date of death, the same time limit for filing for probate as a creditor under current law. However, it appears that did not make it into the bill as amended in the House and I believe that was simply oversight. I am therefore suggesting a technical amendment as follows:

On Page 12, Line 14, to insert after "located" the words "within six months from the date of death of the recipient" This would require KDHE to file it's lien within six months from the date of death of the Medicaid recipient.



Ed Bideau
State Representative
Ninth District

1 assistance estate. The medical assistance estate is defined as including all
2 real and personal property and other assets in which the deceased
3 individual had any legal title or interest immediately before or at the time
4 of death to the extent of that interest or title. The medical within six months
5 includes, without limitation assets conveyed to a survivor, from the date of
6 the deceased recipient through joint tenancy, tenancy death of the
7 survivorship, transfer-on-death deed, payable-on-death contract, recipient
8 trust, annuities or similar arrangement.

9 ~~(4) The secretary of social and rehabilitation services of health and~~
10 ~~environment or the secretary's designee is authorized to file and enforce a~~
11 ~~lien against the real property of a recipient of medical assistance in certain~~
12 ~~situations, subject to all prior liens of record {and transfers for value to a~~
13 ~~bona fide purchaser of record}. The lien must be filed in the office of the~~
14 ~~register of deeds of the county where the real property is located and must~~
15 ~~contain the legal description of all real property in the county subject to the~~
16 ~~lien. This lien is for payments of medical assistance made by the~~
17 ~~department of social and rehabilitation services to the recipient who is an~~
18 ~~inpatient in a nursing home or other medical institution.~~

19 *(A) After the death of a recipient of medical assistance, the secretary*
20 *of health and environment or the secretary's designee may place a lien on*
21 *any interest in real property owned by such recipient.*

22 *(B) The secretary of health and environment or the secretary's*
23 *designee may place a lien on any interest in real property owned by a*
24 *recipient of medical assistance during the lifetime of such recipient. Such*
25 *lien may be filed only after notice and an opportunity for a hearing has*
26 *been given. Such lien may be enforced only upon competent medical*
27 *testimony that the recipient cannot reasonably be expected to be*
28 *discharged and returned home. A six-month period of compensated*
29 *inpatient care at a nursing home, nursing homes or other medical*
30 *institution shall constitute a determination by the ~~department of social and~~*
31 *rehabilitation services Kansas department of health and environment that*
32 *the recipient cannot reasonably be expected to be discharged and returned*
33 *home. To return home means the recipient leaves the nursing or medical*
34 *facility and resides in the home on which the lien has been placed for a*
35 *continuous period of at least 90 days without being readmitted as an*
36 *inpatient to a nursing or medical facility. The amount of the lien shall be*
37 *for the amount of assistance paid by the ~~department of social and~~*
38 *rehabilitation services after the expiration of six months from the date the*
39 *recipient became eligible for compensated inpatient care at a nursing*
40 *home, nursing homes or other medical institution Kansas department of*
41 *health and environment until the time of the filing of the lien and for any*
42 *amount paid thereafter for such medical assistance to the recipient. After*
43 *the lien is filed against any real property owned by the recipient, such lien*