

Kansas Department of

# **Social and Rehabilitation Services**

Janet Schalansky, Secretary

**Senate Financial Institutions and Insurance  
Committee**

March 9, 2004

**HB 2781 - Funeral Agreements**

**Integrated Service Delivery**

Candy Shively, Deputy Secretary

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Senator Teichman and members of the Committee, thank you for the opportunity to testify regarding HB 2781. My name is Candy Shively, Deputy Secretary with the Kansas Department of Social and Rehabilitation Services. This legislation clarifies the notice requirements for recoveries from excess funds in a deceased medical assistance recipient's funeral agreement based on the Department's estate recovery process.

As background, the Estate Recovery Program was initially authorized by the Kansas Legislature in 1992 and has since become a federally mandated process. The program allows the agency to recover Medicaid expenses properly paid on behalf of a Medicaid recipient from their post-death assets. The program is limited to recipients who are either 55 years of age or older or in a long term care arrangement. Most recoveries are from probate actions and family agreements. Significantly, no recovery action is taken when there is a surviving spouse or a minor or disabled child. SRS recouped over \$5.5 million during FY 2003 and approximately \$25 million during the last five fiscal years. Approximately 40% of the recouped funds were returned to the State general fund; the remaining funds were returned to the federal government.

In 2002, the Legislature passed amendments to K.S.A. 16-301 et seq. involving excess funds from pre-arranged funeral plans owned by medical assistance recipients. The legislation provided for funds remaining after the payment of a recipient's funeral to be forwarded to the Department as partial satisfaction of the medical assistance claim. The legislation has been successful. In the period of July 1, 2002 to June 30, 2003, SRS has recovered almost \$287,000 from 320 cases. For the first six months of FY 2004, ERU has collected approximately \$120,000 from 180 cases.

As initially enacted in 2002, this legislation gave the owner of the funeral plan responsibility for notifying funeral homes, financial institutions and insurance companies about the right of the State to recoup excess funds due to estate recovery requirements. While generally successful, there have been situations where the notice was less than complete, resulting in excess funds being paid to other family members or contingent beneficiaries. To insure better notification, HB 2781 modifies the law to allow a written notice to be given at any time by the individual recipient, the funeral home or SRS.

The medical assistance program encourages families to pre-arrange their funerals and burials by allowing such funds and assets to be excluded in eligibility determination. However, when there are excess assets, those assets should be available to the State to offset the cost of operation of the medical assistance program. Clarification of notice requirements addressed by this bill, reduces the likelihood of manipulation of the law to avoid recoupment. Our goal is to be fair to all individuals and families impacted by the estate recovery process while still allowing for enhanced collections in an accurate and equitable manner. This bill would allow us to meet this goal.

Thank you for the opportunity to present. I would be happy to stand for questions.