

**ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009**  
**COMMITTEE STATEMENT**  
**LB288**

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**Hearing Date:** Wednesday January 28, 2009  
**Committee On:** Health and Human Services  
**Introducer:** Health and Human Services  
**One Liner:** Change provisions relating to health and human services

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 6 Senators Campbell, Gay, Gloor, Pankonin, Stuthman, Wallman  
**Nay:**  
**Absent:** 1 Senator Howard  
**Present Not Voting:**

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<b>Proponents:</b> Senator Gay Todd Landry	<b>Representing:</b> Introducer Department of Health and Human Services
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<b>Opponents:</b> Mary Angus	<b>Representing:</b> The ARC
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<b>Neutral:</b> Brenda Decker	<b>Representing:</b> Nebraska Information Technology Commission
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**Summary of purpose and/or changes:**

LB 288 is the annual "cleanup" bill requested by the Department of Health and Human Services (department). The bill makes the following changes:

Medicaid (section 7) (Com AM 846 section 7)

The bill makes a technical update to a reference to federal law (section 68-906).

Food Stamp Program (sections 1, 5-6, 8-14, 22) (Com AM 846 sections 1, 4-5, 13-18, 22, 32)

The bill updates references to the federal food stamp program, which is now called the Supplemental Nutrition Assistance Program (SNAP).

Public Water System Operators (sections 2, 15) (Com AM 846 section 23)

The bill changes relicensure provisions for public water system operators under the Safe Drinking Water Act (act). The bill requires applicants for a license as a public water system operator, whose license or certification has expired two years or more prior to the date of application, to take the examination required for an initial license under the act. The department must consider the results of the examination and the applicant's experience and training in its review of the application. The department is permitted by rules and regulations to establish more stringent relicensure requirements for an applicant whose license is expired or has been revoked or suspended.

Developmental Disabilities (sections 18-21) (Com AM 846 sections 27-29, 31)

The bill changes and eliminates provisions of the Development Disabilities Services Act (sections 83-1201 to 83-1226). The bill deletes a reference to subsection (3) of section 83-1216 relating to development of an objective assessment process for developmental disability services. The bill deletes a limiting reference to "specialized services" in the context of utilizing state and federal funds for the provision of services to persons with developmental disabilities. The bill updates terminology, changing "care" to "services," as it relates to the Beatrice State Developmental Center

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(BSDC). The bill deletes a reference to developmental disability regions and replaces it with the term "services areas" to be more consistent with current administrative organization and practice. The bill changes membership provisions relating to quality review teams. The bill makes the submission of nominations for membership on such teams discretionary rather than mandatory. The bill changes and eliminates provisions relating to the duties of quality review teams. The bill deletes a requirement in the act that a copy of an employee's criminal history background record check be provided to the employee.

Pharmacy Technicians (sections 3-4) (Com AM 846 sections 2-3)

The bill expands disciplinary provisions for pharmacy technicians. The bill deletes grounds for discipline in section 38-2893 and makes the license of a pharmacy technician subject to discipline for violation of all acts or offenses listed in subsections (1)-(17) and (19)-(24) of section 38-178, including abuse of alcohol, misrepresentation of material fact, immoral or dishonorable conduct.

Nursing Facility Preadmission Screening Pilot Program (sections 16-17, 24) (Com AM 846 sections 24-25, 37)

The bill deletes obsolete references to a pilot program administered by the Department of Health and Human Services for preadmission screening of persons seeking care in a nursing facility. The bill outright repeals sections 81-2265 and 81-2267.

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### Explanation of amendments:

The committee amendment (AM 846) adds provisions of six other bills heard by the Health and Human Services Committee and advanced unanimously by the committee.

1. LB 172 False Medicaid Claims Act (sections 6, 9-11, 26)

As amended by the committee, LB 172 changes provisions of the False Medicaid Claims Act (act) (sections 68-934 to 68-947), and provisions relating to the Health and Human Services Cash Fund (section 81-3119).

The bill requires that amounts recovered for the state's costs and attorney's fees under sections 68-936, 68-939, and 68-940(2)(b) be remitted to the State Treasurer for credit to the State Medicaid Fraud Control Unit Cash Fund. The bill creates the State Medicaid Fraud Control Unit Cash Fund, maintained by the Department of Justice and administered by the Attorney General, and consisting of "any recovery for the state's costs and attorney's fees received pursuant to subdivision (2)(b) of section 68-940 and sections 68-936 and 68-939, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy under such subdivision or sections." Money in the fund must be used to pay the salaries and related expenses of the Department of Justice for the state Medicaid fraud control unit.

The bill directs the transfer of two hundred fifteen thousand dollars (\$215,000) on July 9, 2009 from the Health and Human Services Cash Fund to the State Medicaid Fraud Control Unit Cash Fund.

The emergency clause applies to this portion of the committee amendment.

2. LB 371 Medicaid Reform Council (sections 8, 12)

LB 371, as amended by the committee, changes and eliminates provisions of the Medical Assistance Act relating to the Medicaid Reform Council (council).

Current law requires the Department of Health and Human Services (department) to prepare a "biennial summary and analysis of the medical assistance program for legislative and public review" and submit a draft copy of the report to the council no later than October 1 of every even-numbered year. LB 371 requires that the report be submitted annually, requires submission of a draft report no later than September 15 of each year, requires the council to conduct a public meeting on the report no later than October 1 of each year, rather than October 15 of every even-numbered year, and requires submission of a final report to the council no later than December 1 of each year, rather than every even-numbered year. New language is added to require that the department's final report include "a response to each specific recommendation provided by the council."

The bill changes council membership provisions. The bill adds the chairperson of the Health and Human Services Committee of the Legislature (committee) or his or her designee as an ex-officio, nonvoting member of the council, eliminates a termination date for the council, and provides for staggered four-year terms for appointed council members beginning June 30, 2010.

The bill revises duties of the council. Current law requires the council to "oversee and support implementation of reforms to the medical assistance program, including, but not limited to, reforms such as those contained in the Medicaid Reform Plan." LB 371 requires the council to "oversee and provide recommendations to the department and

the chairperson of the committee" regarding such reforms, and requires the council to conduct public meetings at least quarterly. Current law requires the council to conduct at least two public meetings annually.

The bill requires the department to "provide the council with any reports, data, analysis, or other such information upon which the department relied, which provided a basis for the department's proposed reforms, or which the department otherwise intends to present to the council at least two weeks prior to the quarterly meeting."

The bill as amended requires the Governor to appoint members of the Medicaid Reform Council, rather than the chairperson of the Health and Human Services Committee and places the council under the Department of Health and Human Services rather than the Legislature.

### 3. LB 599 Itemized billing statements (sections 19, 20, 37)

LB 599 adds provisions to the Health Care Facility Licensure Act (section 71-401 to 71-463). The bill requires a health care facility or a health care practitioner facility, upon written request of a patient or a patient's representative, to provide an itemized billing statement, including diagnostic codes, without charge to the patient or patient's representative. The itemized billing statement must be provided within fourteen days after the request.

The bill outright repeals section 71-2049.

### 4. LB 462 HIV testing (section 21)

LB 462 changes and eliminates informed consent provisions relating to testing for human immunodeficiency virus infection (HIV testing). The bill adds new provisions requiring that the informed consent for HIV testing must provide an explanation of HIV infection and the meaning of both positive and negative test results.

The bill provides that a separate consent for HIV testing will not be required if a general consent form for the performance of medical tests or procedures has been signed, which informs the person that a test for the presence of HIV infection may be performed and that the person may refuse to have the test performed.

The bill adds and eliminates provisions relating to substitute consent for HIV testing. The bill provides that consent may be provided by the person's legal representative if the person is unable to provide consent. If the person's legal representative cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate medical care.

The bill deletes current provisions prescribing the contents of a written informed consent for HIV testing (section 71-531). The emergency clause applies to this portion of the amendment.

### 5. LB 390 Reimbursement for assisted developmental disability services (section 30)

LB 390 amends the Developmental Disabilities Services Act (section 83-1201 to 83-1226) relating to the method of reimbursement for developmental disabilities services. The bill, as amended by the committee changes the method of reimbursement for assisted services to persons with developmental disabilities. The amendment requires that assisted services provided under the act through community-based developmental disability programs shall be reimbursed on a daily rate basis, including such services provided to eligible recipients under the medical assistance program upon approval for such reimbursement from the federal Centers for Medicare and Medicaid Services. The amendment requires the department to apply to the federal Centers for Medicare and Medicaid Services for approval of any necessary waiver amendments to permit such reimbursement no later than September 1, 2009, and begin reimbursing such services on a daily rate basis no later than ninety days after such approval.

### 6. LB 173 Return of dispensed prescription drugs and devices (section 33)

LB 173 as amended by the committee, provides that prescription drugs or devices that have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the dispensing pharmacy under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription.

Exceptions are provided: (1) the decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy; (2) a dispensed prescription drug or device must be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing; (3) the drug or device must be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container must bear the expiration date or calculated expiration date and lot number of the drug or device; and (4) The drug or device may not be returned if it is a controlled substance or if the relabeling and redispensing is otherwise prohibited by law.

The Jail Standards Board, in consultation with the Board of Pharmacy, is required to adopt and promulgate rules and regulations to carry out the bill, including, but not limited to, rules and regulations relating to (a) education and training of

persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the dispensing pharmacy to accept the returned drug or device.

The bill provides immunity from civil or criminal liability or professional disciplinary action to any person or entity exercising reasonable care in accepting, distributing, or dispensing prescription drugs under the bill.

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Tim Gay, Chairperson