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## TESTIMONY

**BILL: AB 445; BDR 38-482**

**HEALTH CARE FINANCING & POLICY DIVISION**

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Good Afternoon Chairman Rawson and members of the Senate Ways and Means Committee. I am John Liveratti, Chief of the Compliance Unit for the State of Nevada Health Care Financing & Policy Division. With me at the table is Leslie Danihel, Chief of Eligibility and Payments for the Welfare Division.

The Department of Human Resources, Division of Health Care Financing and Policy and the Welfare Division, have requested and support Assembly Bill 445 to amend *Nevada Revised Statutes* 422 and to rescind NRS 422.2725 in its entirety.

The Department of Human Resources refers to NRS 422.2725 as the "nest egg" provision. The intent of the provision was to allow individuals with income above the Medicaid standard to protect that income and become eligible for Medicaid.

The provision required the purchase of an approved long-term care insurance policy and the use of that insurance for a period of 36 months before Medicaid eligibility could be approved. The provision was passed as Senate Bill 370, in 1999 during the 70<sup>th</sup> Legislature. It was passed protecting an income limit (\$200,000) above the Medicaid standard (300% of the federal benefit rate). Medicaid regulations would support a provision protecting assets, but not income. When the proposed state plan amendment was submitted to the Health Care Financing Administration (now known as the Center for Medicare and Medicaid Services) they informed the state they would not approve a Medicaid state plan amendment protecting the income stated in NRS 422.2725.

As a result, NRS 422.2725 has caused a great deal of confusion with the public. Insurance salesmen are selling long-term care insurance to individuals citing this law as the reason why it is a good investment for them. Two things should be considered if this section of the NRS is not rescinded: 1) NRS 422.2725 has not been acted upon as passed because the Center for Medicare and Medicaid Services will not approve the state plan required; and 2) Insurance salesmen are failing to indicate that their product was never approved by the director (as required by the

law), even though the product they sell is viable and approved by the State Insurance Division.

If this section of the NRS is not rescinded, the state and division should expect nothing but negative press and public relations, if it continues to allow NRS 422.2725 to remain on the books. This will be painfully true when the first person applies for Medicaid, who purchased and used long-term care insurance for the required 3 year period and expects to be approved for Medicaid because of NRS 422.2725, but is subsequently denied Medicaid eligibility due to excess income.

The remaining revisions requested in NRS 422 pertain to the Medicaid Estate Recovery (MER) Program. This is a federal requirement under Medicaid which recovers correctly paid Medicaid benefits from the estate of a deceased Medicaid recipient. The intent of the requirement is that a deceased recipient's estate offset the previously paid medical services made on their behalf while they were a Medicaid recipient.

When the Division of Health Care, Financing and Policy was created in 1999, Medicaid Estate Recovery remained behind with the Welfare Division. However,

all monies collected by the Welfare Division are deposited directly into an account established for this purpose within the Department of Health Care, Financing and Policy. Since the Welfare Administrator has no authority for distribution of the monies collected, we are requesting authority for operation of the program be established at the departmental level. This would allow for the greatest amount of flexibility, should any reorganization of the department occur in the future.

AB 445 also proposes to amend the definition of “undivided estate,” by removing community property transferred to another spouse and adding annuities and declaration of homestead. Although the transfer of community property was in state law, CMS would not approve this as part of Nevada’s Medicaid state plan. CMS has advised Nevada annuities and declaration of homestead are covered in current state law, in NRS 422.054, “other arrangement”. However, due to the number of questions received, the department wishes to clarify annuities and declaration of homestead in statute to conform to the Medicaid State Plan.

AB 445 also includes new language in Chapter 115, Homesteads. The bill adds language exempting the Medicaid Estate Recovery Program from the operation of Nevada’s homestead provisions. There have been several instances in the recent

past where the State of Nevada has not been able to maintain a lien against the real property interests of deceased recipients. In two cases, the surviving spouse has filed bankruptcy after the death of the recipient, and claimed a homestead exemption in the bankruptcy. In both of these cases, the State was unable to maintain a lien against the property and had the State's claim against the undivided estate of the recipient discharged in the bankruptcy of the surviving spouse. In another case, the surviving children of a deceased recipient asserted a claim of Homestead, and a negotiated settlement for a lien for less than the full amount of the State's claim was reached. In all three of these cases, the recipients were able to receive the free medical care provided by Medicaid and leave substantial property to their heirs without the State being able to recover Medicaid benefits as required by federal and state law.

We would be pleased to answer any questions the committee may have.