

Revised based on amendments adopted through 3-9-20

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2020-21		FY 2021-22	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

This bill allows, to the extent allowed by federal law, for the owner of an Achieving a Better Life Experience (ABLE) account to transfer the balance in the account to another account upon the death of the designated beneficiary. The State Treasurer would be required to inform the owner of the account of tax consequences of the transfer. The State would be prohibited from seeking recovery in the Medicaid Program once federal approval is received.

CMS guidance issued on September 7, 2017, states that states are required to seek recovery against the estates of certain deceased Medicaid beneficiaries. Those estates are of individuals who received Medicaid at the age at 55 or older, or who received coverage for certain long-term care services. For the ABLE accounts of individuals not falling into these categories, states have the option to file or not file estate recovery claims.

It appears federal approval would not be provided for an exemption from estate recovery for estates of individuals over 55 or who had received long-term care services. It is at the discretion of the states to file claims for estates not covered by the federally mandatory estate recovery provisions. Nebraska has elected the federal option to extend recovery to all beneficiaries. It appears federal approval prohibiting estate recovery would be limited to the estates of recipients under age 55 who didn't receive long-term care services. The number of ABLE accounts that may be exempt from recovery is unknown as is the amount that would be exempt from recovery. The number of accounts is likely to be small as is the amount of funds that would not be recoverable.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 705	AM: 162,2778	AGENCY/POLT. SUB: Nebraska Department of Health and Human Services	
REVIEWED BY: Ann Linneman	DATE: 7-24-20	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the Nebraska Department of Health and Human Services' assessment of fiscal impact.			

LB₍₁₎ 705 AM162
AM2778

FISCAL NOTE

2020

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) Mike Michalski

Date Prepared 7-23-2020

Phone: (5) 471-6719

	<u>FY 2020-2021</u>		<u>FY 2021-2022</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below	See below	See below	See below

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

LB 705 as amended adds three new subsections to section 77-1403, which defines characteristics of a type of account allowed under 26 U.S.C 529A known as Achieving a Better Life Experience (ABLE) accounts. ABLE accounts are intended to repay the state for the designated beneficiary's medical assistance costs following their death.

The bill does not amend sections 68-919 or 68-990 of the Medical Assistance Act, which define an estate and require recovery from those assets. In these sections, the state statutory definition and requirement for recovery are consistent as written with federal law. Furthermore, section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) requires the state to recover assets from the estates of certain Medicaid recipients. The state is required to comply with this provision as part of the state's agreement to receive federal funding for Medicaid.

Subsection 5(b) would prevent the state from filing its claim as a creditor of an ABLE account, contrary to the requirements under 26 U.S.C. 529A(f). If the bill were enacted as written, in nearly all cases there would be no fiscal impact because even if (which it cannot) the state could elect not to collect from any remaining funds in an ABLE account at the death of the beneficiary under Internal Revenue Code (IRC) 529A(f), the general obligation in nearly all cases to seek recovery under federal Medicaid estate recovery law, including our state's election of the federal option that extended recovery to all interests a beneficiary had at or immediately preceding death, has not been altered, meaning we would still have a legal obligation nearly always to seek recovery by alternative means.

The Division of Medicaid and Long Term Care processed \$5,403,611 million in total funds (\$2,573,200 in State General Funds and \$2,830,411 in Federal Funds) in State Fiscal Year (SFY) 2018. Medicaid Estate Recovery recovered \$6,795,612 in Total Funds for SFY 2019-20. LB 705, AM 2778 will impact Medicaid's ability to collect similar funds in the future, inconsistent with federal law, and cause unknown expenses as the State may still be required to provide the federal portion of what should have been recovered from the estate.

The Department of Health and Human Services will be required to complete a major rule and regulation change as a result of LB 705. DHHS will absorb the estimated costs listed below to complete this regulation change.

Title	Hours	Hourly Cost	Absorbed Cost
Director	4	72.115	\$ 288
Deputy Director	4	51.923	\$ 208
Administrator I	4	29.354	\$ 117
Program Specialist	8	21.466	\$ 172
Program Analyst	16	20.869	\$ 334
Attorney 3	30	32.213	\$ 966
Total Costs	66		\$ 2,086

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2020-2021 EXPENDITURES	2021-2022 EXPENDITURES
	20-21	21-22		
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....				