

**Testimony**  
**House Bill Number 1138 – Department of Human Services**  
**House Judiciary Committee**  
**Representative Duane DeKrey, Chairman**  
**January 11, 2011**

Chairman DeKrey, members of the Human Services Committee, I am Tim Austin, an attorney with the Department of Human Services. I am here today to oppose House Bill 1138.

The Department, as required by state and federal law, must file a claim against an estate of a deceased medical assistance recipient (or upon the death of a deceased recipient's spouse) to collect up to the amount of medical assistance paid on behalf of the recipient. Section 50-24.1-07 sets forth a list of preferred claims against a decedent's estate if the decedent or the decedent's spouse was a recipient of medical assistance. Additionally, section 50-24.1-07 requires the personal representative of an estate to notify the Department that a probate is commenced. (A probate is typically commenced to transfer real property or for any estate exceeding \$50,000 in assets.) The Department reviews the probate documents to determine if it has a claim against the estate.

If this bill is enacted and a medical assistance recipient or the recipient's spouse transfers real property of any value, which includes mineral interests, under this Bill, the Department would not be notified of that transfer as the transfer is considered nontestamentary (See HB No. 1138, page 3, lines 23 and 24). Since a nontestamentary transfer is not subject to probate, there will be no need to commence a probate, unless additional assets exceed \$50,000. If no probate is commenced the Department will receive no notification to check its records to determine if there is a potential claim against the estate. If the Department is unable

to file claims against recipients' estates to collect the assets to repay the Medicaid program for payments made on the recipient's behalf while the recipient was alive, the amount of funds the Department recovers will decrease resulting in a negative fiscal impact. The estimated loss of revenue from estate recoveries which will result in an increased need in funds from the general fund is approximately \$1.5 million.

If House Bill 1138 passes, the Department would need to track all beneficiary deeds filed at county recorders' offices and compare the names with medical assistance recipients and spouses. In addition, to assert and collect against its claim, it is presumed that the Department will need to commence the probate proceedings. The Department also would have to track down the original will to commence a probate action as required by chapters 30.1-14 and 30.1-15.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.