

TIMELINE OF PRENATAL CARE COVERAGE IN NEBRASKA

1940s – 1960s

The Federal Department of Health, Education, and Welfare determined that unborn children could be covered under the Social Security Act of 1935 (which allowed funds to be given to states for unborn children). 67 Fed. Reg. 61955 (October 2002). When Medicaid was instituted, many states adopted eligibility definitions for Medicaid that included treating unborn children as eligible to the same extent as other children. 67 Fed. Reg. 61955, 61966 (October 2002).

1970s

The state of Nebraska has provided benefits, including medical assistance, to unborn children since at least the 1970s. *Elliot v. Ehrlich*, 203 Neb. 790 (Neb.Sup.Ct.1979).

1980s – 2002

Over the next nearly three decades, Nebraska continued to provide prenatal care coverage to *all* low-income women and babies in Nebraska.

2002

President George W. Bush's Administration promulgates a regulation that specifically gives states the ability to provide prenatal care to unborn children under the Children's Health Insurance Program (CHIP). 67 Fed. Reg. 61955, 61966 (October 2002). This is referred to as the "unborn child option."

2002-2009

Nebraska continues to provide prenatal care to all low-income women by making the unborn child eligible *under Medicaid* rather than choosing the unborn child option under CHIP. Unborn children are not eligible under Medicaid, however, but should be covered under CHIP, which actually has a higher match rate.

December 4, 2009

- Health and Human Services Chief Executive Officer, Kerry Winterer, receives a letter from CMS indicating that while Medicaid does not allow coverage of an unborn child, "Nebraska may provide prenatal care to pregnant women who do not qualify for Medicaid by covering unborn children under the Children's Health Insurance Program (CHIP)." *See Attachment 1*. The letter notes that to continue coverage under CHIP a State Plan Amendment would need to be submitted.
- CMS did not require DHHS to terminate prenatal care coverage but rather requested that DHHS submit a plan of corrective action, which could have included a plan to shift coverage of unborn children from Medicaid to CHIP.

- continued -

January 15 2010

- Health and Human Services Director of Medicaid and Long-Term Care, Vivianne Chaumont, sent a letter to state Senators informing them that unborn children are not an eligible category under Medicaid. *See Attachment 2.*
- The letter did not inform Senators that unborn children can be covered under CHIP or that such coverage would result in a higher match rate than Medicaid.
- This letter was delivered more than a month after DHHS had received the letter from CMS, but only one day before the end of bill introduction.

January 28, 2010

- At the Appropriations Committee Hearing on Agency 25, CEO Winterer was asked what Governor Heineman's response was in addressing this issue when notified of the problem. Director Winterer said of the Governor "*... his desire I think was to try to find a way to continue to provide the service and look at every way that we could to continue to provide the service. I mean we have been...we have been recognizing, in the state of Nebraska we've been recognizing the unborn for probably 35 years. Ever since the beginning of Medicaid, that has been a recognized category of Medicaid-eligible person, if you will, from the beginning of the problem. And now we're just realizing that obviously that that was obviously an error and, at the same time, I think his approach, as was ours, was to try to find any way we could to deal with the problem and continue. Nobody wants to leave these women out without coverage, and try to find a way to address that ...*" (Agency 25, Appropriations Committee Hearing, Jan. 28, 2010, p. 7.)
- However, Director Winterer said DHHS felt it required a legislative solution or directive to allow them to continue the service. (Agency 25, Appropriations Committee Hearing, Jan. 28, 2010, p. 2-8.)

February 17, 2010

LB 1110 (pre-cursor to LB 599) is introduced by Senator Campbell.

February 28, 2010

DHHS testifies in opposition to this legislative solution. Twenty-one organizations testify in support.

March 1, 2010

Nearly 1,600 pregnant women and unborn children lose prenatal care.