

Health and Human Services Committee
LB 495
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Good afternoon, Senator Riepe, and members of the Health and Human Services Committee. My name is Courtney Miller (C-O-U-R-T-N-E-Y M-I-L-L-E-R) and I am the Director of the Division of Developmental Disabilities in the Department of Health and Human Services (DHHS). I am here to testify in support of LB 495. Thank you, Senator Riepe, for introducing this bill and working with the Department to ensure we align our population and funding priorities for compliance the Medicaid Home and Community Based Services Waivers, and clearly defining definitions throughout all state statutes relating to developmental disabilities.

LB 495 has two objectives. The first is to update the definitions language in the Developmental Disability Court Ordered Custody Act to match the language in the Developmental Disabilities Services Act for consistency in the Division's role to serve individuals with Developmental Disabilities, who meet Intermediate Care Facility for the Developmentally Disabled, or institutional, level of care.

The update to the definitions in the Court Ordered Custody Act creates a more streamlined and consistent explanation of the developmental disability service array and requirements throughout all statutes. It also maximizes the federal funding match for those individuals to participate in the Medicaid Home and Community Based Developmental Disabilities Waivers, rather than being fully state funded.

The second part of the bill is to revise the Developmental Disabilities Services Act. The current statute requires those who are high school graduates, or age 21 and older, to receive services as well as Service Coordination. The Department has been interpreting this to apply to only graduates of a Nebraska High School and Nebraskans who turn age 21. However, following a recent review with the Attorney General's office, I have been advised that the agency's interpretation must be changed.

The Attorney General determined that Nebraska cannot limit the current statute only to Nebraska high school graduates.

Also, in order to ensure harmony between the federally approved Medicaid Home and Community Based Services waiver and state law, our agency is required by the federal government to give priority funding to Priority 1 applicants.

The Centers for Medicare and Medicaid Services (CMS) has provided notice that prioritization of participants to receive State entitlement services would not be approved within our Medicaid-funded Home and Community Based Services Waiver application.

Current law prioritizes funding entitlement services for graduates over all other categories of applicants – including Priority 1 applicants who have demonstrated health and safety needs.

Current law also conflicts with Nebr. Rev. Stat. §83-1202, which mandates that the first priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse or neglect, and protection from harm.

I have had the opportunity to travel the state on two separate occasions to engage stakeholders in the delivery of Developmental Disabilities services. We had honest and frank conversations with families, friends, providers and advocates – critical voices associated with the programs that serve Nebraskans with developmental disabilities.

A concern I heard over and over is how the Department is going to serve aged individuals on the wait list with aging parents or caregivers that are unable to care for themselves, as the statute prioritizes funding for a current graduate over the emergency priority group defined in the Medicaid waivers. These individuals are also waiting for funding, while an entitled high school graduate receives services whose needs may be met by other DHHS or community resources at that point in time.

The health and safety of all individuals is the primary concern, especially when there are funding constraints. By prioritizing services for a select group of Nebraska high school graduates over others that do meet the emergency criteria, a threat to the health and safety to an individual on the wait list could occur.

Entitlement services would require full State General Funds until the participant receives a funding offer to participate in the Medicaid Waiver program based on prioritization criteria in the approved Medicaid Home and Community Based Developmental Disabilities Adult Day Waiver application. That kind of redirection of state general funds would have fewer individuals on the wait list being served.

The negative fiscal impact amounts in the DHHS fiscal note do not represent amounts available for reduction if the bill passes. The amounts represent estimates of General Funds that will need to be added to the budget for FY 2018 and FY 2019 to finance current statutory provisions if LB 495 does not become law.

Funding to align our budget priorities is included in the Governor's budget recommendation to serve eligible individuals with developmental disabilities in crisis situations and on the wait list. Any reduction to appropriations translates to a reduction in services.

The Department is committed to prioritization based upon the severity of the participant's needs and /or other qualifying circumstances, which includes providing services for individuals transitioning from the education system to maintain skills and receive the supports necessary to pursue economic self-sufficiency.

Thank you for the opportunity to testify before you today. I believe LB 495 will help DHHS continue in our mission of helping people live better lives. I'm happy to answer any questions you may have.