

January 22, 2014

Senator Kathy Campbell, Chair
Health and Human Services Committee
P.O. Box 94604
Lincoln, NE 68509-4604

RE: LB 853

Dear Senator Campbell and members of the Health and Human Services Committee:

Following the passage in 2013 of the LB216, the Young Adult Voluntary Services and Support Act, DHHS began preparations to implement the extended services program, which is now known as Bridge to Independence. Throughout this process DHHS has been fortunate to have the support and collaboration of the Young Adult Voluntary Services and Support Advisory Committee, as well as a number of dedicated individuals and organizations in the child welfare system. I look forward to continuing this collaboration as the program is initiated and grows.

I am writing to provide feedback regarding LB853, which renames and amends the Young Adult Bridge to Independence Act

Over the past year, DHHS has voiced concern on many occasions regarding the extended guardianship assistance program established by LB216 (2013). In Nebraska, guardianships of minors terminate when the ward reaches the age of majority. Although LB216 provides funds for guardianship assistance payments to extend beyond the age of 21, it did nothing to extend the legal status of the guardianship beyond age 21. This means that no legal relationship exists between the guardian and the young adult past the ward's 19th birthday, and the former guardian, therefore, has no legal duties or obligations to the young adult.

Extended Guardianship Assistance

LB853 does not resolve the lack of legal relationship. Nebraska guardianship statutes do not allow for a guardianship of a minor to extend beyond the age of majority and LB853 does nothing to change that. Without a legal relationship, it is unclear if the federal government will approve this program. Unless a legal guardianship remains intact, there is no vehicle for disbursement of the extended guardianship assistance. Federal law does not allow the extended guardianship assistance to be paid directly to the young adult. If a former guardian were to receive money under this program, s/he would have no legal obligation to spend the money for the benefit of the young adult or to give any of the money to the young adult. DHHS would have no legal authority to ensure the money is spent for the benefit of the young adult

and, because there is no legal relationship, the young adult would have no avenue for legal recourse.

Fiscal Concerns

DHHS has also continually expressed concerns about the sufficiency of the appropriations to finance the programs established under LB216. LB853 does nothing to alleviate those concerns but continues to give the juvenile courts broad authority to order DHHS payment for services and support not accounted for in the existing appropriations for this program. Not only could this result in fiscal deficits to the program and a disparity of services and financial support in individual cases, it runs afoul of the purported purpose of the Act which is “to support former state wards in transitioning to adulthood, [and] becoming self-sufficient.” Neb. Rev. Stat. § 43-4502.

Additional Concerns

In addition to the issues presented above, DHHS has identified the following issues with LB853:

- Page 20, Line 10: The bill contains language stating “...the independence coordinator shall meet with the young adult in person...” If the young adult is unwilling to meet with the independence coordinator, DHHS could be prevented from terminating a young adult from the program, even when legally justified. This requirement would be impractical with the limited staffing provided in the existing appropriation.
- Page 20, Lines 15-16: I would recommend that the word “final” be added prior to the language “actions or inactions by the department administratively.”
- Page 24, Lines 6-13: This proposed language may result in the delaying of court hearings, therefore, negatively impacting the State’s ability to draw down federal IV-E funds because the court hearings are not held within federally-required timeframes. This requirement would be impractical with the limited staffing provided in the existing appropriation.
- Page 24, Lines 6-13: Sec. 13 mandates DHHS to help the young adult “prepare for how he or she may respond to issues of concern” that arise during the court hearing. This requires the Independence Coordinators to provide legal advice to the young adult and, therefore, engage in the unauthorized practice of law.

Additional recommendations

- Page 21: DHHS recommends adding a provision to Sec. 12 (1) explicitly waiving any court filing fees for the petitions described in Neb. Rev. Stat. § 43-4508(1). DHHS is unaware whether or not the numerous juvenile and county courts intend to require filing fees, as the statute is silent on the issue.
- DHHS recommends striking Neb. Rev. Stat. § 43-4506(6), as it mandates actions related to IV-E eligibility determinations not required by the federal government. By adding this mandate, Nebraska may disqualify individuals who otherwise have remained eligible for IV-E funds. This will result in the expenditure of more State funds.

- DHHS recommends making Neb. Rev. Stat. § 43-4505 (3)(i) optional at the request of the young adult. The current language mandates the creation of a health care power of attorney, which is in contradiction to the Patient Protection and Affordable Care Act, Public Law 111-148.

I greatly appreciate the opportunity to share the above concerns and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Pristow', enclosed within a large, loopy oval shape that extends to the right with a long horizontal stroke.

Thomas D. Pristow, MSW, ACSW, Director
Division of Children & Family Services
Department of Health and Human Services

cc. Senator Amanda McGill