

ONE HUNDRED SIXTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 105

Introduced by Health and Human Services Committee: Howard, 9, Chairperson;
Arch, 14; Cavanaugh, 6; Hansen, B., 16; Murman, 38; Walz, 15.

PURPOSE: The purpose of this interim study is to investigate the eligibility requirements applied to children for the home and community-based waiver for aged and disabled persons under the Medical Assistance Act.

WHEREAS, the purpose of the aged and disabled waiver is to provide care in a community-based setting to adults and children with disabilities who would otherwise require such care in a nursing facility and who do not traditionally qualify for the Medicaid program; and

WHEREAS, to be eligible under the aged and disabled waiver a person must first have a disability determination. If there is a disability determination, the person is then evaluated by the Department of Health and Human Services to see if they meet a specified institutional level of care; and

WHEREAS, prior to 2015, the Department of Health and Human Services used a tool for determining the institutional level of care for children that was not promulgated in rules or regulations for use as an evaluation tool and that was different than the level of care determination for adults; and

WHEREAS, in 2015, the Nebraska Supreme Court in *Merie B. on behalf of Brayden O. v. State*, 290 Neb. 919 (2015), found that the children's institutional level of care tool the department was using was improper in part because the requirements had not been properly promulgated. There already existed detailed eligibility requirements for an institutional level of care which applied to both adults and children in 471 Neb. Admin. Code 12. Therefore, the Supreme Court instructed the Department of Health and Human Services to use the eligibility requirements that had already been properly promulgated; and

WHEREAS, the Nebraska Supreme Court also found the children's

institutional level of care tool the department had been using was arbitrary and overly restrictive. The court found that the standards used by the department for a children's level of care resulted in the unreasonable exclusion of profoundly disabled children. The department followed the ruling of the court and used the existing level of care promulgated in 471 Neb. Admin. Code 12 to determine eligibility for both adults and children from 2015 through 2018; and

WHEREAS, in December 2018, the department promulgated rules and regulations to codify the pre-2015 children's institutional level of care requirements, which the Nebraska Supreme Court had found to be arbitrary and overly restrictive. The department began assessing the eligibility of children for the aged and disabled waiver using these more restrictive regulations in January 2019. Children with disabilities currently admitted under the waiver have been deemed ineligible under the new standards and have lost needed services.

The issues addressed by this interim study shall include, but not be limited to:

(1) Current eligibility requirements for the Medical Assistance Act under the aged and disabled waiver, including the institutional level of care determination applied to children;

(2) The independent evaluation of the children's institutional level of care eligibility requirements being conducted by the Department of Health and Human Services;

(3) Effects of the eligibility requirements and the resulting loss of coverage;

(4) The benefits of providing disabled children early intervention services and therapies which could result in an improved quality of life and possibly result in less dependence on services as adults; and

(5) The best use of resources in the medical assistance program to provide quality of life and care for children with disabilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH

LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Health and Human Services Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the Health and Human Services Committee shall conduct the study and investigation pursuant to Rule 3 of the Rules of the Nebraska Unicameral Legislature.

3. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.