

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

HOWARD: [RECORDER MALFUNCTION] Services Committee. My name is Senator Sara Howard and I represent the 9th Legislative District in Omaha and I serve as Chair of this committee. I'd like to invite the members of the committee to introduce themselves starting on my right with Senator Walz.

WALZ: Senator Lynne Walz, District 15, which is all of Dodge County.

ARCH: Senator John Arch, excuse me, District 14, which is Papillion, La Vista, and Sarpy.

WILLIAMS: Matt Williams from Gothenburg, Legislative District 36, which is Dawson, Custer, and the north portion of Buffalo Counties.

CAVANAUGH: Machaela Cavanaugh, District 6, west central Omaha.

HOWARD: Also assisting the committee are our legal counsels. We'll have T. J. O'Neill for first interim and then Jennifer Carter for our second, and our committee clerk, Sherry Shaffer. We do have a committee page today, Maddy. A few notes about our policies and procedures. Please turn off or silence your cell phones. This morning, we'll be hearing two interim studies and I'll be taking them in the order listed on the agenda outside of the room. On each of the tables near the doors, near to the hearing room, you'll find blue testifier sheets. And if you're planning to testify today, please fill one out and hand it to Sherry when you come up to testify. This will help us keep an accurate record of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do have any handouts that you please bring ten copies and give them to Maddy, our page. We do use a light system for testifying. Each testifier will have five minutes to testify. When you begin, the light will be green. When the light turns yellow, that means you have one minute left. When the light turns red, it's time to end your testimony, and we'll ask you to wrap up your final thoughts. And when you come up to testify, please begin by stating your name clearly into the microphone and then please spell both your first and last name. Each interim study hearing will begin with the introducer's opening statement. After the opening, we'll take testimony. Just a reminder that interim study hearings work a little bit differently, testimony is not grouped by supporters or opponents, but taken in turn unless we have invited testimony, in which case we will take the testimony of those invited first. I will note this at the start of

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

each hearing. If the LR is a committee resolution, I, as the chair, will introduce it and then return to my seat to proceed with the rest of the hearing. We do have a strict no-prop policy in this committee. And with that, we'll begin today's hearing with LR250. Welcome, Senator Walz.

WALZ: Thank you. And good morning, Senator Howard and members of the Health and Human Services Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z. Welcome to the LR250 hearing to examine programs relating to the development and implementation of the plan for providing services to qualified persons with disabilities in the most integrated community-based settings possible. Also known as the Olmstead Plan. Thank you all for being here today to see the fruits of the labor from so many people. As you know, this has been a long time coming for the state of Nebraska. So I wanted to give you a quick refresher. Twenty years ago this past June, the Supreme Court handed down a ruling to the states which indicated that public entities must provide community-based services to persons with disabilities when: number one, such services are appropriate; number two, the affected persons do not oppose community-based treatment; and three, community-based services can be reasonably accommodated taking into account the resources available to the public entity and the needs of others who are receiving disability services from that entity. This plan is fully, I want to repeat, this plan is fully based on the person's desire and willingness to live in the least segregated setting possible. It is all based on the individuals-- on the individual's wants and needs. It is important to note that this does not say that integrated settings are the best thing for every individual, but if they are appropriate and the affected persons do not oppose community-based treatment, the public entity should do their best to provide such accommodations. This past year, thanks to the work of the committee, Nebraska Council on Developmental Disabilities, the ARC of Nebraska, the Statewide Independent Living Council, the Department, the Technical Assistance Collaborative, Parents, Activists, and many more, we now have a draft of a statewide Olmstead Plan to help outline a clear direction for us to move forward in the future. I wanted to give a special thanks to the Nebraska Council on Developmental Disabilities for their work. Because of them, Nebraska achieved grant funding to hire the Technical Assistance Collaborative and kickstart their work even before the Legislature passed LB570. This allowed TAC in coordination with the Department to begin listening sessions and Steering Group meetings as far back as

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

August of 2018. This Steering Group, a list of which you can find on page 55 of your report. But I would like to note that it includes a variety of department heads as well as division heads within DHHS as well as various advocates. There were also, there were also a significant amount of individuals who showed up the listening sessions to provide their feedback as to where services in Nebraska were up to par and where they were not. Another section I would like to draw your attention to begins on page 51. It is the section that includes themes from public comments on the draft, on the draft Olmstead Plan. It summarizes general themes from the public comment period that ran this past November. If you are interested in any more detail from my office-- any more detail, my office requested copies of the public comments and we have them included. We have included all 33 pages behind the Olmstead Plan that you have. There are a number of comments ranging from a lack of data to inform the development of measurable goals and benchmarks to the need for strategies and measures that fund the NASP's rate methodology, or the fact it lacks specific mention of how many people are on the waitlist. I would just like to comment on a few that I did not see in the public comment section. The first question I have has to do with the first goal. Goal number one, which is measurable outcomes to increase appropriations and reduce the waitlist. This can be found on page 19 of the report. This goal indicates that DHHS will seek increased funding appropriated by the state to fund Medicaid HCBS waivers by 1 percent. So I'm curious to know how they intend to reduce the waitlist with a 1 percent increase in funding when eight out of the last ten years' inflation rates were higher than 1 percent. If that trend continues with the Department's appropriation request, they will have to do more work with less money in order to, in order to reduce the waitlist population. I would also be interested in hearing how that intends to be done because I haven't seen anything in the plan that would explain it. The second question I have is Outcome 4F on page 31. This is a plan for citizens with disabilities. And while I support encouraging youth to explore interest in manufacturing and information technology, I would like to know how the school applies to serving individuals with disabilities in a community-based setting. On page 25 and 26, Outcome 3F does not appear to have any measurable goal that the Department will, will strive towards. Neither, neither does 3G. And there is no increase in percentage change in 3H's goal increase. So I would be curious to hear some explanations. And that is why-- and that is what I would like your help with today as we examine this report. I don't want to take up too much time asking questions as I want you to hear from everyone

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

else today. So I will simply say this, Olmstead Plans are intended to reflect the condition our state is in as far as providing services to individuals with disabilities by identifying the issues we face as a state setting goals for areas to improve in, and measuring those goals with metrics that accurately reflect improvement in those areas. I have provided you all with not only the draft of the plan, but the public comments. I have invited the Department to testify to share with you their work as well as members of the Steering Committee and the Advis-- and the Advisory Committee along with anyone else who feels that they will be affected by the implementation of the plan. I hope you have had some time to glance over the Minnesota State Olmstead Plan I sent you last week. They have been through this process already. Unfortunately for them, they had to be forced through this through litigation. On the bright side, however, this allows us to take a look at the end results and see what the Justice Department is looking for as we proceed through our process. I can tell you that one thing they are looking for, in addition to all of these goals, is results. Unless anyone has any questions, that is all I have for now. Thank you.

HOWARD: Thank you. Are there any questions? Seeing none, will you be staying to close?

WALZ: Yeah.

HOWARD: If you can make it. All right, we'd like to invite our first testifier up, Miss Dianne DeLair from Disability Rights Nebraska. Good morning.

DIANNE DeLAIR: Good morning, Chairperson Howard, Senator Walz and members of the Health and Human Services Committee. My name is Dianne DeLair and I am the senior staff attorney at Disability Rights Nebraska. We are the state's protection advocacy system for our state. And I'm here to provide testimony in response to the Olmstead Plan that has been submitted to this committee. Despite the involvement of a group of diverse stakeholders, including Disability Rights Nebraska, and the information resources and consultation provided by the Olmstead Committee, the Technical Assistance Collaborative, unfortunately, the document the state has produced is an Olmstead Plan in name only. The plan, as written, fails to realize the objectives of the Nebraska Legislature or the vision of the Olmstead Advisory Committee, and, unfortunately, will not meaningfully increase opportunities for community, community integration or remedy ongoing

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

discrimination. First and foremost, we were shocked and stunned by the absence of the very components that must be included in any comprehensive, effective working Olmstead Plan. For example, the Division of Behavioral Health's consultant, the Technical Assistance Collaborative, worked with our state back in 2013 and '14. They warned that because we did not have an Olmstead Plan, we would be vulnerable to litigation, stating Nebraska does not have an Olmstead Plan that addresses any disability group. What they also said in 2014 is that a plan to plan is not a defensible Olmstead Plan. Unfortunately, that is exactly what Nebraska has produced. According to the Department of Justice, that's the federal agency charged with enforcing Title II and Olmstead, this is a public entities plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings. A comprehensive, effectively working plan must do more than provide vague assurances of future integrated options or describe the entities' general history of increased funding for community services and decreased institutional populations. Unfortunately, this plan is chock full of those, those very things. Although Olm-- the Olmstead decision only involved one type of institution which was a psychiatric hospital, courts quickly made clear that Olmstead applied to all state and Medicaid-funded institutions, including nursing facilities. Courts also found that Olmstead applied to individuals living in the community who were at risk of institutionalization or placements in isolated, congregated, and segregated settings. Nebraska's draft plan is long on principled statements and short on meaningful, measurable outcomes. The strategies and measurable outcomes mentioned in the plan have come before the gathering of the necessary data. Without knowing what the numbers are, it is impossible to develop meaningful, measurable outcomes. What is lacking is the starting point. It is not present within the document and raises many questions. TAC told us back in 2013 and '14 to ask, who are the people? Where do they live? What are the gaps preventing community integration? What additional funding is required and what entities are responsible? How many individuals are in each setting? Who is at serious risk of entering segregated settings? How many individuals are at serious risk of institutionalization? How many individuals are on the waiting list for home and community-based waiver services? These questions we've been told to ask and find answers to back in 2013. And, unfortunately, we still have not done that. And as a result, this is the document that we, we have today. What is most troubling and shocking in this document is the complete lack of recognition that the Technical

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

Assistance Collaborative has been in our state: 2013, 2014, 2016. In fact in 2016, they completed a supportive housing plan for our state and that was issued and has been presented to the, the Olmstead Steering Committee and also the stakeholder group. It's not mentioned, not once, in this document. And contained in that TAC report are long-term and short-term recommendations dating all the way back to 2014, many of which have not been implemented. The overriding concern is that we are moving forward with a plan that is going to be not defensible. It's going to be difficult to talk about measurable, measurable outcomes and goals if we don't have the necessary foundation. Looks like my, my time is up here. I would urge you to take a look at the rest of my written statement for further examples of what we feel is lacking in the draft plan. And I'll take any questions.

HOWARD: Thank you. Are there any questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Howard. Thank you for being here today. So your concern with the TAC recommend-- recommendations and not being addressed in this, could you speak to what happens if our plan is deemed not adequate?

DIANNE DeLAIR: Well, so according to the Olmstead decision, if a state has a comprehensive, effective working plan that can be used as what's called an affirmative defense of litigation. Now just because the plan says it's an Olmstead Plan, it still has to measure up to those substantive requirements that the DOJ has issued guidance for. And then also we have many, many lawsuits and DOJ settlements that have occurred since the decision in Olmstead that has crafted and, and guided other states in developing their plans. So it is our opinion that the plan is not one that meets legal muster, and it would not afford the state a defense under any particular litigation that would arise.

CAVANAUGH: So the state-- this-- if it doesn't meet legal muster, it's-- is it-- am I understanding correctly that it leaves the state legally vulnerable?

DIANNE DeLAIR: It does. They would not be able to use this as a defense to any Olmstead litigation.

CAVANAUGH: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

DIANNE DeLAIR: Thank you.

HOWARD: Our next testifier will be Courtney Miller from the Department. Good morning. Welcome.

COURTNEY MILLER: Good morning. So good morning Chairwoman Howard 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'm the director of the Division of Developmental Disabilities with the Nebraska Department of Health and Human Services. Due to a prior commitment, CEO Smith is unable to attend the hearing and I am here today to present testimony on her behalf. Thank you for the invitation to participate in today's hearing. In 2019, Nebraska legislators voted to pass LB570, which strengthen previous Olmstead legislation and expanded the scope of state agencies and community partners to be part of the Olmstead Plan development. It extended the completion date of the plan to December 15, 2019, and required DHHS to use an independent consultant to assist with continued analysis and revision of the Nebraska Olmstead Plan. LB570 was signed into law by Governor Ricketts on May 17, 2019. The Nebraska Department of Health and Human Services was pleased to submit the state's proposed Olmstead Plan for your review and comment. This plan serves as a first step and the framework towards achieving the Nebraska Olmstead vision which states, people with disabilities are li-- living, learning, working and enjoying life in the most integrated setting. The Olmstead planning process included a multi-pronged approach for gathering information to contribute to this proposed plan. We collaborated across DHHS with other state agencies and with community stakeholders, including the Olmstead Advisory Committee members and individuals who access publicly funded services. This planning approach also featured stakeholder interviews, public listening sessions, and the development of a Web page to gather input from constituents and stakeholders. The diligent work of all contributors, contributors is captured in this initial Olmstead Plan. This proposed plan represents not an end to the planning process, but rather a beginning as this proposal is intended to be a dynamic and evolving document which must be implemented with the full support of all branches of government and our community stakeholders. This proposed Olmstead Plan is ambitious and will take commitment from various state agencies, all branches of Nebraska's state government, and community stakeholders. All Olmstead strategies and activities are

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

subject to fiscal, statutory, regulatory and policy decisions and directives from state and federal bodies. Given the competing demands for Nebraska's finite resources, this proposed plan is grounded in reality. The goals and measures reflect the progress that can be reasonably achieved within the next three years. We recognize that some stakeholders may believe that this proposed plan does not go far enough, fast enough at ensuring that Nebraskans with disabilities have the opportunity for community inclusion. It is critical to view this initial plan as a starting point, and I welcome diversity with differing perspectives to achieve the best plan for Nebraskans. It is intended for the plan to be a living plan rather than a static document, and for stakeholder collaboration to continue on an ongoing basis. For this reason, our agency anticipates that goals, measures, and strategies will need to be continuously refined. Nebraska's Olmstead plan is a framework designed to provide a solid structure for flexibility to ensure that laws, regulations, and future planning meet the principles to improve the quality of life for Nebraskans with disabilities. The values, guiding principles, and goals are expected to remain consistent over time. However, the strategies, programs, activities, policies, and indicators of progress will change to adapt to changes in law or regulation, new opportunities, and new challenges that arise. Thank you for the opportunity to provide this information to you. CEO Smith looks forward to continued dialog and finalization of the plan with the Health and Human Services Committee, state agencies, community partners, and stakeholders. Happy to answer any questions that you may have.

HOWARD: Thank you. Senator Arch.

ARCH: Thank you for your testimony. I, I just have a couple questions. Do I understand it correctly that the Olmstead Plan is not something to be submitted to a federal agency, but rather it is a defense? In other words, in other words, the Olmstead, the Olmstead decision then required that states have this if challenged. Is that, is that correct?

COURTNEY MILLER: I would say the Olmstead Plan is a commitment to Nebraskans by Nebraskans on making our community disability friendly, of a place where they can live, grow, and, and participate--

ARCH: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

COURTNEY MILLER: --fully and integrated. It's not something that we submit to the federal government. There are states that have Olmstead plans that have not been challenged by the Department of Justice or other lawsuits. And they continue to refine and to implement those plans. So it really is a state plan with the, with the state commitments to serve individuals with developmental-- or sorry, disabilities, not-- all disabilities in Nebraska.

ARCH: And so this is-- this, this plan today that and is submitted as, as proposed. Is that correct?

COURTNEY MILLER: It's a-- it's, it's a-- we view it as a proposed plan and that this has to be accepted and the commitment of all levels of government and stakeholders. And so if you have a plan that then there is no additional funding or progress from the plan, then it is-- then it remains a plan to plan. And so this is what we're proposing and we look forward to the dialog for the finalization of the plan if there are things that other stakeholders and branches of government feel that, that should be added or removed or expanded upon in the plan. So it's a continuing dialog. It's a living, breathing document.

ARCH: OK. So do you, do you have a proposed time line for this dialog or a proposed process? I mean, obviously, we're, we're hearing and you are as well criticism of the plan and, and suggestions for improvement and all of that. Do, do you have a proposed time line or a proposed process for coming to a consensus finalized plan at some point?

COURTNEY MILLER: Well, I think that when you start with a proposed plan, when there's a commitment to the, the strategies and measures that are, that are included in the plan, when that commitment is there, it becomes a plan and that it's continually evolving. So we have the time frame for this plan is three years, but that doesn't mean that it doesn't change within three years. We can review this on an annual or semi-annual basis to review and the continued dialog. I think the dialog in Nebraska happens every day when we meet with stakeholders and we have discussions and some things that we work on and that we have as our priorities aren't included in the plan, but they're still happening.

ARCH: OK. I, I guess I'm, I'm just reflecting on the use of the term proposed plan, final plan. Generally speaking then, it would be-- there would be a date where you would say, well, this now is our plan.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

COURTNEY MILLER: Um-hum. Well--

ARCH: I know. I understand. It's a it's a working document. And it continues to evolve. I just didn't know if, if there was something in your mind where you say, OK, this is-- here it is what we've written so far, but now we start a dialog and we come to a final plan. It doesn't sound like you really anticipate coming to a final plan where there is now-- this is our document. This is, this is what-- you know, it's constantly worked. I guess that's what, that's what I'm hearing from you. Is that correct? I don't want to put words in your mouth. I just want, I just want to understand.

COURTNEY MILLER: Sure and I appreciate that, Senator. That's a good question. I think that from this legislative resolution hearing and hearing from stakeholders in the dialog with, with you that this is the next step. And then another next step is the continued dialog with the Health and Human Services Committee to determine our next step of what your thoughts are once you've had time to digest and hear from stakeholders on the plan.

ARCH: OK. Thank you.

HOWARD: Just so we have a follow up. So when we're talking about a continued dialog and it's great that we're talking everyday, but is there a schedule for future meetings to revisit the Olmstead Plan, sort of every six months, every three months? What does that look like?

COURTNEY MILLER: So I cannot speak for CEO Smith, but I know that, that we do have a commitment to continue on with the Advisory Committee and the Steering Group to continue that dialog. I, I can't speak for, for CEO Smith of how often or those that scheduling just yet, but we can follow up and get back to you on that.

HOWARD: So we don't-- like is the first one scheduled? Do we know when that is?

COURTNEY MILLER: I do not. I'll have to follow up with you. It may be scheduled. I'm just not aware.

HOWARD: All right, no worries.

COURTNEY MILLER: Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

HOWARD: Thank you. Other questions? Senator-- oh, Dave-- Senator Murman, I apologize.

MURMAN: Thanks a lot for your testimony. Are you familiar with the final settings rule?

COURTNEY MILLER: I am familiar with the final setting. Are you talk-- are you referring to the, the Centers for Medicaid and Medicare Services, the 2014 new rule, that's not so new anymore?

MURMAN: Yeah, I think so.

COURTNEY MILLER: Yeah. Yes.

MURMAN: Does that-- is that related to Olmstead or how is that related to Olmstead?

COURTNEY MILLER: It's absolutely related to Olmstead. So the settings rule or the 2014 final rule was a new regulation from the Centers for Medicaid and Medicare Services on 1915(c), Home and Community-Based waivers and for participants to receive maximum integration opportunities. And so the-- there are many facets to that rule. And so we are looking to incorporate those, some we have already achieved. States were required in 2014 to develop what was called a state transition plan of how states would come into compliance. And there was an extension to the finalization [INAUDIBLE] date for that. And so we submitted our final-- we had, we had initial approval for our plan from, from CMS, or the Center for Medicaid and Medicare Services. And we just submitted our final plan. I don't have the exact date, I can get back to you on that. But we submitted our final plan and we're pending federal approval for that. But we're moving forward with all the items in the plan, and I can get you a copy of that plan.

MURMAN: OK.

COURTNEY MILLER: It is available on our Web site, too, for any stakeholder.

MURMAN: So opportunities for community-- more community integration-- what CMS was thinking with that is in my mind is forced 100 percent integration into the community because ultimately with the final settings rule, I think the plan is to close down the workshops and that is forced integration, that's not opportunities for more

Rough Draft

community integration. Would you agree? I mean, we may not have a choice, it comes from CMS.

COURTNEY MILLER: I would say, given my knowledge and the guidance in dialog with CMS, is that I wouldn't agree with that. I think what they're looking for is more opportunities for integration. They have not indicated that it has to be 100 percent integration. What they're looking for is moving away from isolated settings where there are no opportunities for integration. And historically, by service definition, sheltered workshops are secluded and so they're not indicating that sheltered workshops can no longer exist. They're indicating that the service definition is to evolve to some level of integration. And that's what we're working on now is what, what is that sweet spot for integration that works for individuals and still remain a person-centered planning process.

MURMAN: So historically they were-- I forget what term you used, secluded or-- are you talking about in Nebraska or nationwide?

COURTNEY MILLER: Both.

MURMAN: OK. I have, I have personal experience with that with my daughter in Nebraska, at least in the Hastings area, what, what I'm most familiar with, we had a perfect situation up until just recently, and I think because this final settings rule, our-- my personal experience is with Goodwill that the workshop will be eventually closed down or forced to close down because it won't receive funding. Up until recently, they were out-- the clients with disabilities were out two or three days a week and probably part of the day every day of the week. And it was a perfect mix. If you talk to the clients that could communicate, they said they really enjoyed it. And the parents of, of the other clients, they liked it, but now they're forced to be out every day and they're in a van a lot. They, they have to go to different communities, Grand Island, Kearney. Our daughter is only they're half days. So she's-- all she does is ride around in the van pretty much. And it's not working out well at all. They, they have specialized equipment there at the workshop. You know, many of them are tube fed, our daughter has an eye gaze machine, all those things can't be used out in the community as easily at least, when the weather's bad like it is in Nebraska, probably half the time. It's either too cold, too hot, too windy, raining. You know, the clients move very slowly. It just takes so much time to meet in one place, and then go into a van, go to another place, move in and then have dinner

Rough Draft

or whatever. Move out, then come back-- you know, I-- they enjoyed doing it some, but not every day and not hundred percent of the time. Even a person, just a normal person, does not want to be out in the community a hundred percent of the time. And it's just more difficult if you have disabilities. And it's nice to-- you know, many of them get tired easily. So you know, if they're out 100 percent of time they're going to be sleeping in the restaurants or library. It just doesn't work out well to be out 100 percent of the time. Thanks.

COURTNEY MILLER: Thank you, Senator.

HOWARD: Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you, Courtney, for being here. In your testimony, you talked about that this is a living plan rather than a static document. And I think this is kind of a follow up to Senator Arch's question. So you would look at this where we are right now as an ongoing process. Is that correct?

COURTNEY MILLER: Absolutely.

WILLIAMS: And in, in that process, you've engaged stakeholders and you've used the term stakeholder collaboration. Were the stakeholders-- let me put it this way, did they sign off on this draft plan? Did the stakeholders meet and review the draft plan? And in that collaboration that took place with them, did they, did they agree with the draft plan?

COURTNEY MILLER: I would say that there was a lot of collaboration and a lot of great discussions regarding what's in the plan and what is not yet in the plan or has not been further explored. And I would say that, that we didn't, we didn't have the opportunity to further dive into more collaborative sessions. I think we had many. But I think due to the time frame that the public comment period, we were-- the due, the due date, right, the, the submission date was December 15, and we tried to gather as many people as we could, either on the phone or in person. We had a lot of in-person meetings. When, when we put the final draft out for comment, we did take those comments and we did make some adjustments to the plan based on those comments from my understanding with conversations from CEO Smith. And it is a evolving document to be able to incorporate more of those comments as the plan evolves.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

WILLIAMS: Would it be the position of the Department that they would continue in this ongoing process to engage the stakeholder group and collaboration that would make adjustments to the plan?

COURTNEY MILLER: Absolutely. I think the dialog with stakeholders and all branches of government is essential for this plan to help improve the lives of Nebraskans with disabilities.

WILLIAMS: Thank you.

COURTNEY MILLER: Um-hum.

HOWARD: Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman. Thank you for being here. I'm, I'm sorry, I have a lot of other questions, but I also have some follow-up clarification on the plan. So on page 45, we have a list of the Advisory Committee members and I'm cognizant of the fact that you are, are here filling in for, for CEO Smith. So if you, if you can't answer this question, perhaps that's something that she can follow up with the committee on. But to Senator Williams' question about stakeholder, I guess buy-in would be my term, was the Advisory Committee not-- I mean, there's a-- there's pages of people listed here that gave comment,--

COURTNEY MILLER: Um-hum.

CAVANAUGH: --but the Advisory Committee, I would assume, was-- and I know what happens when you assume, so I'm looking for you to clarify for us all. Was the Advisory Committee given the opportunity to review the plan before-- prior to December 15? And did they sign off on the plan?

COURTNEY MILLER: So the Advisory Committee provided comments individually and collectively. We-- the nature of an advisory committee is not necessarily to sign off on a plan, it is to provide the input and advise. Yes, they received the plan prior to December 15. We included members of the Advisory Committee and extended the Steering Group to include members of the Advisory Committee for that voice at the Steering Group as well at their request. And so they did review the plan and provide comments.

CAVANAUGH: So--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

COURTNEY MILLER: What we, what we submitted in, in-- on December 15 was a plan that we believed that was achievable within a three-year period and prioritized some of the things that was part of the themes of the stakeholders based on the goals that were developed by the Advisory Committee.

CAVANAUGH: So in looking over the comments that have been submitted,--

COURTNEY MILLER: Um-hum.

CAVANAUGH: --they're-- and oftentimes it's, it's a criticisms of how to strengthen the plan. I'm, I'm struggling to see how those comments are then carried forward within the plan. Were they carried forward within the plan? Were they looked at and then were revisions made? You've said that this is a living document, so you've had these advisory-- you've had these comment periods over the course since May. I know the most recent one was in December, but were those comments taken? And then was the plan-- were changes made to the plan based on those comments?

COURTNEY MILLER: So we reviewed every comment and we did incorporate some into the plan which we felt supported the goals and the prioritizations that were there, and within the three-year achievable plan.

CAVANAUGH: OK. I have some additional questions, but--

HOWARD: Are there any other questions from the committee? Go ahead.

CAVANAUGH: OK. So I, I-- this a behemoth of a report, so I've, I've written out a few of my questions about it. So on page 18, there is a list of goals-- under Goal 1, and it says DHHS will create a no wrong doors system. Could you clarify what that means?

COURTNEY MILLER: So a no wrong door system is a nationally recognized system that allows an individual to enter a system such as a department, Health and Human Services, and get what they need based on one contact. And that doesn't mean full approval or that the benefits are distributed. It's that you should be able to go in that door and have your answered-- your questions answered and provided with directions so that you're not entering various different doors to get your needs met.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

CAVANAUGH: OK. And Senator Walz, in her opening statement, spoke about the 1 percent increase to get us off-- or to reduce our waiting list. And I mean, we know from the cost of living increase that people get annually, 1 percent is not a cost of living increase which keeps up with inflation. So how is the Department seeing a 1 percent increase in funding going to translate into a decrease in the waiting list?

COURTNEY MILLER: Um-hum. So we just completed a rate methodology with our providers, with our independent and agency providers. And so that rate methodology was funded this biennium. And so we will look at future increases and adjustments. Providers-- I'm sorry, the Department is required under federal rules to rebase rates every five years. And so anything between those five years is at the discretion of the state. And so that's a dialog that we have with the Governor's budget office and the Legislature every year. And our waitlist, now we have an appropriation in fiscal year '20 of roughly \$151 million. So 1 percent is \$1.5 million. And that represents historically what the Department has received as an allocation to specifically reduce the waitlist. And we have been effective at reducing our numbers on the waitlist and we have new applications applying coming on, but we have funded individuals. The reason that we didn't use a specific number of individuals is because we use an objective assessment process to determine individual budgets based on acuity and limitations of that specific individual. And so it's difficult within a set appropriation at the beginning of a fiscal year to determine how much the spend would be at the end of the fiscal year if you have to fund a specific number of individuals.

CAVANAUGH: I'm sorry. I, I appreciate the-- this is a--

COURTNEY MILLER: Yeah.

CAVANAUGH: --very technical answer, but it's not actually getting at my question,--

COURTNEY MILLER: OK.

CAVANAUGH: --which is how are you reducing the waitlist with a 1 percent increase?

COURTNEY MILLER: We reduce by making funding offers.

CAVANAUGH: What does that mean?

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

COURTNEY MILLER: It means that as we receive appropriations, we determine how many individuals that we can serve and we begin from the top of the waitlist so the prioritization is in statute. And we, we reach out and we make those funding offers and bring them into services.

CAVANAUGH: So how does 1 percent help you achieve that if inflation-- accounting for inflation?

COURTNEY MILLER: I guess I'm not understanding the question on the inflation when we have set provider rates.

CAVANAUGH: OK, that's, that's fair enough.

COURTNEY MILLER: OK.

CAVANAUGH: I again, I'll pause if anybody wants to jump in.

HOWARD: [INAUDIBLE]

CAVANAUGH: OK. So I'm, I'm, I'm just-- I'm concerned and I apologize that I did not thoroughly review LB570 that put this into motion in May as to-- this is supposed to be a living-- or this is a living document according to the Department, but it also is a plan. And it's-- until there's another version of this, this is actually a stagnant document. And is there a time line for the next iteration of this that we will see and a review of the comments that have been made over the past six or seven months and implemented into a revised plan point two?

COURTNEY MILLER: So I believe in, in the law, it indicates in LB570 when a report by an independent contractor, which this-- that, that scope of work is included in the TAC contract that we have now that I believe in two years that we will submit to the Legislature a report regarding the progress and deliverables, any recommendations of TAC. However, we also have in that contract that there will be an internal annual review that we will review with stakeholders at that time. But that doesn't mean that another iteration has to wait to a specific date.

CAVANAUGH: OK, I just have a lot of concerns about the vagueness of this plan. Not just from hearing from the legal side, but data collection. There's not really an explanation as to what that means. On page 21, the Division of Public Health will explore data collection

Rough Draft

related to housing needs. That's very broad and nebulous, and I just want it stated for the record that I have concerns about the integrity of this as a-- something that will protect the state and the people that we are working to serve. And I look forward to us working together as a committee and the Department to strengthen this document because I think that it is a start, but it is very far from something that we could actually implement and could use as a defense, which is concerning because I, I believe the December 15 completion date would indicate that it should be further along than it is. So I just want that stated. Thank you very much for your answers today.

HOWARD: Are there any further-- oh, Senator Murman.

MURMAN: The Olmstead Plan-- and I think the final settings rule are supposed to be very individualized and do what's best for the individual. If there would be a group of individuals that would want to keep like a setting, like a workshop open, probably vote unani-- unanimously to do that, is there any way that that can be done? I know this has being forced on the states by people at the federal level that think they know better than the people that have the boots on the ground, but is there anything that can be done to keep the local centers open? I look at this as being similar to closing down the mental health centers years ago. And like the regional centers at Hastings, Norfolk and, and forcing all those people out in the community that many of them were better served in a more restricted setting or a group setting. And I think the same thing is happening now to people with disabilities. Is there anything that can be done about that?

COURTNEY MILLER: So, Senator, that's a great question. I would say that based on your comments and information that you've provided it, it sounds like that does not align with the guidance from the state and the federal government that we've provided to, to the state and our providers. And so I will follow up with, with Goodwill and, and our providers to make sure that, that it's understood what the direction is of a final rule. Three days a week in the community is community integration. There is no requirement for 100 percent, our habilitative community inclusion, service definition or service that's provided requires a majority of time in the community for that specific service, but sheltered workshop today still exists as a service. We know that we have to modify that to some level of integration and if we fail to comply with, with the federal rule, and we allow a service that has zero integration, if the state makes the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

determination to continue with that service, we would not be able to claim federal matching dollars for that.

MURMAN: Yeah, thanks a lot. I don't want to put Goodwill on the spot, I think there's others that are the same way, but at least the ones I'm familiar with never did have zero integration. They, they really had a balanced integration before this forced 100 percent. And, and I know it's-- the term forced isn't used, but if they aren't funded and they're closed down eventually they'll have to be 100 percent integrated. And either that or quit using the services somehow. But, but that's, that's why I asked the question if there's any way to keep them open-- to keep something like that open. So, so thank you.

HOWARD: All right, thank you. Any other questions? Seeing none, thank you for your testimony today.

COURTNEY MILLER: Thank you.

HOWARD: Our next testifier for LR250. Good morning.

KRISTEN LARSEN: Good morning. So good morning, Senators. My name is Kristen Larsen, K-r-i-s-t-e-n L-a-r-s-e-n, and I'm here on behalf of the Nebraska Council on Developmental Disabilities to provide comment on the proposed Olmstead Plan that was submitted by DHHS on December 15. I'm going to read a few of the public comments and response to the initial draft of the Olmstead Plan that was released in November and follow up with a few comments on the proposed plan. I'm not going to have enough time to read on my public comments, but it is in my testimony, so you can read that. I'm also providing you with copies of the guidance document created in May 2014 by Kevin Martone of TAC, Technical Assistance Collaborative, titled The ABC's of Olmstead Planning. And I reference this in my public comment. It is my understanding that Mr. Martone presented this PowerPoint in May 21, 2014, following some work that they had done with the state, that Dianne DeLair alluded to earlier, at the Nebraska Behavioral Health Conference in Lincoln. It was also shared with Advisory Committee members early on in the process so I did my research and looked at that. So part of my public comments, I need to stress that although the Council is appointed by the Governor and administrated by the Department of Health and Human Services, the Council operates independently, and my comments do-- as the Council's executive director, do not necessarily reflect, reflect the views of the Governor's administration or the Department. We are a federally

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

mandated, independent Council comprised of individuals with developmental disabilities and family members, community providers and agency representatives, and we advocate for systems change and quality services. The Council serves as a source of information and advice for state policy makers on matters that will impact individuals with developmental disabilities. It was spoken about earlier, the Council's played an instrumental role in supporting the Nebraska Olmstead Plan development process. We were able to approve \$127,000 of our federal funds to be used by DHHS to hire TAC and they were able to create the framework and help do the initial work on the plan. The Council also supported the passage of LB570 in 2019, which ultimately strengthened efforts to complete the development process for Nebraska to have a cross-disability, that's important to note, comprehensive Olmstead Plan. As a member of the Nebraska Olmstead Planning Advisory Committee, I've been engaged throughout the entire process. I've also conducted additional research on the components of what makes a valuable Olmstead Plan. I found that a good plan will include specific action steps in various areas to achieve the promise of the ADA to provide individuals with options to live, work, and receive educational service in the least restrictive, most integrated settings possible. I reviewed the ABC's of Olmstead Planning, the document that you have, and my concerns with the initial draft that was submitted in November are related directly to some of those comments in that handout that you have. Specifically, one, the draft did not provide an environmental scan services currently being offered in Nebraska. Key Olmstead plan components including details of Nebraska's disability populations and data were missing. And it makes-- that makes it challenging to measure how Nebraska is currently doing at providing key supports for integration and community inclusion. Two, the draft did not provide data on where people with disabilities are being served. A strong Olmstead Plan will include where these people are. Three, the draft plan does not provide detailed population summaries for individuals receiving things like behavioral health services, those with traumatic brain injury, those who have co-occurring or multi-occurring disorders or information on specific age groups and lacks data and information on the Nebraska's aging population. Four, the draft plan did not adequately assess access to community-based services. And I'm not going to-- five, was just we didn't go on previous technical assistance guidance provided in other reports. Six, the draft plan needs to include additional substantive benchmarks, outcomes, and measures. The draft plan lacks metrics on how the state will address developmental disabilities waitlist that's

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

been spoken about. So ultimately, this plan must promote the most integrated settings possible. And although we talk about budget shortfalls, that cannot be a reason to not support the funding that's needed to expand integrated options for people with-- who experience disabilities. And then I'm going to jump on down because I see I'm on yellow here. I want to thank the Department that we did have really good, strong stakeholder input throughout the time. It's just that the time line was so pressed. It was very hard to get to do a lot of back and forth towards the end. But we look forward to continuing to collaborate with DHHS. And we also want to work with DHHS to ensure ongoing integration of Person-Centered Planning principles. Comments that I want to talk about after the new proposed plan that you have seen that was just submitted, I want to commend them for taking the public comments. There was a question on that earlier and they have made some noticeable adjustments to the proposed Olmstead Plan that was submitted. Specifically on page 35, it states-- it addresses the lack of data to help monitor the goals or monitor plan process. So please look at that page. Also on page 36, it's another good addition. It talks about the addition of measurable Outcome 6A, on looking at longitudinal data to identify gaps and barriers. I'm also pleased to see that Goal 1 on 18 addresses the traumatic brain injury population. They reference the recent Nebraska VR TBI grant and the goal to build a statewide voice driven association. Still, I was disappointed that we didn't talk about the increase to, to address community waiver options for those with TBI, and then the themes of public comments is also in there. It's really important that I encourage you to look at those public comments because ultimately that's-- we need to look at those because I know this is a starting point. But to succeed, the community stakeholders really need to be working with all levels of state government, not just DHHS, to make sure that we fully do what needs to be done for a Olmstead Plan. Sorry, it was long, I couldn't get through all of it.

HOWARD: No worries. Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman. Thank you for being here today and for sharing. This is very helpful information. Is it your understanding that we could be pursuing additional federal dollars for Medicaid to fund the Olm-- the-- some of the populations that should be served?

KRISTEN LARSEN: I think our state could definitely be exploring additional home and community-based service waivers that could serve

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

additional people that are currently not being served. I think Nebraska has a lot of work to do to serve those families who have young children that typically are on a waitlist and don't get served until they age out of the school system so there's opportunities there. I talked-- referenced the traumatic brain injury waiver and that currently only serves about, I think 20 people in a-- at the QLI setting, which is not really a community-based setting. And so there's, there's potential to seek additional funding through those waivers. If, if we-- and it takes additional appropriations, though, to do that, too. It's like a-- and Director Miller would probably be the better one to ask on that. I think it's like a 50, 49 percent-- you know, 50 percent federal and 49 percent state or vice versa. But that's definitely a way to continue expanding. And then I definitely stressed the waitlist issue. And I agree that that 1 percent is not adequate to keep bringing that list down if the numbers keep growing.

CAVANAUGH: Just a follow up on the waiver. Something that this committee has become very familiar with is the 1115 waiver when it comes to Medicaid expansion. But that is also something that we could potentially be pursuing for some of those services that you're talking about.

KRISTEN LARSEN: You mean the Medicaid expansion waiver that's currently being--

CAVANAUGH: No, no, not the Medi-- I mean, 1115 waiver can be used outside of Medicaid.

KRISTEN LARSEN: Yes, there are other-- my understanding is there are other different kinds of waivers. You know, you could do like a mental health waiver, an autism waiver. Lots of states have done a variety of different innovative ways to meet the needs of their population. And I think Nebraska could definitely be exploring more of that.

CAVANAUGH: OK. Thank you.

HOWARD: All right. Seeing no further questions, thank you for your testimony today.

KRISTEN LARSEN: Thank you.

HOWARD: Our next testifier for LR250.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

JOE VALENTI: Hi, my name is Joe Valenti, J-o-e V as in Victor a-l-e-n-t-i. Thank you, Chairperson Howard and committee. I come here representing the Community Advisory Board of the University Center for Excellence in Developmental Disabilities at the University of Nebraska Medical Center and Munroe-Meyer Institute for Genetics and Rehabilitation. The following comments do not necessarily reflect the views of MMI or nor those of the University of Nebraska. I am not going to indulge you in reading all the-- or me reading this to you. I think a lot comments have already been brought up, so I think redundancy is not helpful for this particular group. So, therefore, I'm sure you won't have any questions of me, but I won't-- I would address the handout. One area that has not been brought up too much yet, but is the A&D waiver that doesn't seem to be addressed in the, in the plan, which was of heavy discussion, I know, to this committee over the last several months. And so we, we would ask you to really take a look at that as well as I think the other challenge for this, as I've testified on a private basis-- or personal basis, is the need for comprehensive care for individual center and what I would call adolescent ages, the ages of-- you know, 18, 17 and under, young children with severe co-occurring behaviors, co-occurring conditions, and what our state can do to better serve those individuals and parents. And that I would say-- like I say, I don't want to read this all to you because first of all I would run out of time, and secondly, I think a lot of it's been covered by Kristen and, and other individuals and I'm sure other individuals will cover it again. I know Dianne covered a number of the items, too, so. I do say I want to thank the Department for trying to come up with a plan. I, I think it's very difficult. But again, I think it needs to be improved upon and I'm sure they will do that with your help and, and stakeholder help.

HOWARD: Thank you. Are there questions?

JOE VALENTI: And I'd like to sign off to Senator Murman's questions. You know, I, I think you bring up-- I'll talk on a personal level now just for a second. I think it-- what CMS requires in workshop requirements and, and, and rules are just really going way too far because-- and I know there'll be disagreements of this in this room, but a lot of individuals, that's the kind of work they can do versus driving around in a van, excuse me, for a better part of a day. And I know the state is trying to oversee that, but it's a challenge, it's a challenge. But certain individuals with disabilities, good or bad, can, can work in those workshops very effectively and be very-- they

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

can be very encouraged by that kind of work also. So I'd really ask you to stay on that topic.

HOWARD: Any other questions? Senator Murman.

JOE VALENTI: Senator Howard, thank you very much.

MURMAN: Yep, thanks for coming in to testify.

HOWARD: Stay there Mr. Valenti. Mr. Valenti stay there.

MURMAN: I guess my question would be-- you know, there's such a broad range of disabilities as you well know. And I totally agree with you that-- you know, depending on the disability or the acuity of disabilities, some disabled people can be integrated in the community very effectively. But, but some are served much better in a community-based group. And that doesn't mean they never get out in the community, it just means it's more like 50/50 or in the community a third of the time or something like that. Would you agree with that?

JOE VALENTI: Well, I would agree with that. And, and again, like I said, I want to remove myself from who I was representing before, so I just make sure this on a personal level, our son is at-- who is 31 is at BSDC and I know there'll be arguments in this room and disagreements in this room on this particular topic, but he is better placed at BSDC, and, and, quite frankly, in our opinion, my wife's and mine and others, he is in the least restrictive environment at BSDC in Beatrice, Nebraska. In a group home, he would be in a more restrictive environment in the sense that he would never get out of the group home to get into the community, even though they call it community integration at that point. So I think it's terms and, and semantics can be really deceiving and deceptive in this kind of environment when you're dealing with this whole topic. But to answer your question, yes, I think that's-- I think CMS-- by the way, they did ask for a lot of comments about this particular subject. And I, I offered a number of them, and I'm sure others did in the room. But there's just-- you know, workshops like anything-- and again, in my opinion, were probably abused. And so, therefore, when something is abused and the attorneys know this, then you you develop laws to legislate against that abuse. But then it defeats the whole purpose of what was the good side of those subjects. And that's what gets lost in the shuffle, I think.

MURMAN: Yes, and when anything's carried out to an extreme--

JOE VALENTI: Yeah.

MURMAN: --it can be harmful, I think. An example of with our daughter, the-- some of the other disabled people there have more empathy, I think, toward her than would be shown by-- you know, so-called normal person. And they're in the workshop. She loves be read to by certain individuals and-- you know, things like that. They play games together. I think it's discriminatory against disabled people to say-- you know, it's not good enough for you that you can be together in a workshop 50 percent of the time. You know, you've got to be out 100 percent of the time. And, and it's just like any community-- you know, they enjoy being together also, and I think that's a great thing.

JOE VALENTI: Couldn't agree more. And I'm sure Courtney Miller would like you-- to have you, have you on her staff a little bit to talk to CMS about those kinds of things.

HOWARD: All right. Any other questions? Seeing none,--

JOE VALENTI: Thank you very much, Senator Howard.

HOWARD: --thank you for your testimony today. Our next testifier for LR250. Good morning.

LINDY FOLEY: Good morning. My name is Lindy Foley, L-i-n-d-y F-o-l-e-y, and I am the administrator for the Office of Vocational Rehabilitation, or Nebraska VR. We are an office within the Nebraska Department of Education. And on behalf of our commissioner of Education, and the Nebraska Department of Education, I'm here today providing testimony in support of the Olmstead Plan as it's written. I'd like to highlight a few specific reasons for this, for this support beginning with this plan provides a framework for ensuring individuals with disabilities have access to learning, earning, and living in the most integrated setting. Secondly, as written, the Olmstead Plan addresses individuals with a variety of disabilities and it's across the age span. And lastly, the plan reflects commitment from a variety of agencies and stakeholders as outlined in the goals and strategies. As engaged members of the Olmstead Steering Group, as well as the Advisory Committee members, the Nebraska Department of Education will continue to support the work outlined in the plan with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

the understanding this will be an evolving commitment to ensuring quality services for Nebraskans with disabilities. Thank you.

HOWARD: Thank you. Are there questions? May I ask, is there a waitlist for VOC rehab?

LINDY FOLEY: There is currently a waitlist. We started a waitlist for our services in December of 2017.

HOWARD: OK. And how, how long is the waitlist?

LINDY FOLEY: We currently have about 2,300 people on the list. We have three priority groups, one-- priority one being those with the most significant disabilities. Those are the individuals that we by federal law should be serving first. And with the support of some additional funding in July as well as in September, we've removed approximately 1,300 people since July. So we're making good gains.

HOWARD: So it's currently at 2,300, but you've removed 1,300 or--

LINDY FOLEY: After the 1,300, we're still at around 2,400 total.

HOWARD: 2,400.

LINDY FOLEY: Yeah.

HOWARD: And than what prompted the-- I mean, have you just always had a waitlist or it's--

LINDY FOLEY: Yeah, that's a good question.

HOWARD: --you said that you started one in December of 2017?

LINDY FOLEY: Yeah. So we started the order selection in December of 2017. We will continue through the order of selection until we have sufficient resources which includes both staffing and funding. I, I must say that nationally VR programs are experiencing more of a demand for agencies to move into an order of selection. And that's mostly due to some federal interpretations of, of federal law, WIOA. But as of October, there are actually more VR agencies in order of selection right now than not. So certainly a lot of conversations both at the federal and state level as to how we can continue to interpret some regulations so that we-- states can be serving more people, which is what we all want to be able to do.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

HOWARD: Yeah, absolutely. Any other questions? Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here.

LINDY FOLEY: Yes.

CAVANAUGH: And you said that-- and maybe I misheard, you fully support the plan as written?

LINDY FOLEY: Yes.

CAVANAUGH: OK. So that-- I mean, we did see a lot of comments about some opportunities to strengthen the plan.

LINDY FOLEY: Um-hum.

CAVANAUGH: Do you disagree with those comments?

LINDY FOLEY: I think there's always going to be opportunities to improve. From the Department of Education's perspective, we understand that there will be opportunity for continued conversation, a continued look at data and a refinement of strategies. And, and so we're ready to move forward and we're comfortable doing that with the plan that's written.

CAVANAUGH: OK. Thank you.

LINDY FOLEY: You're welcome.

HOWARD: All right. Any other questions? Seeing none, thank you for your testimony today.

LINDY FOLEY: Thanks.

HOWARD: Our next testifier for LR250. Hey, Erika, could you grab the chair and the blue sheet.

JENNIFER JAMES: Good morning.

HOWARD: Good morning.

JENNIFER JAMES: My name's Jennifer James. It's spelled J-e-n-n-i-f-e-r J-a-m-e-s. I am testifying as an individual with a disability. I'm also a member of this-- of the Advisory Committee for Olmstead. I'm here to say that I am not happy with the plan. There has been a lot of

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

comments on the plan and TAC has told us, the Advisory Committee, that they only were taking about the first 100 they think are important. They need to be taking everybody's comments into consideration. This is going to strongly effect everybody in Nebraska that has a disability no matter what their disability is. I think that we need to have more communication with everybody that's disabled and take all of us-- all of our comments and questions into consideration to make a plan that is going to support all of us. I think that if we don't do that, we're going to be in a worse situation than we were before we had a plan. That is all I really have to say. If you have any questions, I'll be happy to answer them.

HOWARD: Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here. So you mentioned-- and I see your name here on the page 45 as a member of the Advisory Committee. I was wondering if you'd be willing to tell us a little bit about what your experience was as a committee member and a stakeholder in this process?

JENNIFER JAMES: My experience has been that they just weren't really listening to what we were saying. We have-- you know, voiced our concerns about the plan, and they just seemed like they weren't paying attention to what we were saying. And I think that with people with disabilities need to be listened a whole lot more than what they have been listened to. And if we're not even listened to, then what's the point of a plan if they're not going to listen to what we had to say about it.

CAVANAUGH: Um-hum. OK. Well, thank you. Thank you for being here today.

HOWARD: Any other questions? Seeing none, thank you for visiting with us today. Our next testifier for LR250. Good morning.

DEANNA HENKE: Hello. I have testimony written that you'll be getting a copy of. There are a few things that I wanted to bring up based on the questions that have, that have been asked and some comments that I've heard from the testimony. First of all, my name is Deanna Henke, D-e-a-n-n-a H-e-n-k-e. I am testifying as an individual, not on behalf of any organization. If you look at the, the plan that you have in front of you with the list of the Advisory Committee members, of those members on there, three of those people have disabilities. Three.

Rough Draft

There is a fourth one on there that does have a disability, but she is also listed on there as a liaison for one of the managed care organizations that she works for. So she has kind of a dual role on there. But even including her, there's only four people with a disability. How are we supposed to have stakeholder advice, comments, input into an Olmstead Plan with four people from the community? When they first had a Steering Committee, we were told at one of the advisory meetings that there were approximately 1,000 comments at that point. And my daughter kind of addressed this and they said, we'll take 100 of those. Ninety percent of the comments then are being ignored, not even looked at, not reviewed not-- you know, put into the plan. To be blunt, this plan is shoddy, it's useless, it's horrible, and it's unacceptable. The talking points that they use at the Advisory Committee are the same every time: we need more data, we're looking at this, we're talking about this. The data is people are dying in institutions that could be out in the community. By out in the community, that doesn't mean-- the Olmstead Plan says that means you need to have the opportunity to live in the community if you choose, if you work. Your care team has to, first of all, approve that you are-- that that is the best option for you. If they say, no, the better option is for you to be in this nursing home, in this facility, then Olmstead doesn't even apply to you because you have to have all of those members agree, first of all, that you are better serviced and able to get the services you need in the community. Now that means you live in the community. To Senator Murman's comments, I agree with what you're saying. Your daughter being in the van all the time is not a good situation at all. But with Olmstead, as it relates to Olmstead, that doesn't mean that if you use Olmstead that you have to go out of your house every day and do something. You live in your house, you get the services to come into your house that you need, whether that be medical providers, short providers, whatever it is. And you can choose to go out and see a movie Friday night. You can choose to go to the grocery store Tuesday, you don't have to. It's all about choice. In the Olmstead Plan itself, the proposed plan, they have the word coercion and they say with the least coercion, there should be no coercion. An able-bodied person is not told you're going to live at this address and we're going to-- you are going to live there and if we have to force you we will, but we're going to use the least coercion just, can you go. That's what we are accepted-- or expected to accept. And as a person with a disability, within the next-- they estimate five years, I will be in a wheelchair full-time. I will need help to go out into the community. I may no longer be driving. I may

Rough Draft

be in a situation where without accessible and portable housing, wheelchair accessible, what are my options? An Olmstead Plan would protect me from having to go into an institution at that point. So what they have now won't do that. And they have a Steering Committee, we were told that the Steering Committee makes the decisions or helps make the decisions. There were no people with a disability on that committee until we demanded a seat at the table and then they took six people. We asked for more. They said, no, six people is the limit. That still means the majority of that Steering Committee are people without disabilities. So I guess the other main concern besides the coercion factor is the waiting list. And you've heard this from other people, and you're going to hear it again, the waiting list is, is ridiculous. You could go on that waiting list and wait for years and years and years and years and never get services, even though you need them. They have a priority. I understand that. Somebody who's living on the street is going to take priority over someone who is living with their parents. And their parents say, hey, they can stay there for another six months or a year. I understand that. But the people that are in danger of going onto the street or in danger going into an institution are not considered priority one. Until they are in an emergency situation, they're not helped. And that should not be the case. There is, there is people that are tomorrow going to need to go into an institution because there's nothing in place for them to stay in the community. This is happening daily. It's happening over and over. There are people in institutions that are able to come out that could function out here, but they don't have the service. They don't have transportation. They don't have-- you know, service providers. So the Olmstead Plan needs to be something that works and I'm tired of hearing, we're looking at it. We need more data. We need more this. We need more. They've had 20 years. How much time do they need to get this data? How much time do they need to say, OK, we're going to act, we're going to prevent Nebraska from having litigation. We're going to help these people get out of institutions if they can live in the community. We're going to help people prevent them from having to go into an institution because they don't have housing, they don't have transportation, they don't have providers. How much time? And I guess that's the end of my testimony. I'll be happy to take questions.

HOWARD: Thank you. Are there questions? Senator Murman.

MURMAN: Thanks a lot for your testimony, Deanna. I like the way you used the word coercion because in a situation I'm familiar with and, and others that are in similar situations, I feel that Olmstead Plan

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

is a coercion because if you ask the, the indi-- the disabled individuals or their caregivers-- you know, depending on whether they can speak for themselves, are you, are you happy with what you have now? To a person, they'll say, yes. But this final settings rule and Olmstead Plan is forcing them to be out in the community 100 percent of the time. So would you agree with that, that that is coercion?

DEANNA HENKE: No, that's actually incorrect. There's three parts to Olmstead and it's explained more-- the justices said that put this-- that passed it in the Supreme Court said specifically, and I don't want to use quotes because I don't want to-- I may miss a word or two, but they said this does not mean closing down all institutions. This does not mean there will be no more nursing homes. This does not mean everybody in a nursing home is immediately going to come out. And the three parts are: the [INAUDIBLE] would agree that it's appropriate. The second one, most importantly, the person that would be coming out into the community or, or staying out rather than going into a facility has to say, yes, this is what I want. If the person says, I want to go to this facility or I want to stay in this facility, I like-- you know, what they have here. I like how they treat me here. I like this. I like that. They're not going to force them. There is no coercion to go out if you don't want to.

MURMAN: Yes, I-- oh, go ahead.

DEANNA HENKE: There's no coercion based on the Olmstead Plan to go in if you don't want to. It's all about choice. And the only coercion is if somebody else is making that decision for you and the Olmstead Plan says you have to agree that this is what you want. So there isn't coercion if you agree that that's what you want, your doctors say, yeah, that's appropriate. And there are services there, too, that you can get when you go out in the community. So you'll still receive-- like in my instance, I need a ventilator at night. I need a wheelchair to go a certain distance as I can walk from there to here, but I can't walk down the hall to get to the door without a wheelchair. So if I have those services, that equipment and so forth, that's one of the, one of the parts. I want to be in the community, that's the second part. My doctors right now say I can live in the community. But in five years, in three years, I don't know. But I know I'm still going to want to be in the community. Whether there are services and whether my doctors say I can are two different things. But as far as coercing

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

me to go into a facility-- you know, the death rate when you go into a facility is a lot quicker than when you stay out of one.

MURMAN: Oh, I agree with you. I think on, on that about the living in a home like you were saying-- or I guess for lack of a better term, a facility. But that's not what I'm referring to. I'm referring to the like the workshops. If they are, are not funded, that's essentially closing them down. So--

DEANNA HENKE: True, but the final rule that you were talking about, although I'm not real familiar with it, I will admit that, is not the same as the Olmstead Plan. The Olmstead Plan doesn't, doesn't say, the plan is to shut down the workshop. It says if you're living or going into a facility or if you're in danger of going into a facility, these are your choices. Do you want to stay in the community? Do your doctors say that's appropriate? Do you have someone to get you in and out of bed if you're in a wheelchair, for instance? Do you have someone to change your, your needle on your insulin pen? Do you have someone to do whatever the needs are that you have, that you're in a facility for? Can I get those in the community? The Olmstead Plan should ensure that you can get those in the community, that those things are in place. And-- you know, DHHS saying we're going to need data does not help me. That doesn't help me-- you know, get into my wheelchair. That doesn't help me hook up my ventilator. And I-- getting data and looking at it for another 20 years, what does that do for anybody, that doesn't help me. That doesn't help Nebraska. As a state, that doesn't prevent litigation. And not to be confrontational, but I tell you what, if in three years or five years we don't have something better than this proposed plan and I'm in danger of going into nursing home, there's your litigation right there, because I will file and I will have the backing of many organizations and people because you can't just let it go on and on and on and on, 20 years. What other plan or what other federal legislation has come down 20 years ago that has been completely ignored by Nebraska? We were the last one to do baby safe haven. But even that wasn't 20 years. And that-- you know, they called special session. You know the whole story with that. And I helped get that passed. But Nebraska shouldn't be last. There is-- what is it, 14, I believe. I could be off now, but I think it's 14 states that don't have a working Olmstead Plan at this point. Out of those, 50 percent have had litigation. So--

MURMAN: Well, thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

DEANNA HENKE: --you know, we're playing with fire.

MURMAN: Thank you very much. The Olmstead and the final settings are a little confusing because I know they're not exactly the same thing, but the terminology and everything is very similar. The-- they both say that it is supposed to be tailored to the individual. And that's the part I'm most concerned about. I don't think that it is tailored to the individual. I think for the most part, at least in my experience, it was in the past and it isn't now. So thanks a lot for your testimony.

DEANNA HENKE: I understand what you're saying. And I-- hearing your story, I do empathize with your situation and your daughter. My daughter, you saw her up. She's also disabled. So not only am I a person with a disability, I'm also the parent of a daughter with a disability. And we've had situations where they say she needs this, this, and this. And we've had to fight and go in and say, no, that's not appropriate. She needs this and this. And if I knew then what I know now, she would have had a much better experience in school because I didn't know what my rights were. But I do know that when it comes to Olmstead, it's all about choice.

MURMAN: Sure.

DEANNA HENKE: So if your daughter, for instance, was-- I, I don't know where she lives, if she lives in a group home or a facility or at home or whatever, if she were in an institution and they, they said her doctor said, yeah, she's able to come in the community. And she came in the community and lived in her own apartment, let's say, or even with a caregiver in an apartment. If she didn't want to go out that day, she didn't have to. If she doesn't want to go out seven days a week, she doesn't have to. Based on Olmstead, you have that choice. The, the situation she's in, I understand they have to go out so many times, go out in the community. This just says you can live in the community. That can be in your apartment or wherever and you don't have to go out. You can go out as much as you want. You can have visitors over when you want. You don't have visiting hours. You can go out and drive to the store. Nobody tells you when you can and can't come and go. So those are the things that we're looking at needing and none of that is addressed in the proposed plan.

MURMAN: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

HOWARD: Thank you. Thank you for your testimony today.

DEANNA HENKE: You need to speak up a little.

HOWARD: I will. Thank you for your testimony today.

DEANNA HENKE: Thank you.

HOWARD: All right. Our next testifier for LR250.

ERIN PHILLIPS: I don't have a sheet. I just wrote it on my phone and I need it. My name is Erin Phillips, E-r-i-n P-h-i-l-l-i-p-s. I'm here on my own behalf. I'm also an individual with disability and I cannot be timed. I'm here to-- I'm with individuals with disabilities. You, you all care about live in the community but not in the nursing homes or institutions. I believe that we need to [INAUDIBLE] the voice now, but not later. I'm happy to take any questions.

HOWARD: Thank you. Are there questions? Thank you for visiting with us today. We're glad you testified.

ERIN PHILLIPS: You're welcome.

HOWARD: Our next testifier for LR250.

KATHY HOELL: Hello, my name is Kathy Hoell, K-a-t-h-y H-o-e-l-l. First of all, I'm requesting an accommodation of no light because of my vocal impairment. I am the executive director of the Statewide Independent Living Council. And I am not going to comment on the plan because you've heard from lots of other people about how bad the plan is. But I am going to comment about the process because I-- in my role with Nebraska's Statewide Independent Living Council. I was on the Advisory Council and on the Steering Group and I can't think of a really nice way to put this, but it was a catastrophe from the very beginning because they-- the meetings were not-- and you couldn't plan for them. They would just call you like [INAUDIBLE] the week before the committees meet and there would be no notification. They did not meet the open meeting law requirements. They did not provide documentation in a sensible format prior to the meeting [INAUDIBLE]. My disability is a brain injury and when I read something it takes me a while to totally digest it. So that means I have to have it well in advance. I finally, as a member of the Steering Committee, I was able to get the plan only 24 hours in advance, and that is not adequate for my needs. And when we were-- when they first announced that there's

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

this Advisory Committee and the problem with the Advisory Committee is you only give advice. Doesn't mean they have to take it. Which in this case a number of times, I'm sure they didn't. But when they announced they we're going to have this Steering Group, which was essentially going to make all the decisions on the, the plan. But there were no people with interest in all the disability groups on-- in that committee. The Advisory Group got kind of upset and decided to start pushing. They conceded to 6 people out of 13. On our group, we had eight to volunteer that wanted to be on it. And they all had valid points. Somebody from rural Nebraska who is involved in housing in the western part of the state, very good potential member. But she was not included because she couldn't come in, she'd have to join by phone. The state was very adamant that we could not exceed six and so there is some really good people that were really good advocates that were not included because of this arbitrary limit they placed on [INAUDIBLE]. If and when this ever goes to litigation, this plan, because they've limited stakeholder involvement, that could be problematic. And it's a choice you have to make whether you're willing to exempt that or not. But you know, the last week we were meeting every week for this [INAUDIBLE] because they were like rushing to get this done and I, I made sure I attended every meeting of this Olmstead Steering Committee. And then we were told that we would get a draft of this plan on the 9th of December so we could review it prior to it coming to you guys. We did not actually get access to this plan until Monday, this past Monday. We weren't getting good information. We weren't getting the support we needed. I will say one thing about the plan, it really-- is they do not mention the waitlist at all. And one of the-- they talked about increasing HCBS waiver. But that does not mean those waivers are dedicated to the waitlist. There's a lot of other waivers. Senator Cavanaugh, they could apply for a-- like a family support waiver because Nebraska is like 48th in the country for offering support to families who have children with disabilities. They did apply for a mental health waiver. They could strengthen their TBI waiver so that the only place it funds. If you have a brain injury and you live in the rural part of the state, if you want to get funded by the TBI waiver, you have to live in Omaha. That defeats the whole [INAUDIBLE] component is required. Anyway, so I've rambled on enough. I'd be happy to answer any questions.

HOWARD: Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here and sharing your experience on the committee. You mentioned that they did not meet the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

open meeting requirements, and I think that's an important detail for us to know a little bit more about. And maybe-- I don't know if you can provide it right now, but perhaps follow up with the committee and share with sort of the time line of when you received notification if you have it via e-mail.

KATHY HOELL: I believe I still got all the e-mail. When-- I mean, I get an e-mail three days before the meeting-- two days before the meeting.

CAVANAUGH: Yeah.

KATHY HOELL: To me that's problematic.

CAVANAUGH: Yes, it would be helpful if you're willing to share that with the committee. But then also you mentioned a member who or someone who is willing to be a member of the committee, a rural member, but they were excluded because they had to join by phone. Was there an explanation as to why that wasn't an option?

KATHY HOELL: Because we can only six.

CAVANAUGH: But if, if-- say you had five other people and this one person, they still-- would they have been allowed?

KATHY HOELL: But we had eight with the one other person.

CAVANAUGH: Right. But if you had the slot for the person, were they not allowed because,--

KATHY HOELL: They would--

CAVANAUGH: --because of the phone?

KATHY HOELL: --they probably would have allowed, but they didn't. They weren't willing to compromise on the number of slots they had.

CAVANAUGH: OK. Did they give you any details as to why? No. OK. OK. Thank you very much. Thank you for being here.

HOWARD: Any other questions? Seeing none, thank you for visiting with us today.

KATHY HOELL: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

HOWARD: Our next testifier for LR250. Good morning.

EDISON McDONALD: Good morning. Hello, my name is-- ooh, wow, this might be rough. Hello, my name is Edison McDonald. I'm the executive director for the Arc of Nebraska. We represent individuals with intellectual and developmental disabilities across the state. Over a decade ago, the Nebraska Legislature said in LR156 that Nebraska is at a crossroads for its-- with its obligation to Nebraska citizens with developmental disabilities. Several Nebraska senators have recognized the urgent need to develop a strategic plan to address the current and future needs of citizens with developmental disabilities and their families. It seems that we have still failed to take the sort of serious action needed to help people with disabilities. We've worked to be engaged in the Olmstead process by bringing legislation to ensure that DHHS was no longer out of compliance with state and federal laws. They were as of December 15 of last year. Our hope is that this plan would provide a quality strategic plan to ensure proper supports for people with disabilities and that this would meet the requirements of an Olmstead Plan under the Olmstead case that would protect the state from litigation that could be costly. We are concerned this draft fails to meet those requirements. In particular, the funding to close the waiting list must be improved from this draft. As my colleague, Miss Hoell, said, I think it is important to make that distinction between the waiting list and just general funding of waivers. The following addresses several of our concerns with this plan's-- or with this plan. So I've included in here and I'll just go over the top line. Number one, increasing developmental disability funding. I think we've heard a good amount about this. The study that Nebraska Consortium for Citizens with Disabilities and Disability Rights provided in the LR on the waiting list that we just had recently, I think really did a good job capturing this and really accurately estimating out what we really need to do to be able to address this. I think at the very least, the language in this needs to be adjusted so that instead of saying that they would increase waiver funding in general by 1 percent, it would specifically be targeted towards the correct waivers and it would go and say that it would be above the cost of living adjustments or above assumed increases so that we're actually not growing the waiting list with this plan. Number two, we talked several times about the importance of looking at some other options. We recognize that several of these are costly endeavors. So really finding ways to go and find steps forward, that would be a little bit more fiscally conservative, such as creating a

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

family support waiver and then funding the autism waiver and/or supporting an IDD mental health waiver. I know that you all have heard a whole bunch about the issues of mental health, but I think the issues with mental health and with developmental disability are some of the most stark and also lead to some of the most costly individuals to deal with. Number four, we want to alter priority one category to include imminent dangers. Number five, that better tracking of metrics. I think this plan really does only work if it is a continuously updated plan. It's one with publicly published metrics that we can go and track well. To Senator Arch's question, I think-- you know, while we have what's currently the plan, this needs to be updated every three years and this will continuously need to be updated ongoing into the future. We did list out some of the key metrics that we think are important to track, including a number of BSDC residents, semi-institutional settings, waitlist size, nursing homes, homeless/IDD population, TBI, emergency room usage, access to case management. I was very impressed and I'm glad Director Foley's in the room. The VR waiting list goal to end the VR waiting list in a year is really impressive. I am a little bit doubtful, though, I think it might-- that's the only goal that I think might be a little too aggressive and I'm wondering if that's going to eventually lead to some backswing as that federal funding cycle changes. Exclusionary and harmful and restrictive practices focusing on expanding service hours and service areas, especially in the transportation sector. In rural communities, we see that as a huge issue that we constantly hear about. Increasing pay for DSPs and implementing the rate rebase I think is a top priority issue. We want to see increased supports for independent providers and then a focus on correctional services and a focus on rural communities, because really we don't see that throughout. And then just lastly, I wanted to ask Senator Murman, is there a certain part of the plan that there-- that you had a concern with? I know that you've got a concern with the final setting rule, but in this plan, I don't think that there's anything that specifically that I've seen that really would go to cause any increase in the issue that you saw.

HOWARD: So unfortunately, Mr. McDonald, you don't get to ask us questions and so should Senator Murman like to reply to your question he may. But unfortunately, that's not the purpose of, of, of this hearing today. Are there questions for Mr. McDonald? Senator Murman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

MURMAN: Yeah, my specific question, and I'm not sure exactly how closely it's related to Olmstead,--

EDISON McDONALD: Um-hum.

MURMAN: --but if the workshops are not funded, they'll have to be closed down. And that's the number one concern, I guess of-- but also the concern is that they're forced to be out in the community more than desirable.

EDISON McDONALD: Was there a page number specifically where that funding that you saw that was?

MURMAN: No, I don't know. I didn't find it in here.

EDISON McDONALD: Because I, I know especially early on in the discussion process, there'd been some concerns that that maybe kind of the focus of this or we're really going to try and drag out the 100 or so remaining folks who are in BSDC and force them out. I don't think that's the intent, nor is it what is described in the plan, nor has it been in any plan that I've seen in the United States that has an Olmstead Plan. It's really I think, about going and making sure that those-- you know, 2,300 families that are on the waiting list have those supports so that those, what, 2,400 families now that are on the VR waiting list that they have supports and ensuring that they get the same sort of supports and same sort of luck that your daughter's had.

MURMAN: Yeah, I agree with that.

HOWARD: All right. Seeing no other questions, thank you for your testimony today.

EDISON McDONALD: Thank you.

HOWARD: Is there anyone else wishing you testify for LR250? Good morning.

ERIN ARELLANO: Good morning. Chairwoman Howard and members of the committee, my name is Erin Arellano, E-r-i-n A-r-e-l-l-a-n-o. I live in Omaha, Nebraska, and have never missed an election. I'm going to talk about a part of the population that hasn't-- wasn't mentioned until Mr. McDonald mentioned them. I am the mother of Carlos Arellano, a 38-year-old man who is intellectually, developmentally disabled. His IQ is 57 and he is currently incarcerated in the Nebraska Department

Rough Draft

of Corrections. He does not exhibit any physical deficits. So you can't tell by looking that Carlos has a disability. For the untrained eye, his disability is invisible. The reason I think it is important to talk about this population is that while 2 to 3 percent of our general population has a developmental disability, it is estimated that 6 to 10 percent are within our prison systems or somehow justice involved. I have many stories that I would love to share with you about how the judicial system has affected undesirable outcomes for Carlos. Today, I'm going to tell you about his experience with the presentence investigation process, something that wouldn't have happened had he been identified up front and had there been a process. In Sarpy County, they utilized the LS/CMI level of service/case management inventory, which includes a structured interview with categories like criminal history, education, employment, family, leisure, pro-criminal attitudes, antisocial patterns. Sorry. Imagine the reaction of a young man who is IDD with around a second grade reading level, receiving this document through interoffice mail in the Sarpy County Jail. When our attempts to translate the form over the phone, him spelling out individual words and me defining for him failed, he did what anyone else would have, he asked for help from another inmate. I recently shared this story with Edward Latessa, director of the School of Criminal Justice at the University of Cincinnati, and an expert regarding the validity, reliability, and predictive performance of various risk needs assessment tools. And he told me that he would not consider the assessment valid unless properly administered as a structured, interactive interview, which it was not. This is what happens when people who are invisible or ignored within a system. This is what happens. I am pleased to know that the committee is moving forward with plans to review, develop, and implement programs and services for those with disabilities. I am especially eager to see what progress will be made regarding Goal 3 of the Nebraska Olmstead Plan that Nebraskans with disabilities will receive services in the settings most appropriate to meet their needs and preferences and how it might impact individuals with IDD who are currently incarcerated. People who might-- I'm sorry, people who are IDD who are justice involved qualify for the protections of the ADA, protections that were not afforded to my son. Much of the focus seems to be on those with serious mental illness and others who are IDD, but not in a correctional setting. I just want to make sure that individuals who are IDD, especially those who are currently

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

incarcerated or otherwise justice involved, are not overlooked. Thank you.

HOWARD: Thank you. Are there questions?

ERIN ARELLANO: Thank you.

HOWARD: Seeing none, thank you for sharing with us today. Our next testifier for LR250. Good morning.

PAUL FEILMANN: Hi. My name is Paul Feilmann, F as in Frank e-i-l-m-a-n-n. I'm a retired licensed mental health therapist. And I just wanted to follow up with the last speaker just briefly raising the issue of folks with disabilities that are in the criminal justice system, currently the prisons. I worked pretty extensively with Senator Lathrop around the LB686, which has to do with the use of solitary confinement for people that have vulnerable-- they're in a considered vulnerable population, which is mental disability, traumatic brain injury, serious mental illness. And I've consulted with several of the organizations that have testified earlier today. They are in a process-- that bill was passed last year, which was really a positive thing, it restricts the use of solitary for those populations. It's to be implemented on March 1. The question I have at this point, I just wanted to raise to the committee here, if you're going to address people with disabilities in the prison system, solitary confinement is probably the most extreme example of things that are just not [INAUDIBLE] indicated for people with disabilities. It's supposed to be implemented by March 1. The current staffing crisis that they've got is requiring the entire prison of NSP and Tecumseh to to be on lockdown 12 hours a day. They don't have staff to run the prison the way it is, the ability to carry out screening-- that's probably the biggest issue right now is how do you screen people for traumatic brain injury, for mental disability or serious mental illness when you don't have adequate staffing? So as far as the Olmstead bill, I'm not as familiar with that piece of it. But as far as-- I do understand the mental illness piece and the vulnerable population piece and I just wanted to put that into the discussion about how that can possibly be implemented. I don't know where that fits into the discussions that people have with the plan. But the woman that just spoke, it is a rarely thought about population, but the percentage of folks that are incarcerated, there are a significant number of folks that do fit into that category.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Is there anyone else wishing to speak for LR2--250? Seeing none, Senator Walz, you're welcome to close.

WALZ: Well, thank you. And I want to thank everybody for coming today and testifying. And I definitely want to thank people for the work that's already been done. There seems to be a little confusion between the Olmstead versus the final setting. This plan-- we have to remember has not even been implemented. It's not in place. So it's not the Olmstead Plan that's foreseen the closure of nursing homes or stopping any funding. It's not in place. When implemented, though, the Olmstead Plan will strive to assure that people are being served in the least restrictive environment if that's appropriate and if that is what people want. Deanna, I hope you don't mind if I talk about you for a minute. But to me, the Olmstead Plan is something that would reflect Deanna's life. She came up here and she testified that in a few years her health will deteriorate and she understands fully that people who move into nursing homes, the death rate is higher. That's a scary thing for somebody. The Olmstead Plan would create options for Deanna. I did not expect the version of this draft to be perfect today. But it is important with the amount of people and the amount of time and the amount of money spent on this project that we should absolutely expect a well-detailed plan and we should absolutely take public comment into consideration. I guess one of the things that I'm most disappointed about is to hear that some of our testifiers do not feel like they've been heard, especially those with disabilities. We cannot create a plan for people who have disabilities without asking for their input. Every department, every stakeholder that's involved in this plan should have the input of the people that we are creating the plan for. It is my hope that this hearing has provided good feedback to the Department and to our stakeholders and additional questions that obviously need to be researched and answered. I want to, again, say that there should-- this plan should be looked at as an opportunity for people to not have to be forced into nursing homes if they don't want that. And it will when implemented, positively. And it should positively affect the lives of all people who live in Nebraska. Thank you.

HOWARD: Thank you. Are there questions for Senator Walz? Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you. Sorry, I have questions. You were a part of the stakeholder committee, and I just-- I'm curious at through

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

that process of, of, of receiving the comment, what was your expectation of what would have been done with the comments that were being put into the public record?

WALZ: I would have thought that they would have all been considered and, and maybe they are yet, but changes made for those recommendations.

CAVANAUGH: Um-hum. Well, I mean, the, the testimony from the Department and the LB570 both said that the plan had to be completed by December 15. So I have concerns as to how-- it's December 18, how they're going to be included in the plan if this is the plan. But apparently, there's some confusion over whether or not this is the plan. But for now, this is the plan.

WALZ: Yeah, I would consider this a draft of the plan.

CAVANAUGH: OK. Well, I, I hope that that's correct, and that these public comments will become a part of it. Thank you.

WALZ: Yeah.

HOWARD: Any other questions? Seeing none, thank you, Senator Walz. This will close the hearing for LR250, and we will move into LR193. All right, this will open the hearing for LR193, Senator Bolz's interim study to assess implementation of the federal Family First Prevention Services Act in Nebraska. Welcome.

TAMI SOPER: Thank you. Senator Bolz had a previous appointment, so I am here in her stead. Good morning, Senator Howard, or good afternoon. I guess, we're pretty close there. Good morning, Senator Howard and members of the HHS committee. My name is Tami Soper. That's T-a-m-i S-o-p-e-r, and I'm here on behalf of Senator Kate Bolz. Today, we are bringing you LR193. The purpose of this resolution is to offer an opportunity to just present some feedback on the status of Nebraska's implementation of the Family First Prevention Services Act. As background, the Family First Prevention Services Act was part of the Bipartisan Budget Act in 2018. This Act reforms the federal child welfare financing streams, the Title IV-E, Title IV-B of the Social Security Act to provide services to families who are at risk of entering the child welfare system. There are four overarching priorities of the Act, and they are to support prevention services. So the Act gives states and tribes the ability to target their existing federal resources into an array of prevention and early intervention

Rough Draft

services to keep children safe, to strengthen families, and reduce their need for foster care whenever it's safe to do so. The second overarching purpose would be to provide support for kinship or relative caregivers. Family First provides federal funding for evidence-based kinship navigation programs and those programs link relative caregivers to a broad range of services and supports to help children, again, remain safely with those, those relative caregivers and require states to document how their foster care licensing standards accommodate relative caregivers. They also-- the Act also establishes requirements for placement in residential treatment programs, and it improves the quality and oversight of those services. The Act allows federal reimbursement for children in certain residential treatment programs with emotional and behavioral disturbances requiring specific treatments. And so the last of the overarching purposes of the Act is to improve services for older youth. Family First allows states to offer services to youth who have aged out of foster care up to age 23 along with adding flexible-- flexibility to the education and training voucher programs. So as of October 2019, Nebraska was one of five states that was reported by the federal Administration for Children and Families to have a plan in place to begin implementation of the Act. So Senator Bolz wanted to make sure that we commended the Department for their leadership in implementing this landmark change in child welfare services and being, and being an early implementer in this program. While we have taken the initiative to jump in and, and be very forward thinking in terms of prevention services, it's also important to identify that there are some challenges with the integration of the Family First Act and there have been challenges that have been faced across the state and echoed by stakeholders here in Nebraska. Those challenges include identifying evidence-based programs. The evidence base for child welfare programs lags behind that of other disciplines. So while programs are studied on other populations, they may be eligible for federal reimbursement. It remains to be seen whether or not how, how many of those programs will eventually qualify as promising or supported or well-supported for the purposes of the Family First Act. So that makes us a little bit nervous. Ensuring that programs are producing the desired outcomes is also a concern. The Prevention Services Clearinghouse is, is sort of the place where they're housing all of the evidence-based programs for the Act and it considers evidence from populations that do not have child welfare involvement, including adults receiving substance abuse programming and treatment, or children receiving mental health services through behavioral health system. It reviews those programs

Rough Draft

and, and determines whether or not they're applicable. So and it's, it's possible that programs that are effective for those other populations would not necessarily produce the desired outcomes for children at risk of foster care or their families. Identifying culturally relevant programs has been another challenge. Evidence-based programs that are culturally relevant, the existing evidence for programs that may come from study examples that don't match the characteristics, the needs or experience of children and families served in our local jurisdiction, including maybe some of the tribal families that have some disproportionate representation in our system. So we're using those interventions with other populations. That doesn't necessarily mean it will work the same way with the populations that we're using and achieve the same results. Building the evidence based for emerging programs is another challenge. So by requiring the program's need to be rated as promising or supported or well-supported first states to receive the federal reimbursement for those, the Act incentivizes states to implement programs that are already strongly evidence based or effective. But it, it will be important to identify other funding sources in some instances to implement continued evidence-based program building and strengthening of maybe some of the programs that we currently have or doing some evaluation on those programs to ensure that they meet the requirements as evidence base. So overall, aligning the programs with the needs of families will be a challenge that we'll continue to face to make sure that we're meeting the parameters of the Act now that we've committed to implementing it. At the family level, states may select promising supporting or well-supported programs that ultimately don't meet the needs of individual families. So by understanding the needs and characteristics of the families they serve, states can work to build a continuum of services that provide responsive and tailored supports. And again, it'll be important to be evaluating the programs that we currently are implementing, as well as any new programs that we're taking on, to ensure that we're meeting all of those criteria as we move forward in implementation. Today, you're going to hear from some community stakeholders regarding the impressions of the potential impact that the Act will have on our children and families. Again, we just started implementation in October and we had approval of our, of our prevention plan. And those folks will-- they've had experiences, providers and delivering those services. And so they'll talk particularly about how it's affected them and may make recommendations for specific areas or challenges or concerns that they've seen related to the provider relationships or family impact related to Family First

Rough Draft

implementation. I want to thank those folks for being here to testify and their commitment to the well-being of children and families.

HOWARD: Thank you, Miss Soper. We'll invite our first testifier up for LR193.

SARAH HELVEY: Hi. Good morning, my name is Sarah Helvey. That's S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare Program at Nebraska Appleseed. My testimony is a bit of background about Family First but Miss Soper covered that very well. I'll just note that I'm somebody that if you have substantive questions about the federal law, I'm happy to answer those, but I'll skip ahead. The only thing that I would add is just to note that on October 16 of this year, the Department submitted their five-year prevention plan seeking approval from the federal government to receive those federal matching funds for prevention services. And that was something that did receive stakeholder input. Appleseed had a couple of opportunities to review that, and that was something that we greatly appreciated. I want to spend my time highlighting a few aspects of the implementation that prevent-- present both opportunities and challenges for Nebraska. First, I want to say that we're supportive. Appleseed is supportive of the candidacy definition that the Department has proposed. Again, that candidacy-- it's kind of a funny word to use for children, but that's the term that federal law uses for children who are determined to be at imminent risk of entering foster care and for whom the state may draw down for a matching funds for their prevention services and for their parents and caregivers as well. And I won't go through-- I think in my testimony it, it shares the categories of situations that for children who meet that definition, we think that it allows for a broader range of children and families to access needed services. However, we think that that will likely require some further definition and information from the Department as to how those qualification decisions are made. One example is that children may be eligible if they're presenting with an extraordinary need for whom their parents, caretakers are unable to secure assistance. So we think that's good, but we'll need a little bit more information as implementation proceeds about what that-- what it means to be a child presenting with an extraordinary need. We also appreciate that the Department has indicated that the candidacy definition is intended as a starting point and could be expanded in the future. Second, we are also strongly supportive of the opportunity to draw down the federal funding to provide high quality legal representation to children and their parents in noncourt

Rough Draft

involved cases. This is a critical new opportunity that could address some due process concerns by providing attorneys for children, parents, and their caregivers involuntary or noncourt involved cases which now represent over half of the system involved families in Nebraska. Without the assistance of counsel, families are left to determine their options and whether the state's actions are appropriate without any legal information or expertise. It would be helpful to have some, some legislation on this, and I know efforts are underway to, to begin to discuss that opportunity. A few challenges I want to note and Miss Soper mentioned there's a concern across the country, this is not unique to Nebraska that the federal government has not yet approved enough services as meaning sufficient evidence-based to be eligible for federal funding under the Act. Our prevention plan identifies six of the ten federally approved programs that are available in the state, but not across the state and included five in the plan. I want to note that Congress-- there's currently a bill pending in Congress, the Family First Transition Act, which would be very helpful to Nebraska and other states in this regard. It would delay some of those evidence-based requirements and allow more transition time to build a service array for more prevention and for more prevention programs to be approved at the federal level. And I just got notice yesterday that that bill has been included in the combined appropriation package to continue to fund federal agencies through fiscal year 2020. And that passed the House yesterday. It's bipartisan and expects to be considered by the Senate later this week. So that's something that we'll be watching as advocates. Second, Nebraska's implementation of the prevention option of Family First will significantly bolster existing practice around hidden foster care or voluntary or noncourt involved cases. We're generally supportive of the approach of providing assistance to families without unnecessarily bringing them into the formal foster care system. But we think it's critical that policy is clear and children are kept safe and families are receiving concrete prevention services. There's currently no-- I think I've mentioned to this committee before, statutory authorization or guidance around those cases. And so this is a critical gap that we think needs the attention of the Legislature, particularly as we move forward with more prevention and noncourt involved cases as part of Family First. And I'll just close by saying that this is a great opportunity for Nebraska. We need to pay attention to meeting IV-E requirements so we can maximize this opportunity under federal law. And we thank the committee and Senator Bolz for continuing to, to

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

focus on this, and the Department as well as we move forward. Thank you.

HOWARD: Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Howard. Thank you for being here today. You just spoke about concerns of the hidden foster care and you stated that this is a critical gap that needs the attention of the Legislature. And I just wanted to ask if you could maybe expand on that for this committee as to what that attention might look like from your point of view?

SARAH HELVEY: Sure. So as I said about-- and you're aware, I think, that about half of this system involved cases now are-- involve children in a voluntary noncourt involved case. And so as part of Family First, that will increase. And there's nothing in statute or in regulations about what those cases look like. And so we think some legislative authorization of that, some guidance around what types of cases should be considered noncourt, some do-- and what type of cases shouldn't. And also putting into place some due process protection for parents in those situations. And then another critical issue, I think, I would highlight is making sure that we're being clear when children are informally placed with a relative or caregiver, that, that there is clear transfer of rights in that, in that scenario. So that if a grandparent, for example, is taking care of a child on an informal basis, that they have the authority that they need to contact the school or work with the child's physicians and other providers. So some clarity on those aspects to protect children and families in those cases. One, I would point the committee also to LB328, which was introduced by Senator Bolz and remains in committee, I think, and outlines-- it is a pretty comprehensive bill that outlines some aspects, both the Family First implementation and the noncourt involved side as well and includes-- you know, some things that we would support on that part.

CAVANAUGH: Thank you.

SARAH HELVEY: Um-hum.

HOWARD: Any other questions? Seeing none, thank you for your testimony today. Our next testifier for LR193.

KATHERINE BASS: Chairperson Howard and members of the Health and Human Services Committee, my name is Dr. Katherine Bass, K-a-t-h-e-r-i-n-e

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

B-a-s-s. I am the research director for the Foster Care Review Office. And I'm here to provide testimony regarding LR193 and talk a little bit about LR88 regarding grandparents as well. We really want to talk about the impact of the Family First Prevention and Safety Act on grandparents raising their grandchildren. The FCRO is an independent agency responsible for oversight of children and youth and out-of-home care as defined by Nebraska statutes. The FCRO meets its statutory duties both at individual case levels through compelling-- completing case file reviews, over 4,200 per year and at the system level through the use of our data and recommendations through quarterly and annually-- annual reports. And I've attached our most recent quarterly report as part of this testimony today. Over the past year, the FCRO has heard from numerous grandparents regarding their challenges in raising their grandchildren. These specific challenges are discussed in more detail below. Since these children are not state wards or receiving services from HHS/CFS, the needs of these children and families do not fall within the statutory duties of the FCRO, but the FCRO does feel that these children and families are part of our moral responsibility. By ensuring that these children's needs are being met, we are preventing children from entering the child welfare system and allowing them to be raised by people who truly care for them. Senator McCollister and his staff have been extremely responsive in both exploring the challenges involved in creating viable solutions. We know that over 10,500 Nebraska grandparents are responsible for their grandchildren who live with them. Senator McCollister hosted a roundtable discussion this fall to hear from numerous grandparents regarding their concerns. This roundtable discussion generated a detailed list of questions that have been posed to DHHS and a copy of those questions are attached to my testimony. For these thousands of Nebraska children, their grandparents have voluntarily agreed to raise them and ensure that their needs are being met. While every grandparent we have spoken with would not change the situation, they are asking for and needing assistance. We have found that many of the grandparents are raising their grandchildren at a detriment to their own physical and mental health and also to their financial detriment. The majority of these grandparents are living on fixed incomes that cover their personal needs, but not the extended needs of their grandchildren. For example, if they are working, many do not qualify for Title XX child care assistance or TANF funds. They do not receive any type of foster care payment. If they are on retirement income, many, again, do not qualify for either of these funding sources. Additionally, if their grandchildren have behavioral or mental health

Rough Draft

needs, the resources are scarce. Many of these grandchil-- grandparents are on Medicare, which we know will not cover their grandchildren. Some of the grandchildren may qualify for Medicaid or CHIP funding, but whose income is this funding based on, the grandparents or the parents? Many of these grandparents do not have legal documentation, such as legal guardianship or a statutory delegation of parental powers. Many of these grandparents did not have the financial ability to hire the needed legal representation to obtain either of these legal documents. And without legal documentation, these grandparents can't obtain physical or mental health records or other services. They can't get their grandchildren enrolled in school without parental consent, and they can't participate and obtain copies of their grandchildren's special education needs such as 504 Plans or IEPs. There is no question that the children being raised by grandparents would be considered candidates for foster care under the FFPSA. But for the actions of their grandparents, these children would be in foster care. The child welfare system needs to ensure that this population of children and grandparents are included in any and all resources and services. One of the provisions of the federal FFPSA was funding for states to create and implement kinship navigator programs. HHS/CFS has selected providers in Nebraska to implement these programs. One of the main questions that remains outstanding is whether this, this program will also have funding for specific services for grandparents or if it will be a referral system for outside services. Will these services also include legal services? Since this Kinship Navigator program in Nebraska is in its infancy, close attention must be given as it goes forward to ensure that the needs of grandparents are met. We also need to make sure that there are-- or that currently we know that there are not extra prevention services for grandparents. This is why it's imperative that we look at all required qualifications for Nebraska's current benefit programs, including Medicaid, Title XX and TANF. There is no question that Nebraska's current child welfare system is not equipped to handle thousands of more state wards. There is also no question that these children do not need to become state wards if we as a state are intentional in the creation of the needed prevention and early intervention services. If all stakeholders are intentional and willing to make the needed changes, this would create a win-win for everyone. It would be a win for the children since they would be raised by their grandparents outside of the child welfare system. It is a win for the state since fiscally it is more cost effective to prevent children from entering the foster care system than to pay for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

children in foster care. And I'm willing to ask-- or answer any questions that you may have. And thank you for your time.

HOWARD: Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman. Thank you, Dr. Bass, for being here today. I see at the end of your testimony you have a letter that Senator McCollister sent to the Department,--

KATHERINE BASS: Yes.

CAVANAUGH: --and it requested a response by Monday of this week. Do you happen to know-- and this might be a question for Senator McCollister, if he received a response?

KATHERINE BASS: I do not know that answer. Sorry, I would say that you would have to ask Senator McCollister.

CAVANAUGH: OK, thank you.

HOWARD: Senator Walz.

WALZ: Quick, easy question.

KATHERINE BASS: OK.

WALZ: Thanks for coming today. Can you tell me what-- can you just run through the process of what it's like right now for a child to enter into foster care with the grandparent? What does that look like?

KATHERINE BASS: So are you talking about entering into foster care or--

WALZ: To be with the grandparents.

KATHERINE BASS: Right. So in some cases, in the cases that, I think, we're referring to here, that Senator McCollister for the roundtable is that oftentimes these grandparents are stepping up before there's a safety concern. So before DHHS, CFS even becomes involved in a case that someone has made a call to the hotline. In other situations, there is a hotline call, right, to DHHS because there is a safety concern. And from there, we're seeing sort of two different paths. Right? One is the path that I believe Kim Hawekotte, our Executive Director talked to you about before, where-- with the Department, the decision is made that the children should live with someone else, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

there is no court case filed in those approved informal living arrangements. And we have more information on that in that quarterly report that I attached for you. In other instances, there is a court case filed and a grandparent may take custody of their-- or excuse me, care for their children as unofficial formal foster care placement.

WALZ: Um-hum.

KATHERINE BASS: So those are all different routes that are possibilities.

WALZ: In both cases, is there an assessment of placement with grandparents like any type of assessment?

KATHERINE BASS: Sure. So certainly in formal foster care there is. We did review cases where children were in those-- I think, the, the term that Sarah Helvey used earlier, which I agree with is hidden foster care. The Department refers to them as improved informal living arrangements. In those cases, there was typically a background check. And, and in some instances a walk through that we couldn't verify that. There's different levels of documentation certainly for formal foster care versus the approved informal living arrangements.

WALZ: OK. But no, like, sit down, come up with a plan on living with grandparents or what does that look like?

KATHERINE BASS: They're certainly-- I mean, that's part of the safety planning process.

WALZ: OK.

KATHERINE BASS: Yes.

WALZ: OK. Thank you.

KATHERINE BASS: Yeah.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

KATHERINE BASS: Thank you.

HOWARD: Our next testifier for LR193.

LANA TEMPLE PLOTZ: Good morning.

HOWARD: Good morning.

LANA TEMPLE PLOTZ: I guess it's afternoon. Good afternoon, Chair Howard and the members of the Health and Human Services Committee. My name is Lana Temple Plotz, L-a-n-a T-e-m-p-l-e P-l-o-t-z, and I serve as the CEO of the Nebraska Children's Home Society. But I appear before you today on behalf of the Children and Family Coalition of Nebraska, also known as CAFCON. CAFCON is an association of 12 child welfare and family service provider agencies with a mission focused on turning forward thinking into action for the betterment of children, youth, and families in Nebraska. On behalf of our member agencies who serve Nebraskans across all of Nebraska's 93 counties, I want to thank you for the opportunity to appear today and provide some feedback from our members about the state's implementation of the provisions of the federal Family First Prevention Services Act or FFPSA. First, I'd like to start and be really clear that FFPSA and Nebraska's commitment to being an early implementer is one that CAFCON wholeheartedly supports. We have seen firsthand how early intervention and preventative approaches to helping children and families is far and away the best approach to improving the lives of those we serve. Statewide, in a national shift toward these practices through FFPSA is an important step toward making real progress in the child and family welfare arena. In preparing for today's hearing, CAFCON members were asked to complete a brief survey to gather impressions and concerns that the member agencies have experienced since FFPSA implementation efforts began in Nebraska. We ask our members to respond to five questions seeking information about positive experiences as well as negative ones and ideas for solutions to rectify some of those solutions. With respect to positives in the implementation process, we're quick to point out we completely appreciate the conversation surrounding child welfare services, moving them toward a more proactive and preventative approach. And as Miss Helvey spoke before, we were involved in that process and got to see the five-year plan on several occasions. So again, that preventative approach that leverages those state resources is really important and moving towards those evidence-based practices. We've had great feedback from providers and the Department and we've also been appreciative of the implementation of the Kinship Navigator Program as a positive first step. The children's home is one of the individuals who received that contract as well. So supporting those families and preventing future involvement in the child welfare system is, is very important. And I will say that as the Foster Care Review

Rough Draft

Office mentioned that large populations of grandparents raising your grandchildren is not just a Nebraska thing. It's a, it's a national piece. So paying close attention to how those families are supported is, is very important, both within kinship navigation and also services that are offered outside of that. Some things that we are looking at in regard to some of the concerns we have about FFPSA would be those delays in implementation and a lack of clarity with respect to priorities. I think that our state, in particular, is in the process of doing several huge things at once. FFPSA is a very large lift. Transition of the Eastern Service Area is a very large lift. Not having a CFS director during this time also makes that-- compounds those issues. And I think we have kind of a perfect storm going on right now which has led to some of those-- that lack of clarity and those priorities. I will also note that the feds have not been super clear about how all these pieces will come together. So that's been important to raise as well. The other thing I'll mention is that there has been some frustration expressed by our members in regard to provider meetings and the Department not having clear answers. But again, as I mentioned, some of that, I think, is due to not always getting those-- that clarity from the federal government. The other piece that I will also say is in regard to the Eastern Service Area, that the December meeting was canceled so we were not able to have conversations with the Department about that transition, the Eastern Service Area case management. Some of the things that we want to focus on in regard to improving the implementation process, continued communication between the Department and providers is very important as we move forward in this process. Collaborative conversations about how we can work together in this implementation is important, as well as looking towards other states and what they're doing. I think there's only two states whose plan have been approved, D.C. and Utah is my understanding. So those are two states that we should be looking at their plans and, and focusing on that. Ultimately, the members of CAFCON want to make clear our support for continued efforts to fully implement FFPSA and use this transition as an opportunity to reorient Nebraska's child welfare priorities towards early intervention and prevention. We're confident that the shift towards such a focus will pay dividends for Nebraskans who find themselves in the child and family welfare system for years to come. We wish to thank, Senator Bolz, for her introduction of LB328 last session to spur conversations with respect to the implementation of FFPSA and for her introduction

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

of LR193 for the same reason. With that, I'm happy to answer any questions anyone has.

HOWARD: Thank you. Are there questions? Senator Arch.

ARCH: Thank you for coming. I, I-- we did receive written testimony from CEO Smith regarding, regarding this LR,--

LANA TEMPLE PLOTZ: Sure.

ARCH: --but, but it, it-- there's a, there's a few questions and I just didn't know if you had received any information from the Department or heard anything and I'll just click through them quickly.

LANA TEMPLE PLOTZ: OK.

ARCH: Use of implementation dollars. I know that there are some administrative dollars that are available for implementation.

LANA TEMPLE PLOTZ: Yes.

ARCH: Have you, have you heard-- have you received any communication as to--

LANA TEMPLE PLOTZ: Yes.

ARCH: --the plan of the Department as to how they're going to use those implementation dollars?

LANA TEMPLE PLOTZ: Yes. So can I give an example from my organization?

ARCH: Sure.

LANA TEMPLE PLOTZ: So for my organization, we provide Healthy Families America, which is an evidence-based home visiting program, which is a preventative program. And we are-- have received implementation dollars to be-- to begin building a team to start providing that service. So there are implementation dollars available and some organizations have received some of those dollars.

ARCH: OK. So that's in process--

LANA TEMPLE PLOTZ: Yes,

ARCH: --of the expenditure of those implementation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

LANA TEMPLE PLOTZ: Yes. And there is a time line for when they have to spend that money.

ARCH: Yeah, OK. You know, one of my issues has always been the fingerprinting requirements--

LANA TEMPLE PLOTZ: Yes.

ARCH: --for the implementation.

LANA TEMPLE PLOTZ: Yes.

ARCH: And have you received-- have your providers received any information on, on any possible funding source to, to assist in, in that cost?

LANA TEMPLE PLOTZ: We have not. No.

ARCH: OK. Not, not at this point.

LANA TEMPLE PLOTZ: Uh-uh, not at this point.

ARCH: I had an interim study earlier to discuss that.

LANA TEMPLE PLOTZ: Yes.

ARCH: It was not clear at that point either. So I didn't know if--

LANA TEMPLE PLOTZ: Yes. I know that our members have ongoing concerns with that piece, and the cost to our organizations.

ARCH: OK. And feedback from your providers on implementation as far as getting contracts-- I mean, we're, we're approaching January 1 pretty quickly here.

LANA TEMPLE PLOTZ: Yes. So as far as new implantation for FFPSA, there's been a concern that contracts are not coming out in a timely manner. And so that's been a struggle.

ARCH: Yeah. Well, you mentioned, you mentioned heavy lifts-- I mean, this--

LANA TEMPLE PLOTZ: Yes.

ARCH: --there's a lot to the implementation--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

LANA TEMPLE PLOTZ: Yes.

ARCH: --of this, so-- you know that--

LANA TEMPLE PLOTZ: So this implemen-- I'm sorry.

ARCH: Go ahead, please.

LANA TEMPLE PLOTZ: The implementation of FFPSA is incredibly complex. There's lots of pieces. The federal government does not always understand all the components. And sometimes there's unintended consequences of things put in legislation that you don't really think about-- that you don't anticipate. And so I think that is a huge piece. And, and so there's a lot of, there's a lot of pieces involved in that. With the addition of the Eastern Service Area transition, those two things in combination, it's just-- it's so much information and so much unknown, it's really hard to keep track of how things are moving forward and for the Department to keep all those pieces going forward, and for providers to know what's going on.

ARCH: OK. Thank you.

LANA TEMPLE PLOTZ: So--

HOWARD: Other questions? Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here.

LANA TEMPLE PLOTZ: Yes, thank you.

CAVANAUGH: You stated that there was a December meeting that was canceled.

LANA TEMPLE PLOTZ: A provider meeting. Yes.

CAVANAUGH: Provider meeting.

LANA TEMPLE PLOTZ: Health and Human Services provider meeting. Yes.

CAVANAUGH: And that was to discuss the Eastern Service Area transition?

LANA TEMPLE PLOTZ: Not necessarily. We have provider meetings on a regular basis on a quarterly basis and the December meeting was canceled. I think that it was provider's hope that we would have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

opportunity, an open forum to have conversation with the Department about concerns we had regarding the Eastern Service Area transition and since the meeting was canceled, we did not get that opportunity.

CAVANAUGH: Could you share what some of those concerns are here?

LANA TEMPLE PLOTZ: Yes. So I think what the Eastern Service Area transition there has been-- currently we don't have a contract with the-- with St. Francis. So those contracts are in process. But we currently do not have a contract with St. Francis. So that's a concern because transition is happening. We have cases. I'm currently-- we have cases within our organization, but we have no contract. That's a concern. I think that communication, ongoing communication is something that we're interested in enhancing. As you can imagine, CAFCON members provide a large amount of service in the Eastern Service Area, our, our provider agencies. And so our desire is to create a collaborative relationship with St. Francis and to work to ensure that all the children and families that are served in the Eastern Service Area get, get the services that they need. To that end, we do have a call schedule with Jodie this afternoon to talk about our concerns related to contracts. It is our hope that we can resolve that in a timely fashion. And it would also be our hope that we would continue to see more involvement from St. Francis as a whole and not just the Nebraska contingent. I think that this is a-- again, a large lift and a large contract. And so to have involvement from St. Francis corporate would be also helpful for us.

CAVANAUGH: So just to follow up,--

LANA TEMPLE PLOTZ: It's probably a longer winded answer then the question you asked.

CAVANAUGH: When you say that there's no contract with St. Francis, but that you have cases,--

LANA TEMPLE PLOTZ: Um-hum.

CAVANAUGH: --can you explain a little bit more about-- so you are managing cases of children,--

LANA TEMPLE PLOTZ: Um-hum.

CAVANAUGH: --and previously you had contracts with PromiseShip--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

LANA TEMPLE PLOTZ: Um-hum.

CAVANAUGH: --to do that. You're still managing those cases. But in not having a contract, what does that mean for your organization?

LANA TEMPLE PLOTZ: So that means that we have had all of our youth that were-- all of the children and families that we're serving with my-- in my organization, transition from PromiseShip to St. Francis over the last month and a half. And so they go from being served by PromiseShip to being served by St. Francis being case managed by St. Francis. We do not have a contract with St. Francis. We have individual service agreements where I have the name of the child, the master case number, and what service they're-- we're providing to them and the rate. And I-- we have each of those, but I don't have a master contract that, that comprehensively lays out the agreement between my organization and St. Francis.

CAVANAUGH: So even though you have a rate, you could-- they could say we're not gonna pay you that rate or we're not going to pay you at all.

LANA TEMPLE PLOTZ: Yes. Although they have been timely with payment. But I'm, I'm more concerned about liability--

CAVANAUGH: Sure.

LANA TEMPLE PLOTZ: --and my board is more concerned about liability not having a contract.

CAVANAUGH: OK. And was there ever a time line given to you by either the Department or St. Francis? I mean, this-- the agreement with St. Francis was announced, obviously,--

LANA TEMPLE PLOTZ: Sure.

CAVANAUGH: --earlier this-- much earlier this year.

LANA TEMPLE PLOTZ: Sure.

CAVANAUGH: Was there ever a time line given to CAFCON members as to when a contract would become available?

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

LANA TEMPLE PLOTZ: Sure. Initially, I'm not remembering the initial time, but we-- I, I do remember we were supposed to have a contract before Thanksgiving.

CAVANAUGH: OK.

LANA TEMPLE PLOTZ: And then we got, we got a contract-- a draft contract with draft service attachments last Monday night in the evening with the request to have it back to St. Francis by Thursday. And then, then have everything signed by tomorrow. With boards and legal teams, it's really impossible to have that quick of a turnaround. So CAFCON members have been really working hard to work with their internal teams to review all those pieces. And again, and we have a conversation with Jodie this afternoon about some of our overarching feedback regarding the contract and service attachments.

CAVANAUGH: OK.

LANA TEMPLE PLOTZ: But that time line was fairly short to get that back.

CAVANAUGH: Thank you.

HOWARD: All right. Any other questions? Seeing none, thank you for your testimony.

LANA TEMPLE PLOTZ: Thank you.

HOWARD: Our next testifier for LR193. Good morning.

CINDY KWIATKOWSKI: Good morning, Senator Howard and all members of the Health and Human Services Committee. My name is Cindy Kwiatkowski, C-i-n-d-y K-w-i-a-t-k-o-w-s-k-i. Thank you for allowing me to be here to provide testimony for LR193 as well as LR88 due to their commonality. My husband and I are grandparents raising a grandchild. Our grandson is ten years old. He has lived with us in our home three different times over the last ten years. The first time when he was two years old, his mother just left him with us and did not come back to get for over seven weeks. She did not leave any paperwork with us or any way to get a hold of her. Our son is not on his birth certificate and lives out of state raising three other children, one on a vent and has severe disabilities. At the time, we were unsure of what to do or where to go. We were quite afraid to contact anyone since we did not know if he would be taken away or if we would ever

Rough Draft

see him. The second time he was four years old, the state took him away from his mother and he was made a ward of the state. We went through a CPS, caseworkers, drug court hearings, and supervised visits for about 18 months. It was a horrifying experience, as we were told right up front we had no rights. During the court hearings, we were not allowed to speak unless the judge specifically asked us questions. That never happened. And what was presented to the judge was not exactly what was really happening in the case. He was given back to her at age five and a half. She immediately went back to living with her drug dealer and prostituting. He rarely made it to school and spent several years a great deal of time hiding in closets and under beds to stay safe. We called CPS several times, but they could not find her as she was never working. She would disappear. A couple years later, when he was seven years old, she fled to California with him. There she'd end up homeless and on meth. Our grandson lived from couch to couch and did not go to school. He was constantly in fear as he was still living with different drug addicts and prostitutes. After a couple of months, our grandson begged to go to some place safe. His mother finally allowed her brother to pick him up and send him back to us to Nebraska. We paid for a one-way ticket. She again sent no paperwork and refused to sign anything. We were able to obtain guardianship privately through our own attorney at this time. A few months later, after he was back in Nebraska, she decided she wanted him back in California, even though her situation had not changed. She posted an old video of him on Facebook. We had never seen this video before. In the video, he was strapped in a highchair. He was about five years old and a man yelling at him, telling him that he needed to eat something very nasty. In her Facebook post, she posted that her son had been kidnapped and she stated that my husband was the man in the video and that both my husband and I had kidnapped him. She also posted our names and addresses. This video was shared over two million times. We started getting hundreds of death threats. The court and police stations here in Omaha were also getting thousands of calls demanding we'd be thrown in jail and our, and our grandson sent back to California. There were multiple people threatening to come to our home and steal our grandson to take him back to his mom. We had to leave our home for safety reasons and eventually ended up moving. When we went to court to set a date for a hearing, we were told that the burden of proof was on us to show that our grandson should stay with us. We paid thousands of dollars for attorney's fees, investigations to prove she was still homeless, on drugs, and was not in a safe place for a child. In the end, I spent three hours testifying. She did not

Rough Draft

show up for court, she did not pay for anything, and did nothing that was requested of her. Our guardianship, thank goodness was upheld. And he is still living with us today, almost three years later. Having our grandchild live with us both within and without the system, we have found it very difficult to know what to do or where to go for help. There are many other families in the same types of situation. I was recently at the roundtable that they just discussed at the Nebraska Children's Home Society, and we were privileged to have Senator McCollister join us. At this roundtable, there were several other grandparents raising grandchildren that were able to tell their stories and help come up with the questions that were sent to DHHS. It is important to note that there are thousands and thousands of grandparents and other family members raising children in Nebraska and elsewhere. Many are living on Social Security or have minimal income. Many are not in the system. And even the ones that are in the system do not have know where to go to for help. The laws here give all the rights and help to the parents. Many of these parents are on drugs and or mentally unstable. These interim studies are imperative to look at the needs of the people raising the children and help the children themselves. The parents are not doing what they need to do to get the children back and are getting multiple chances, financial support, and free transportation. Yes, in a perfect world, all parents would be decent parents, but we do not live in a perfect world. These parents need to be held accountable and those truly raising the children need to be helped. Over the last ten years, I've been told over and over by caseworkers and others in the system that Nebraska is a for parent state. Isn't it time we changed the statement to make Nebraska a for child state. Again, I want to thank you for allowing me to testify. Please let me know if you have any questions.

HOWARD: Thank you. How old is your grandson now?

CINDY KWIATKOWSKI: 10.

HOWARD: And where's he going to school?

CINDY KWIATKOWSKI: Westside in Omaha.

HOWARD: Oh, that's great. What's his favorite subject?

CINDY KWIATKOWSKI: Reading. He, he loves to read, but then he will fight it and say it's math.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Health and Human Services Committee December 18, 2019
Rough Draft

HOWARD: Right. If he was here, he would say math.

CINDY KWIATKOWSKI: If he was here, he would say math.

HOWARD: OK. All right. Let's see if there are any questions from the committee. Seeing none, we're really grateful for you sharing your story with us today.

CINDY KWIATKOWSKI: Thank you.

HOWARD: Thank you. Anyone else wishing to testify for LR193? Paul, do you have a blue sheet for us?

PAUL FEILMANN: Yes. Thanks. Hi, back again. I've been doing some advocacy around criminal justice reform, and I--

HOWARD: Could you state your name and spell it for everyone.

PAUL FEILMANN: Oh, yeah, Paul Feilmann, F as in Frank e-i-l-m-a-n-n, and I have some ongoing dialog with a lot of individuals, but Director Frakes and I-- he communicates with me fairly, fairly promptly when I send things to him. I sent him an article the other day about there is a research study done nationally where they try to get every state corrections department to do a survey of inmates, residents, and see how many had been in foster care and they only got 12 states to do it. But they did and they did a pretty thorough job on it. The percentage of folks that were in the survey was 25 percent were-- had been in foster care, which is-- you know, that's just another piece I just wanted to bring up. But I'd like to send these things to Director Frakes just to get his feedback. And this is what he said-- it's fairly short. He said, now you are getting into the real factors that, if addressed, could reduce the national prison population. So-- and when I learned about-- so he sees what's going on because he works in the prisons. What I've learned-- and this is a, this is a great example if you can get it. This is on-line, Voices for Children. It's a study that was done on children of incarcerated parents in Nebraska. It's got tons of data and it shows a lot of the issues that are taking place. And I volunteered with the prisons, I've worked with a lot of guys. The-- there's-- the highest-- this bill that was passed or this legislation with the funding, I got really excited about it because you could address one of the highest risk populations there is as far as going into foster care and going into the prison system, is children that have incarcerated parents. I have met so many people that have been incarcerated in the last years since I've been doing my

Rough Draft

advocacy stuff. And if you start to talk to them, the risk factors are supposed to be like 75 percent, that if you are incarcerated, your kids are going to be incarcerated. But I've found it to be like 90 percent. So if you want to address this money that's coming in to prevent foster care placement, I think one of the categories you really want to look at is identifying people that are incarcerated and their children and then putting a firewall between those children and adverse childhood experiences, poverty, and so forth, so that they don't get caught up in the system. And the, the statistics are showing that if you don't get kids by third grade in stable family situations, and doing well educationally, they start gravitating towards the only family they will find, which is gangs. And there's a really powerful documentary that's out. It was filmed over eight years, it followed twin brothers in Omaha and they were in a really bad situation. Both parents had been previously incarcerated, had drug and alcohol problems. These twin brothers were just barely making it by. One of them got arrested on some gang stuff in juvenile court. The other one left and got out to Grand Island and the other brother eventually got out of Omaha, which is the name of the documentary. And those two brothers ended up surviving the system and being out in Omaha-- or out of Omaha and out of that poverty area in north Omaha and they-- one's raising his daughter, they have a small company, cement company, and they wanted their younger half brother to come live with them. And it's pretty emotional in the movie, but the mother felt guilty. She didn't want the younger brother to-- she didn't want to, quote, you know, dump the younger brother on the older brothers. So she kept him. He ended getting caught up in the same gang violence and poverty and intergenerational incarceration that the older brothers did. The older two brothers got out of Omaha. He didn't get out of Omaha. Now he is serving 90 years at Tecumseh for gang, gang involved murder. That's how close he came to staying out of and having a life. And, and-- so my point today is if we can work with-- the Department of Corrections has a lot of parents to start with that have children, so facilitating relationships between those people and their children, and Director Frakes has been working on that, but getting collaboration between Health and Human Services and the Department of Corrections for prevention is, is really critical. And we've got these resources-- if you can invest these resources with families that have incarcerated parents, you can almost-- I mean, you can make a huge impact. They are the highest risk group. So if you factor that into the equation of who you're going to intervene with. You just go down the list and look at-- you know, like, if you have a school situation, you will identify

Transcript Prepared by Clerk of the Legislature Transcribers Office

Health and Human Services Committee December 18, 2019

Rough Draft

any family, any kids in that school that have incarcerated parents. Because the risk is-- remember what I said the risk was 75 to 90 percent that kid is going to prison. And how is he going to get there? He's going to go through foster care, adult-- you know, childhood experiences, chemical dependency, the whole nine yards. But he's going to be that kid down in Tecumseh doing \$40,000 a year with his life wasted. So anyway.

HOWARD: Thank you. Let's see if there are any questions. Are there any questions?

PAUL FEILMANN: The movie is out of Omaha. It's available on several platforms: iTunes, YouTube.

HOWARD: The library.

PAUL FEILMANN: Very powerful. Pardon?

HOWARD: I actually finished it last night and I got it from the library.

PAUL FEILMANN: OK, good, good. But yeah, I mean, once you see it, it's like-- it's, it's so clear about what we need to be doing to stop this prison crisis that we've got. We've got to stop things way earlier. So--

HOWARD: Yeah. All right. Thank you, Mr. Feilmann. Is there anyone else wishing to testify for LR193? Seeing none, Senator Bolz waives hearing. And this will conclude our hearings for the morning. Thank you.