Testimony on LB 1076

Before the Health and Human Services Committee

Nebraska Legislature

Brad Meurrens

Disability Rights Nebraska

Good afternoon Senator Campbell and members of the Health And Human Services Committee. For the record my name Is Brad, B-R-A-D Meurrens, M-E-U-R-R-E-N-S, and I am the Public Policy Specialist with Disability Rights Nebraska, the designated Protection and Advocacy organization for people with disabilities in Nebraska. I am here in support of LB 1076.

We wish to thank Senator Campbell for introducing this important legislation. LB 1076 creates a space where we can pause to have a frank and thoughtful discussion about how Nebraska could improve its system for home healthcare. Given the recent conflicting legislative and regulatory proposals to make changes to home health care over the last few years, it is only prudent that Nebraska should pause to assess its system.

Home health care is, for many people with disabilities, not an option. They require, for example, home health for their medical needs, to get them up and ready to go to work, or to simply stay out of the nursing home or other institution(s). For many, it is a quality of life issue, and for some people with disabilities, truly a life or death issue.

What is the Nebraska's plan for individuals already receiving home health care? Reduce their current services, let them languish so their conditions deteriorate to the point that they need nursing facility care, and *then* put them on the waiver or put them in an institution. This seems so, looking at the language in the Fiscal Note: "However, the restriction on limiting services may result in higher in-home costs for higher need individuals ***who would otherwise be served in a nursing facility***."

United States Senator Tom Harkin produced a study in July 2013[1] regarding the utilization of home and community-based services. The conclusion: providing HCBS is less costly than providing institutional care. As the average cost of nursing home care in Nebraska is *significantly* higher than home health care, we believe cost savings through

[1] Separate and Unequal: States Fail to Fulfill the Community Living Promise of the Americans with Disabilities Act, July 18, 2013, http://www.harkin.senate.gov/documents/pdf/OlmsteadReport.pdf

reducing home health care will not materialize and would be swamped by increases in future institutional or waiver expenses.

If the concern is with the balance of payments and costs of providing services to people with disabilities, we would suggest that other larger sections of the Medicaid budget be addressed first. According to the Nebraska 2013 Medicaid Annual Report[2], home health and Personal Assistance Services account for only 1.8% of the Medicaid and CHIP vendor payments for FY 2013, where nursing facilities account for 18% and full risk managed care accounts for 24.3%. The Harkin report further outlines the national trend to rely on institutional care:

- In reality, only 12 states spent more than 50 percent of Medicaid long-term services and supports (LTSS) dollars on home and community-based services (HCBS) by 2010. Further, the population of individuals with disabilities under 65 in nursing homes actually increased between 2008 and 2012. This is true even though ***38 studies over the past seven years have clearly demonstrated that providing HCBS is more cost-effective than providing services in an institution.*** (emphasis added)

Beyond the cost estimates, home health care is also a civil rights issue. In its 1999 decision in *Olmstead v. L.C*. that unjustified institutionalization of people with disabilities is a form of unlawful discrimination under the Americans with Disabilities Act (ADA). The decision reflects a preference to serve people with disabilities in their homes or communities rather than in institutions. As the Harkin Olmstead report summarizes:

- The Olmstead decision clearly articulates that ensuring individuals with disabilities are able to exercise their right to participate as citizens of the state and the country is a protected civil right under the ADA. Olmstead envisioned that states will provide appropriate long-term services and supports (LTSS) to individuals with disabilities through home and community-based services (HCBS) and end forced segregation in institutions.
- Previous testimony before the Committee illustrates the discriminatory nature of institutionalization. One individual stated simply: "People need to have high expectations for people with disabilities because then they'll give them opportunities to learn and grow. ***People don't grow in…institutions***." (emphasis added)

Moreover, the Harkin study clearly prescribes a potential solution to the continuous back-and-forth between policymakers in the legislative and executive branches. Finding a solution requires a different philosophical approach and the development of an enforceable/accountable Olmstead plan. Harkin explains:

> "The result of the survey demonstrates that, with a few exceptions, ***state leaders continue to approach decisions regarding Medicaid from a social welfare and budgetary perspective***. ***For the promise of Olmstead to be fully realized, state leaders must also approach decisions about Medicaid delivery options from a civil rights perspective.*** To do so, ***states must create an Olmstead plan with enforceable benchmark targets***—one that fully evaluates whether a state can take advantage of new federal options to better

[2] http://dhhs.ne.gov/medicaid/Documents/2013-Medicaid-Annual-Report.pdf

ensure that individuals can live in community-based settings where they can fully participate and be granted the power of individual decision making and choice." [3] (emphasis added)

It would behoove the legislature to inquire about the development of Nebraska's Olmstead plan. If one is not available or developed, we would strongly recommend that the legislature again step in and ensure that one is created, maintained, and enforced.

The Affordable Care Act provides a series of programs designed to increase the utilization of home and community-based services such as:

- **Funding for The Community First Choice (CFC) Program**, which gives states an increased six (6) percent federal Medicaid match for providing community-based attendant supports as an alternative to institutional services.
- **Funding for The Balancing Incentives Program**, which gives a higher federal Medicaid match to heavily institutionalized states who shift to community-based services as an alternative to institutions.
- **Enhancing Funding for Aging and Disability Resource Centers**, which are designed to assist seniors and people with disabilities in a variety of tasks, including choosing among long-term care options.
- **Funding to maintain and expand the Money Follows the Person (MFP) Program through 2016.** Under this program Medicaid funds that supported an individual to live in a nursing facility can now "follow" the person and support the provision of long term services in their home.
- **Expanding the scope of the Community Living Initiative** and opportunities available to states to promote and support community living for people with disabilities. This expanded role deepens the focus on the relationship between home and community-based services and accessible, affordable medical services.

We would strongly encourage Nebraska to aggressively seek out any and all opportunities under the Affordable Care Act to strengthen and improve HCBS systems, services, and service delivery to Nebraskans with disabilities

We recommend advancing LB 1076 to the floor; it is a discussion that is long overdue.

[3] "Separate and Unequal: States Fail to Fulfill the Community Living Promise of the Americans with Disabilities Act, July 18, 2013", p. 1