

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

**Testimony on LB 1216
Before the Judiciary Committee
Nebraska Legislature**

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Good afternoon Senator Lathrop and members of the 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 Director with Disability Rights Nebraska. We are the designated Protection and Advocacy organization for people with disabilities in Nebraska. I am here today in opposition to LB 1216 as originally written and with AM 1949.

To be clear, we are not insensitive or dismissive of the needs of families. The dearth of service providers has a real and significant impact on the lives of individuals with disabilities and their families. As the Protection and Advocacy organization, we are charged with protecting and advocating for the legal and civil rights of people with disabilities. As an agency that gets calls regarding inappropriate or exploitative guardianships for vulnerable people, we are additionally concerned about the rights of individuals subject to guardianship. The National Council on Disability reminds us that:

“Regardless, because of its legal implication on the person’s civil rights, guardianship must be recognized as ‘an extraordinary intervention in a person’s life and affairs,’ with the inherent potential to be a ‘drastic restraint on a person’s liberty,’ and, as such, an option of last resort”¹.

NCD’s warning should give us great pause; rather than enact quick legislation in the hopes of meeting immediate needs of families, we should instead engage in a deliberative, thorough, and expansive review of our guardianship statutes (benefitting from the input of critical stakeholders) and consider updates where needed. LB 1216’s and AM 1949’s prescriptions do not apply just to people with intellectual/developmental disability, but would attach to all disability types, the aging community, and any other person deemed incapacitated; again demonstrating the need for inclusive deliberation.

¹ National Council on Disability (2019). *Turning Rights into Realities: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, June 10, pp. 24-25, available at https://www.ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf

LB 1216 invites serious conflicts of interests between the ward, guardian, family, and institution, all without sufficient protections. For example, what if an individual wanted to change service provider? What if someone were injured due to institutional negligence? Is the guardian going to sue their employer?

Some states have made changes to their guardianship statutes, but we have not gathered sufficient data and understanding of the outcomes. Some states have built in additional layers of rights protections and language to allow expanded categories of providers and avoid/mitigate potential conflict of interests². The Uniform Law Commission’s guardianship proposal³ includes reform ideas that show promise. A fruitful change might also lie in the Medicaid waivers, not in the guardianship statutes—the waivers allow for relatives and legal guardians to provide services but prohibit a “Legally Responsible Person” (i.e. parent of a minor child) from service provision (see handout).

LB 1216 as originally written, or with AM 1949, is not the approach Nebraska should take. The bill would significantly alter existing protections for vulnerable people. It proposes change to our decades-old guardianship statutes that have not benefitted from a full vetting by individuals, other families, and the wide array of organizational stakeholders that would be impacted or that have particular expertise in these matters. What knowledge have we gained over the decades about the efficiencies and deficiencies of our guardianship process and schema? How are other human service systems affected and could they hold some solutions? How can we best meet the service needs of individuals and families while avoiding conflicts of interest and best protecting the rights of individuals? We need to bring parties together to dialog about potential changes to guardianship and their impact.

Instead of acting on LB 1216, we would strongly suggest an interim study be developed where this broad deliberation and analysis can take place. We would be happy to assist where and how we are able.

That concludes my testimony and I would entertain any questions the committee may have.

² For one example, see Alaska statute 13.26.145: “... (c) A person may be appointed as the guardian of an incapacitated person notwithstanding the provisions of (b) of this section if the person is the spouse, adult child, parent, or sibling of the incapacitated person and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated person. When appointing a relative or friend of the incapacitated person as the guardian of an incapacitated person, the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship before the appointment or within 30 days after the appointment.” See <http://touchngo.com/lglcntr/akstats/statutes/Title13/Chapter26/Section145.htm>

³ Uniform Law Commission (2017) *Guardianship, Conservatorship, and Other Protective Arrangements Act*, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.